

CHAPTER 10

RULES OF PROCEDURE, CIVIL AND CRIMINAL

TABLE OF CONTENTS

Section 1.	Name.....	160
Section 2.	Jurisdiction.....	160
Section 3.	Venue.....	160
Section 4.	Judges.....	161
Section 5.	Attorneys.....	161
Section 6.	Assignees.....	161
Section 7.	Attachment and Garnishment.....	162
Section 8.	Actions. How Commenced.....	162
Section 9.	Filing Fees.....	162
Section 10.	Service of Declaration and Order.....	163
Section 11.	Answer and Claim of Defendant.....	164
Section 12.	Date of Trial and Time for Service.....	165
Section 13.	Index and Register.....	166
Section 14.	Costs.....	166
Section 15.	Execution.....	167
Section 16.	Appeal.....	167
Section 17.	Security to be Posted by Appellant.....	168
Section 18.	Appointment of Guardian Ad Litem for Minor or Incompetent.....	170
Section 19.	Request to Proceed without Cost.....	171
Section 20.	Service of Declaration and Order by Certified or Registered Mail.....	172
Section 21.	Subpoenas.....	173
	A. Subpoena.....	173
	B. Subpoena, Peace Officers.....	173
	C. Subpoena Deces Tecum.....	175
	D. Witness beyond 150 Miles.....	175
Section 22.	Continuances.....	176
Section 23.	Off Calendar Cases.....	176
Section 24.	Dismissals.....	177
Section 25.	Transfer of Small Claims Action to Tribal Court.....	177
Section 26.	Amendments of Declaration.....	179
Section 27.	Recording Proceedings in Court.....	179
Section 28.	Notice of Entry of Judgment.....	179
Section 29.	Default Judgment.....	180
Section 30.	Satisfaction of Judgment.....	180
Section 31.	Dismissal of an Appeal, or Abandonment of Appeal.....	181
Section 32.	Proceedings against Sureties following Appeal.....	182
Section 33.	Writs of Execution-Procedure.....	183
Section 34.	Writs of Execution-Duty of Tribal Police.....	185
Section 35.	Writs of Execution-Time Limit.....	187
Section 36.	Abstract of Judgment.....	187
Section 37.	Procedure for Claim for Exemption.....	188
Section 38.	Counter-Affidavit to Claim of Execution.....	188
Section 39.	Exemptions.....	189
Section 40.	Costs Bill after Judgment.....	193

Section 41. Examination of Judgment Debtor.....194
Section 42. Court shall Prescribe Rules of Procedure.....195
Section 43. Words used in this Chapter.....195
Section 44. Statute of Limitations.....196

CHAPTER 10
SMALL CLAIMS COURT

Section 1. Name..

There shall be one Small Claims Court of the Blackfeet Indian Reservation.

Section 2. Jurisdiction.

Jurisdiction of the Small Claims Court is limited to cases for the recovery of claims not exceeding Five Hundred Dollars (\$500.00). Where there is joinder of plaintiffs, each having a separate cause of action against the defendant within the jurisdictional limit above, the case of each plaintiff is her or her individual cause of action and demand. When plaintiffs have a joint cause of action against the defendant, wherein all plaintiffs are interested in the total amount recovered, the total sum of the amounts claimed determines the jurisdiction. The plaintiff may not split a single cause of action and made it the basis of several suits so as to bring each within the jurisdictional limit of the Court. If such splitting is attempted, the defendant in the second action may plead the pendency of the first action abatement, or, if the first action has been concluded and judgment has been entered on the merits, the defendant may plead that judgment as a bar to the second action. The plaintiff is not required to consolidate for trial two or more existing claims where each claim constitutes a separate cause of action. There shall be no filing of Unlawful Detainer actions in Small Claims Court.

Section 3. Venue.

In a tort action, the Court has venue if the injury occurred within the exterior boundaries of the Blackfeet Reservation, or if the

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defendant resides within the exterior boundaries of the Blackfeet Reservation. On contract actions, the Court has venue of the obligation sued upon was to be performed within the exterior boundaries of the Blackfeet Reservation or the defendant resides within the boundaries of the Blackfeet Reservation at the time the contract was entered into. If the contract is silent as to place of performance, it is presumed to be performable where entered into. In all other cases, the Court has venue if the defendant resides within the Blackfeet Reservation at the commencement of the action in the Small Claims Court.

Section 4. Judges.

All judges of the Blackfeet Tribal Court may sit as judges of the Small Claims Court.

Section 5. Attorneys.

No attorney at law, or other person, may represent the plaintiff or defendant in the filing, prosecution, or defense of litigation in Small Claims Court. In cases wherein a corporation, partnership or unincorporated association is either the plaintiff or the defendant, an officer of such corporation, partnership or unincorporated association may represent such entity, whether or not he is an attorney since he is appearing in his capacity as an officer, not as an attorney. An attorney also may not represent the judgment creditor in any proceedings supplemental to execution in connection with any judgment rendered in Small Claims Court.

Section 6. Assignees.

The assignee of a claim may not file or prosecute such claim in Small Claims Court. The word "assignee" includes anyone who stands in

the place of the original creditor. Neither may an assignee be allowed to initiate creditor.

Section 7. Attachment and Garnishment.

No attachment or garnishment may issue from the Small Claims Court.

Section 8. Actions. How Commenced.

Actions in the Small Claims Court are commenced by filing with the Clerk, an affidavit or declaration, together with the required filing fee.

Section 9. Filing Fees.

Fees in Small Claims Court are limited to:

- (1) Declaration of Affidavit commencing the action.....\$2.00
- (2) Service by the Clerk by certified mail, for each party to whom mailed.....\$1.50
- (3) Issuing a writ of execution.....\$1.50
- (4) Issuing an abstract of judgment.....\$1.50
- (5) Transmitting papers to another court.....\$1.00
- (6) Filing appeal to Tribal Court.....\$1.00

No fees shall be charged to any public agency, either tribal, federal, city or state, for the filing of a small claims action, or for the performance of any official service. Non-profit corporations or associations, upon the filing of an affidavit showing their non-profit status, are not required to pay the prescribed fees with the exception of the service fee in Section 9(2) above, if service is to be made through the Clerk and Section 9(3) above for the issuance of a writ of execution.

Section 10. Service of Declaration and Order.

A. The Declaration and Order may be served:

- (1) by any Tribal Policeman on the Blackfeet Reservation, or
- (2) by any person eighteen (18) years of age or older, not a party to the action, who thereafter must file with the Clerk proof of such service in the form of an affidavit, or declaration of service, or
- (3) by registered or certified mail by the Clerk of Court only.

B. Who may be Served. The Declaration and Order may be served by delivering a copy thereof as follows:

(1) if the suit is against a corporation, to the president or other head of the corporation, a vice-president, a secretary, an assistant secretary, a treasurer, a general manager, or a person designated for service or process or authorized to receive service of process. If such a corporation is a bank, to any of the foregoing officers or agents thereof, or to a cashier or an assistant cashier. If no such officer or agent of the corporation can be found within the Blackfeet Reservation, then to the Secretary of the Blackfeet Tribe;

(2) if the suit is against an unincorporated association or partnership, then to a general partner or partnership, then to a general partner or the general manager of the partnership and any officer of the association or such person designated to receive service of process;

(3) if against a minor (under the age of 18 years), to his parent, guardian, conservator, or similar fiduciary, or, if no such minor, or with whom he resides or by whom he is employed, and to such minor if he is at least 12 years of age;

(4) if against a person for whom a guardian or conservator has been appointed, to his guardian, conservator, or similar fiduciary and to such person, but, for good cause shown, the Court in which the action is pending may dispense with delivery to such person;

(5) except as otherwise specifically provided by statute, in an action or proceeding against a public entity, to the clerk, secretary, president, chairman, or other head of its governing body. "Public entity" as used in this section includes the Blackfeet Tribal Council, the Blackfeet Tribe, and any office, department, division, bureau board, commission or agency thereof, the Bureau of Indian Affairs, the City of Browning, any state agency and any other entity coming under the direction of the Blackfeet Tribe, the Federal Government, the City of Browning, or the State of Montana;

(6) in all cases where corporation has forfeited its charter or right to do business, or has dissolved, by delivering a copy thereof to one of the person who has become the trustee of the corporation and of its stockholders or members; and

(7) in all other claims, to the defendant personally.

Section 11. Answer and Claim of Defendant.

A. A formal answer by the defendant is not necessary, if the defendant in any Small Claims Court action has a claim against the plaintiff which is for an amount within the jurisdiction of the Small Claims Court as set forth in Section 2 above, he may file an affidavit stating such claim.

B. Personal service of a copy of the affidavit shall be delivered to the plaintiff in person, not late than forty eight (48) hours prior to the hour set for appearance of said defendant in such action.

C. If the defendant has a claim against the plaintiff for an amount over the jurisdictional limit of the small claims court but of a nature which would be the subject of a cross-complaint in such action under the Rules of Procedure as set forth in Chapter 9 of the Code, he may commence an action in Tribal Court and have the small claims action in Tribal Court and have the small claims action transferred to that court and such actions will then be tried together in such Court.

Section 12. Date of Trial and time for service.

The date for the appearance of the defendant as provided in the Order appearing with the affidavit or declaration shall be as follows:

A. If the defendant resides within the Blackfeet Reservation, not less than ten (10) nor more than thirty (30) days from the date of said Order. Defendant is entitled to service of the order at least five days prior to appearance date. If defendant is not served in time in time for this five (5) day period to apply, plaintiff is entitled to a new order setting a new date under the limitation of this Section;

B. If the defendant resides outside the Blackfeet Reservation, not less than thirty (30) days nor more than sixty (60) days from the date of said Order. Defendant is entitled to service of the Order at least fifteen (15) days prior to appearance date. If defendant is not served in time for this fifteen (15) day period to apply, plaintiff is entitled to a new order setting a new date under the limitation of this Section.

C. When there are two or more defendants and one or more of them resides outside the Blackfeet Reservation in which the action is brought, the date for the appearance of all defendants shall not be more than thirty (30) days from the date of the order to appear.

D. If a defendant was not properly served as set forth under A and B above, the Court has no jurisdiction to proceed unless and until the defendant appears and waives the statutory notice.

E. If defendant was not properly served, as described in A and B above, continue the case to a date for trial not less than ten (10) days from the date of the order of continuance.

Section 13. Index and Register.

The Clerk of the Small Claims Court must keep a "Register of Small Claims Action" in which must be recorded the names of the parties, the title of the action, each and every paper filed in the case and the date of the filing. The Clerk shall also keep an index with the name of the defendants listed in alphabetical order, showing the names of both parties, the number of the case and the date of filing.

Section 14. Costs.

The prevailing party in any action in the Small Claims Court, is entitled to costs of the action, and also the costs of execution upon a judgment rendered therein. Such costs shall include costs of service of the Order for the appearance of the defendant. Such costs may include;

- (1) Fee for filing the action;
- (2) Fee for serving Declaration and Order upon the defendant;
- (3) Fee for serving a defendant by registered or certified mail;
- (4) Witness fees and mileage paid to a witness;
- (5) Fees for issuance and service of a writ of execution;
- (6) Fees for issuing and recording abstracts of judgment;

(7) Fees and costs approved by the court in supplementary proceedings after judgment;

(8) Other fees in aid of execution;

Section 15. Execution.

A writ of execution may issue as in civil actions against any and all of the judgment debtor's property not exempt. A fee of One Dollar Fifty Cents (\$1.50) is charged for issuance of the writ. A Claim for exemption may be filed by the judgment debtor upon judgment being rendered against him or her and such judgment debtor shall have ten (10) days from the date of judgment to return such exemption form to the clerk. Procedure for a writ of execution is found in section 33 below.

Section 16. Appeal.

A. The judgment of the Small Claims Court is conclusive and final upon the plaintiff and he may not appeal it. A plaintiff may appeal, however, when an adverse judgment is rendered against him as a cross-defendant on a claim of the defendant.

B. If the defendant is dissatisfied, he may, within twenty (20) days after the date of entry of the judgment, appeal to the Tribal Court. The Tribal Court will not review the Small Claims proceedings, but will try the case anew. Each party is entitled to be represented by counsel on appeal.

C. The Appellant must pay, for filing the papers in Tribal Court, the same fee is charged and collected for filing a civil claim in the Tribal Court.

D. If judgment is rendered against the defendant in the Tribal Court, he must pay, in addition to the judgment, an attorney's fee to

the plaintiff in the sum of Fifteen Dollars (\$15.00), and all other costs as may be ordered. Process for the enforcement of such judgments is issued out of the Tribal Court.

E. The decision of the Tribal Court on an appeal from a Small Claims judgment is final. No further appeal or review is allowed.

F. A Tribal Judge who has presided over a Small Claims proceeding, may not preside over an appeal from such proceeding in the Tribal Court.

Section 17. Security to be posted by appellant.

A. When a defendant decides to appeal the decision of the Small Claims Court he must deposit some form of security equal to the judgment rendered against him in the Small Claims Court proceeding plus certain costs including the Fifteen Dollar (\$15.00) attorney fee. This security may be either in the form of a cash deposit or may take the form of a written guarantee of certain sureties that in the event the judgment is upheld against the appellant, and the appellant does not pay the judgment within thirty (30) days of the appeal, that they will be responsible for payment of the judgment and all costs involved in the appeal. This type of agreement is called an "undertaking on appeal" and must contain an affidavit or declaration of the Surety stating his name, his residence address, if any, and that he resides within the Blackfeet Reservation and is worth the sum of the judgment plus costs over and above all his just debts and liabilities exclusive of property exempt from execution. The undertaking must contain further, the promise that if the judgment of the Small Claims Court is affirmed, in whole or in part, or if the appeal from the judgment of the Small Claims Court is dismissed, and the appellant does not pay the

judgment and costs within thirty (3) days thereafter, judgment for such amount may be entered, on motion of the respondent and in his favor, against the surety, together with interest due, costs on appeal and the Fifteen Dollars (\$15.00) attorney fee.

B. There may be more than one surety on an undertaking on appeal and notice by mail of the filing of the appeal and of the filing of either the undertaking or the cash deposit must be given forthwith to all parties by the clerk.

C. The filing of the undertaking or the deposit of cash stays and stops all proceedings in the enforcement of the judgment in the Small Claims Court.

D. When a defendant files his motion of appeal and appeal bond after issuance of a writ of execution, the case should be presented to the judge for an order directing the officer to stay proceedings on the writ, to release any property levied upon, and to return the writ to the clerk for filing. The clerk should prepare, certify, and give to the defendant a copy of the order for delivery to the officer.

E. If it appears to the court that the appellant does not have the money to make a deposit or the means to secure the proper sureties, but nevertheless has a meritorious claim for appeal, and it further appearing to the court that substantial injustice will be done by denying such appeal, the court may order the appeal to proceed to the Tribal Court upon a written agreement between the appellant and the respondent, that in the event the appeal is dismissed or the judgment of the Small Claims Court is upheld in whole or in part, that the appellant agrees to pay the respondent the amount of the judgment, plus costs of the appeal, plus the Fifteen Dollars (\$15.00) attorney fee

within twenty (2) days after the final decision on the appeal, and further, that in the event the appellant defaults on this agreement, his property will be subject to execution without benefit of the claim of exemption. This agreement shall be witnessed by the judge of the Small Claims Court.

Section 18. Appointment of Guardian Ad Litem for minor or incompetent.

A. A Guardian ad litem must be appointed by the Court when:

(1) The plaintiff or defendant in the Small Claims action is a minor and is not represented by a general guardian Any person under eighteen (18) years of age is a minor;

(2) the plaintiff or defendant is an insane or incompetent person, and is not represented by a general guardian.

A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, expedient to represent the minor, insane or incompetent person in which the action or proceeding even though he may already have a general guardian.

B. When the plaintiff is a minor under fourteen (14) years of age appointment of a guardian ad litem to represent him in a Small Claims Court action may be made upon the application of a parent or other relative, or of a friend or of another party to the action.

C. When the plaintiff is a minor fourteen (14) years of age or older, appointment of a guardian ad litem to represent him in a Small Claims Court action may be made upon his own application.

D. When the defendant in a Small Claims Court action is a minor and neither the defendant, if he is fourteen (14) years of age or

older, nor the parents, guardian or other interested person make application to have a guardian ad litem appointed for such minor within ten (10) days after service upon him of the Declaration and Order, application for appointment of a guardian ad litem may by the Court on its own motion.

E. When an insane or incompetent person is a party to a Small Claims action, he must appear by his general guardian or by a guardian ad litem appointed by the court. Application for appointment of a guardian ad litem to represent such person may be made by a relative or friend, or by another party to the action, or by the court on its own motion. In order for a party to a Small Claims Court Action, to come under this section there must have been an adjudication in a court of competent jurisdiction that the person is in fact insane or incompetent. If there has been no such judicial determination of this fact, the action must be stayed from any further proceedings until such time as this judicial determination is made.

F. For purposes of this section, the term "guardian ad litem" refers to a person appointed to represent the minor, insane or incompetent person only for the Small Claims Court proceeding, including any supplemental proceedings taken after judgment, and for no other purpose and said guardianship terminates automatically at the final conclusions of such proceedings.

Section 19. Request to proceed without cost.

When plaintiff desires to commence a Small Claims action, and states that he is unable to pay the fees prescribed by law in this Chapter for the filing of the action, he may request an order from the Court to proceed without costs, by filing a "Declaration to Proceed

without costs". This form should contain information that he is the plaintiff, that he is without funds or assets to pay the filing fee, that he has a good and meritorious claim, that if not allowed to proceed with his claim because of failure to pay the required fee he will be denied the opportunity to secure any remedy of relief, and that if he recovers the judgment sought including costs of the action, that he will pay the filing fee to the Court.

The court, upon reading the application, may give its approval to the plaintiff's request and the required filing fee may be waived, but in no event shall the fee required by the clerk for service by registered mail be waived; instead the plaintiff must serve the Declaration and Order commencing the action under Section 10 A(1) or (2) of this Chapter.

Section 20. Service of Declaration and Order by Certified or Registered Mail.

A. When service of the Declaration and Order is being made by registered or certified mail, the addresses may be the defendant, or any person authorized to receive service on behalf of the defendant.

B. When the plaintiff requests service of the Declaration and order by registered or certified mail, the clerk shall;

(1) collect a fee of One dollar Fifty Cents (\$1.50) for each defendant on whom service by registered or certified mail is requested, and issue a receipt to the plaintiff;

(2) prepare return receipt card, entering the case number and date of hearing thereof;

(3) mail copy of Declaration and Order to the defendant or defendants, requesting a return receipt from addressee only;

(4) attach to the original Declaration and Order, the U.S. Post Office receipt for the registered or certified letter;

(5) enter in the Register of Small Claims Action, the date the registered or certified letter was mailed;

(6) upon receipt of return card, enter date of receipt by the addressee in the Register and file the return card in the case file.

Section 21. Subpoenas.

A. Subpoena. A witness may be required to attend a Small Claims proceeding by service upon him of a subpoena. Subpoenas may be issued in blank by the Clerk and filled out by the party wishing to use the same. A subpoena is served by exhibiting the original and delivering a copy thereof to the witness personally. The subpoena may be served by any person, including the parties to the action, providing he or she is eighteen (18) years of age or older. Return of Service of the subpoena shall be filed with the Clerk. If the witness fails to appear in Court after being served with a subpoena the Court may issue a bench warrant for his arrest.

B. Subpoena, peace officers. Any member of the Tribal Police, the Montana Highway Patrol, Sheriff, Marshall or city or federal law enforcement agencies who is obligated by subpoena to attend a session of the Small Claims Court as a witness regarding an event or transaction which he has perceived or investigated in the course of his duties, shall receive his salary or compensation and reasonable traveling incurred by him in complying with such subpoena upon agreement made between the Blackfeet Tribe and the various law enforcement agencies. In turn, the party at whose request such

subpoena is issued must reimburse the employing agency in the amount of such salary and traveling expense for the time such officer is absent from his official duties, unless such officer is off duty. Each employing agency shall submit to the court a cost schedule in computing the amount required. The employing agency may require a deposit upon receipt of the subpoena by the officer, but in no event may this deposit exceed the sum of Forty Five Dollars (\$45.00).

When the party requests such a subpoena, the Clerk shall:

(1) collect the deposit, if so requested by the employing law enforcement agency and place such deposit in the safe of the Tribal Court marked separately under "Small Claim-civil trust";

(2) prepare the subpoena, naming the officer, the law enforcement agency by which he is employed and its address, and the time and place at which the officer is to appear. The Clerk shall also endorse upon the subpoena the amount and receipt number of any deposit;

(3) sign and seal the original subpoena and deliver both the original and the copy to the requesting party for service;

(4) instruct the requesting party that the subpoena may be served either upon the officer personally, or upon his immediate superior, except that the officer is not entitled to witness and mileage fees;

(5) enter in the Register of Small Claims Action the date and fact of the issuances of the subpoena; the time and place for appearance; the name of the officer; the name and address of the law enforcement agency by which he is employed; the amount and receipt number of any deposit, if any, together with the name and address of the depositor;

(6) upon attendance of the officer as a witness, forward the deposit to the requesting law enforcement agency.

The peace officer subpoena may be shown as costs at the discretion of the judge;

C. Subpoena Duces Tecum. If party to the action wishes a witness to bring physical evidence to the trial, such as books, documents, or other things under his control, a subpoena duces tecum should be issued and served on the witness. This subpoena is issued by the Clerk upon application of the requesting party and by the filing of an affidavit or declaration showing good cause for the production of the matters and things described to be produced, setting forth in full detail the materiality to the issues involved in the case. A subpoena duces tecum is served in the same manner as set out above for a subpoena, except that a copy of the affidavit or declaration must be served together with the subpoena on the witness and the original must be filed with the court prior to the time appearance.

D. Witness beyond 150 miles. A witness, including a peace officer subpoenaed pursuant to Section 21 E above, is not obligated to attend as a witness before the Small Claims Court if he resides more than one hundred fifty (150) miles from the Blackfeet Reservation, except; that a member of the Montana Highway Patrol may be subpoenaed to attend at a distance greater than one hundred fifty (150) miles if the part at whose request the subpoena is issued, reimbursed the State of Montana for the actual necessary and reasonable travelling expenses upon request of the Montana Highway Patrol. The effective limitation set above is not applicable where a subpoena duces tecum is duly issued

Section 22. Continuances.

If, after service of the Declaration and Order within the prescribed time period, either the plaintiff or defendant requests a continuance, the requesting party must either:

A. File with the Clerk a written stipulation signed by both parties, plaintiff and defendant, agreeing to a new date of trial that conforms with the Court's calendar; or

B. Appear in Court ex-parte, prior to the original trial date, and made a motion for continuance; or

C. Appear in Court on the date of the trial and request a continuance.

If the motion is granted, the Clerk shall give written notice of the continuance to all other parties.

Section 23. Off Calendar Cases.

A. If a defendant has not been served, the Clerk shall:

(1) inform the plaintiff that his action will go off calendar automatically upon the non-appearance of the parties;

(2) place the case file with the other unserved actions;

(3) if neither party appears at the trial, so inform the judge and the judge in turn will order the action off calendar.

B. If the defendant has been served, and the plaintiff requests that his action be placed off calendar, the Clerk shall:

(1) inform the plaintiff that a memorandum of his request will be placed on the case file for attention of the judge and that if the defendant appears, the judge may either give judgment for the defendant or dismiss the action;

(2) before the trial, enter on the case or calendar a memorandum of the plaintiff's request.

C. If the defendant has been served and has filed a claim of the defendant against the plaintiff and thereafter the plaintiff requests that his action be dismissed, or be placed off calendar, the Clerk shall:

(1) inform the plaintiff that the defendant is not deprived of his right of action on his claim and that if defendant appears and the plaintiff does not, the judge may give judgment for the defendant and against the plaintiff on the defendant's claim;

(2) before the trial, call the judge's attention to the plaintiff's request and the fact that the defendant has filed a claim against the plaintiff.

Section 24. Dismissals.

A. When the plaintiff desires to dismiss an action prior to trial and a claim of defendant has not been filed, the plaintiff may file a written request for entry of dismissal. Where the defendant has filed a claim, a voluntary dismissal by the plaintiff is barred unless the defendant consents thereto in writing, or simultaneously files a dismissal on his claim.

B. If prior to trial, the plaintiff gives written notice other than a dismissal that the claim has been satisfied, the Clerk shall note such notice in the case file and the Court shall dismiss the action at the date set for hearing of said action.

Section 25. Transfer of Small Claims Action to Tribal Court.

A. When a defendant in a Small Claim action has a claim against the plaintiff for an amount over the maximum jurisdiction of a nature

A. When a defendant in a Small Claims action has a claim against the plaintiff for an amount over the maximum jurisdiction of a nature which would be the subject of a cross-complaint, the Small Claims action may be tried together with a civil action filed by defendant against plaintiff in the Tribal Court. After the defendant has filed the civil action in the Tribal Court, the defendant must file with the Clerk of Small Claims Court a copy of the civil complaint and a Declaration setting forth the facts of the commencement of such action. The defendant must also serve upon the plaintiff at or before the date set for trial of the Small Claims action, a copy of the declaration together with the summons and a copy of the civil complaint filed in Tribal Court.

B. Upon the filing of such a declaration and copy of the civil complaint, the Clerk shall;

(1) collect and issue receipt for One Dollar (\$1.00) transmittal fee from defendant;

(2) enter in the register of action, the filing of the declaration, copy of the civil complaint filed in Tribal Court, and the deposit of fees;

(3) file the declaration and copy of the civil complaint and summons in the case file.

C. On the date set for trial, the judge of the Small Claims Court will order the Small Claims Action transferred to the Tribal Court, provided that on or before said date, the defendant has served upon the plaintiff a copy of the Declaration together with summons and a copy of the civil complaint in Tribal Court, and has filed proof of such service, or plaintiff does acknowledge such service in open Court.

Section 26. Amendments of Declaration.

The Court may, at the time of the Trial or at any time prior to trial, on motion of the plaintiff or by stipulation of the parties, allow the plaintiff to amend his Declaration by adding the name of any new party, by dismissing his claims against any party named, or by correcting a mistake in the name of any party. A continuance may be granted by the Court when service of the Declaration and Order upon new parties is necessary.

Section 27. Recording proceedings in Court.

A. At the time of hearing on a Small Claims action, the Clerk shall record in the register of actions minutes of the hearing which shall include;

- (1) the date of the proceeding;
- (2) the parties present;
- (3) if the case is ordered submitted, the order of submission;
- (4) the decision of the Judge, including the party or parties in whose favor the judgment is given, the party or parties against whom the judgment is given, the amount of the judgment and costs, any order for payment of the judgment in installments, or other order affecting the execution of the judgment and the name of the presiding judge.

B. It is not necessary that the minutes in the register show the witnesses sworn, or exhibits presented but not retained, in the small claims trials, since an appeal from the small claims judgment results in a trial de novo in the Tribal Court.

Section 28. Notice of entry of judgment.

The Clerk shall prepare and mail or delivery to each of the parties to a Small Claims action, a notice of the judgment rendered therein, showing the date of the judgment, the number and title of the action, the name of the party or parties in whose favor the judgment is given, the amount of the judgment and costs, the terms and conditions for payment of judgment, if any, and any order affecting execution of the judgment. The Clerk also enters the information as to the judgment in the register of actions and this acts as a judgment for each judgment so given.

Section 29. Default Judgment.

If, after service of the Declaration and Order on the defendant within the prescribed time period, and the date for trial having been set, the defendant fails to appear at the appointed time and place, without any excuse or notification to the Court, the plaintiff will be given a default judgment against the defendant. The Clerk shall enter the default of the defendant in the register and shall deliver or mail notice of the default judgment to the defendant. Provided however, that no default judgment may be taken against a defendant in a Small Claims action until the plaintiff has filed with the Clerk a Declaration or Affidavit of Non-Military Service showing that the defendant is not in the Military Service of United States, pursuant to the terms of the Soldiers and Sailors Civil Relief Act of 1940, as amended and found in the United States Code.

Section 30. Satisfaction of Judgment.

A. The Clerk must enter in the register of Small Claims action, a satisfaction of judgment whenever:

(1) a memorandum or notice of judgment is filed together with a letter signed by the judgment acknowledging payment of the judgment in full or;

(2) a writ of execution is returned fully satisfied, or;

(3) an acknowledgement of satisfaction is filed, reciting payment of the judgment in full, or acceptance by the judgment creditor of any lesser sum in full satisfaction thereof. Such a satisfaction must be an original document, signed by the judgment creditor and acknowledged before a notary public or the Clerk of the Court; or

(4) the judgment creditor endorses upon the face of, or in the register of actions, an acknowledgement that the judgment has been satisfied; or

(5) ordered to do so by the Court.

Section 31. Dismissal of an appeal, or abandonment of appeal.

A. If the appellant fails to bring the appeal to trial within one year after his request for an appeal is made to the Small Claims Court, and the appeal is dismissed by the Tribal Court, all papers and records, including the cash deposit on appeal, if posted, will be refunded by the Tribal Court to the Small Claims Court from which the appeal was taken, and thereafter, the Small Claims Court shall have jurisdiction of the case, including all proceedings in enforcement of the judgment, as if no appeal had been taken. Upon receipt of the records on appeal and copy of the Tribal Court Order dismissing the appeal, the Clerk shall;

(1) enter in the register of actions, each document returned by the Tribal Court, the order of dismissal of the appeal, and the remittance of the cash bond on appeal, if posted;

(2) give notice to the parties that the Tribal Court has dismissed the appeal; that all records and papers on appeal including the cash deposit on appeal, if posted have been returned, said cash deposit on appeal will be applied in satisfaction of the judgment, and the balance if any, refunded to the appellant;

(3) if a cash bond on appeal is on deposit, upon application of either party, prepare an order for disbursement of cash bond, disburse the cash bond, and show satisfaction of the judgment in the register.

B. The appellant may also abandon his appeal prior to transmittal to the Tribal Court of the record on appeal. The Clerk shall then enter the abandonment in the register and return the cash bond on appeal, if any, unless there is a motion by either party to use such bond to satisfy the Small Claims judgment.

Section 32. Proceedings against sureties following appeal.

A. By terms of the undertaking or agreement by the surety or sureties, such surety on the appeal becomes liable to the judgment creditor for the amount of the judgment entered if upon appeal to the Tribal Court, said judgment is affirmed, or the appeal is dismissed. When an appealed judgment is affirmed, all proceedings for its enforcement, including motions for judgment against the surety, are handled in the Tribal Court. When an appeal is dismissed, all papers are returned and jurisdiction for enforcement of the judgment is restored to the Small Claims Court.

B. If the judgment remains unpaid for thirty (30) days following dismissal of an appeal. the plaintiff may move the Court for an order giving judgment against the surety in the amount of the judgment, for

interest thereon from the date of its entry, for costs on appeal, and for attorney's fees of Fifteen Dollars (\$15.00). If the plaintiff elects to proceed against the surety pursuant to the foregoing, the Clerk shall:

(1) inform the judgment creditor that he must file at least ten (10) days before the date set for hearing, a motion for judgment against the surety;

(2) instruct the judgment creditor to serve a copy of the motion in one (1) above upon each surety at least ten (10) days prior to the date set for hearing.

Judgments against sureties are enforced in the same manner as for other judgments in the Small Claims Court.

Section 33. Writs of Execution-procedure.

A. When a Small Claims judgment has not been paid or otherwise satisfied, the judgment creditor is entitled, after entry of judgment and within ten (10) years thereafter, excluding any period during which execution is stayed or enjoined, to a writ of execution giving to the Tribal Police on the Blackfeet Reservation, the authority to satisfy the judgment out of the personal or real property of the judgment debtor. A writ of execution may not be issued until judgment has been entered in the register of Small claims actions, and until the expiration of any stay of execution which may have been granted. A new writ of execution may be issued only when all prior writs of execution have been returned and filed.

B. If the Judgment or the order prescribes the payment of the judgment in installments, a writ of execution may issue only upon the filing of a declaration by the judgment creditor showing that the

judgment debtor is in default on the installment payments, and noting any part of the judgment that has been satisfied up to the time of default.

C. A new writ of execution may be issued only when all prior writs of execution have been returned and filed.

D. The judgment creditor may claim interest accruing after entry of judgment by filing with the Clerk, at the time of his request for issuance of the writ execution, a declaration or affidavit specifying the amount of such interest. In the event the amount of interest claimed exceed seven percent (7%) per year.

E. Upon request for issuance of the writ of execution, the Clerk shall:

(1) make certain there are no outstanding writs of execution on the judgment;

(2) prepare the writ of execution in an original and as many copies as are required by the Tribal Police, attaching to said writ any judgment debtor's claim of exemption as approved by the Court, if any, and a list of property of the judgment debtor, not exempt, which the judgment creditor has prepared and which he believes can be levied upon;

(3) instruct the judgment creditor to give the writ, with the attached papers as stated in two (2) above to the Tribal Chief or Police for action;

E. After action has been taken upon the writ of execution the Chief of Police shall return the writ to the Clerk, noting upon the writ whether it has been wholly unsatisfied, partially satisfied or

wholly satisfied and noting the amount, if any, obtained such satisfaction.

Section 34. Writs of Execution—duty of Tribal Police.

A. Upon receipt of a writ of execution in the form prescribed above in section 33E(2), the Tribal Chief of Police or a Tribal Officer assigned by him, shall proceed to search for the described non-exempt property of the judgment debtor. If the property is in the form or money, such as wages, bank account, or money in any other form, he shall take said money, issue a receipt to the holder thereof, together with a copy of the writ of execution, and hold money until he notifies the judgment creditor to pick it up. If the property is in the form of personal or real property other than money as set out above, the officer shall take the property into his possession and hold until he has complied with a procedure for sale. A receipt shall be issued to the holder together with a copy of the writ of execution.

B. Sale of property, personal and real. The Tribal Chief of Police may hold any real or personal property of the judgment debtor, not exempt, for sale and apply the proceeds of the sale to satisfaction of the writ of execution in his possession. Any such property, if capable of being moved, shall be transported to the Tribal Law and Order building for safekeeping until the time of sale. The Chief of Police shall then cause a notice to be posted in three public places within the Blackfeet Reservation stating that the property has been seized pursuant to a writ of execution in satisfaction of a judgment, naming the parties to the judgment; a full description of the property, the time and place of sale; that the highest bid will be taken, unless such bid is less than the current cost of the sale and any outstanding

balance owed upon such property. The sale must be a public sale, and any private or secret sale is hereby forbidden. The sale must be held not less than ten (10) days after posting of the notice set out above, not more than thirty (30) days after posting of such notice and shall be in a public place on the Blackfeet Reservation and shall remain open from the hours of 8:00 A/M to 5:00 P/M. Bids may be accepted either in writing or by oral as a binding offer the same as if it had been put in writing. Upon receipt of the highest bid which qualifies under this Section, the Chief of Police shall inform the person making such bid and such bidder upon notice thereof, shall pay over the amount of his bid to the Chief of Police and receive the property. If the property is such that must be transferred through an agent of either the State, Tribal or Federal governments, the Chief of Police shall then cause any proceeds from the sale to be paid on any outstanding balance owing to any creditor by the judgment debtor, then apply the remaining proceeds to the cost of the sale as itemized by the Chief of Police, then pay to the judgment creditor the remainder, of the sum up to the total cost of the judgment. If the remainder of the proceeds from the sale after deduction of outstanding balance owed to creditors and costs of the sale do not equal the total amount of the judgment, the Chief shall give any sum then remaining to the judgment, creditor in partial payment on the judgment. If the sum after all deduction are made exceeds the total amount of the judgment, the Chief of Police shall give the remaining balance to the judgment debtor. It is the duty of the judgment creditor to ascertain whether there is any property so seized for sale under this section and to so inform the Tribal Chief of Police.

C. The judgment debtor has the right at any time before commencement of the sale of his property as set forth above, to redeem said property by paying to the Chief of Police the total sum of the judgment together with any costs assessed thereon by the Chief of Police for the setting of the sale. Upon such redemption, the Chief of Police shall release the property to the judgment debtor and shall notify the judgment creditor of the judgment money so held. The Chief of Police shall then return the writ of execution to the Clerk of Court with the total satisfaction noted thereon.

D. When the Chief of Police receives a writ of execution listing certain money of the judgment debtor held through the Agency Office of the Bureau of Indian Affairs and subject to execution under Chapter 2; Section 5, of this Code in the name of the judgment debtor either in an Individual Indian Money account or otherwise, the Chief of Police shall present the writ of execution to the Superintendent of the Bureau of Indian Affairs on the Blackfeet Indian Reservation for release of such funds.

Section 35. Writs of Execution-time limit.

No writ of execution issued under section 33 or 34 above shall be valid for more than three (3) months from the date of issuance by the Clerk of Court. If the Chief of Police is unable to act upon a writ of execution given to him within this three (3) month period, he must return the writ to the Clerk of Court as unsatisfied.

Section 36. Abstract of Judgment.

An abstract of judgment is a brief transcript of essentials of a recorded judgment. It may be issued from the Small Claims Court if no appeal has been taken by the defendant and if the record does not show

payment of the judgment according to the terms and conditions imposed by the Court.

Section 37. Procedure for claim for exemption.

When a judgment debtor desires to claim exemption for all or part of his earnings, he must file with the Clerk of Declaration of exemption, together with a copy thereof, alleging;

- (1) that earnings levied upon are exempt to a certain sum;
- (2) specifying the subsection or subsections under section 39 below relied upon for his exemption;
- (3) stating all necessary facts to support his claim;
- (4) giving his name and address for the purpose of permitting service by mail of any affidavit, declaration, counteraffavit, or counter-declaration, or any notice of hearing thereon.

Upon the filing of an affidavit or declaration of exemption the Clerk shall serve such notice of exemption on the judgment creditor with instructions that the judgment creditor may contest any claim of exemption made in such notice. The Clerk shall further set a hearing on the claim of exemption, not less than five (5) days after service of the notice to the judgment creditor, the judgment creditor has not filed a counter-affidavit or otherwise contested the claim of exemption, the Court shall allow the claim except that certain amounts may be either raised or lowered in accordance with section 39 below or the Court's discretion.

Section 38. Counter-affidavit to claim of execution.

To contest a Claim of Exemption, the judgment creditor must file with the Clerk, within five (5) days after service of the Clerks

notice, a counter-affidavit alleging that the amounts claimed in the Claim of Exemption are not exempt. Upon receiving such counter-affidavit, the Clerk shall set the matter for hearing within five (5) days thereafter, inform the parties to the action of the hearing date, and after such hearing note the Claim of Exemption allowed by the Court in the register. Any amount ordered by the Court to be included in the judgment debtor's Claim of Exemption shall be exempt from execution. If the judgment debtor fails to file a Claim of Exemptions under these provisions, any property he claims may be levied upon with the exception of Section 39 A(8).

Section 39. Exemptions.

A. All property, including franchises or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this Section, or elsewhere in this Code. If selected and reserved by the judgment debtor through his Claim of Exemption before execution thereon, the following property of the judgment debtor shall be exempt from execution upon order of the Court, upon either a hearing upon the affidavit and counter-affidavit filed by the judgment debtor and creditor or upon failure of the judgment creditor to contest judgment debtor's claim. This property shall consist of the following:

- (1) books, pictures, musical instruments, to the value of Seventy Five dollars (\$75.00);
- (2) necessary wearing apparel to the value of One Hundred Dollars (\$100.00), and if any judgment debtor is a householder, for each member of his family to the value of Thirty Dollars (\$30.00);

(3) tools, implements, apparatus, team, harness, or library, necessary to enable the judgment debtor to carry on the trade, occupation or profession by which he habitually earns his living, to the value of Six Hundred Dollars (\$600.00), and sufficient quantity of food to support such team, if any, for sixty (60) days. (The word "team" here does not include more than a span of horses or mules);

(4) one vehicle to the value of Three Hundred Fifty Dollars (\$350.00) but the total exemption claimed and allowed by this subsection taken together with subsection (3) above, shall not exceed Six Hundred Dollars (\$600.00). (As used here the word "vehicle" includes an automobile, truck, trailer, truck and trailer or other motor vehicle and does not include any type of motor bike, motorcycle, or snowmobile);

(5) domestic animals and poultry kept for family use to the total value of Three Hundred Dollars (\$300.00) and food sufficient to support such animals and poultry for sixty (60) days;

(6) household goods to the total value of Four Hundred Dollars (\$400.00) if owned by the householder, and in actual use, or kept for use by and for his family or when being moved from one habitation to another including furniture, one radio, one television set and utensils plus provision actually provided for family use and necessary for the support of a householder and family for sixty (60) days and also 60 days supply of fuel;

(7) all property of the Tribe, or any government agency, including the State of Montana, City of Browning, and United States, or any other public or municipal corporation of like character;

(8) sixty five percent (65%) of take-home pay earned as employment wages per week except that judgment debtor is still liable under this Section for any order of the Court for support of any person, any bankruptcy order or order for State or federal tax, and any salary, wages, credits or other property in possession of under control of the Tribe, city, federal government or school district is subject to execution with this subsection applying to exemptions in the same manner and with the same effect as like property held by individuals;

(9) a mobile home that is the actual abode of and occupied by the judgment debtor and his family when such mobile home is occupied as their sole residence and no other homestead exemption is claimed up to the value of Three Thousand Dollars (\$3,000.00) and this exemption shall not be impaired by temporary removal or absence with the intention to reoccupy the mobile home as a home for a period to exceed six (6) months, nor by sale thereof up to \$3,000.00 with the intention to procure another mobile home or homestead with the proceedings not to exceed six (6) months;

(Amended by Ordinance No. 43, Blackfeet Tribe, December 13, 1974-deleted here from the original SECTION are the words "and the property upon which mobile home is situated").

(10) a homestead up to the value of Seven Thousand Five Hundred Dollars (\$7,500.00) provided that it is the actual abode of and occupied by the owner, his spouse, parent or child and such exemption shall not be impaired by temporary removal or absence with the intention to reoccupy the homestead as a home for a period not to exceed six (6) months, nor by sale thereof up to \$7,500.00 with the intention to procure another mobile home or homestead with the proceeds not to exceed six (6) months, except that a house being purchased under

any Blackfeet Housing Authority Program cannot be levied upon until the owner thereof has received clear title to said home and further that the word "homestead" as used here shall consist of a house or other similar structure which the above described persons occupy.

(Amended by Ordinance No. 43, Blackfeet Tribe, December 13, 1974--deleted here from the original Section are the words "and 160 acres or 1 block if in town or city provided it does not exceed the value of \$7,500.00" and added is the word "any" in substitution for "the" on line 11 of original and "a house or other similar structure which the above-described persons occupy").

11) any real property owned ~~by an~~ enrolled member of the Blackfeet Tribe, when such property is found within the exterior boundaries of the Blackfeet Reservation, provided that the owner thereof can produce to the Small Claims Court correct and sufficient documentation proving that he or she is the true owner of said property.

(Amended by Ordinance No. 43, Blackfeet Tribe, December 13, 1974. This is a new addition).

B. If the property selected or reserved by the judgment debtor and approved by order of the Court as exempt shall be adjudicated by the Court to be of such value in excess of that allowed by the appropriate subsection above. the officer making the levy shall proceed to sell such property, and, out of the proceeds of such sale, the officer shall deduct costs of sale and shall pay to the judgment debtor an amount equivalent to the value declared to be exempt by any of the subsections above to the value declared to be exempt by any of the subsections above and shall apply the balance of the proceeds of sale on the execution. No sale shall be made under such execution unless the highest bid made exceeds the appropriate exemption claimed and allowed plus costs of sale. If no bid is received in excess of the

value allowed by the appropriate exemption value claimed by the judgment debtor and allowed by the Court, the costs of the sale shall be borne by the judgment creditor and the property shall be returned to the judgment debtor.

C. If the event the judgment debtor does not file a claim of exemption under subsection A above, all his property may be subject to execution, except:

- (1) wages exemption under subsection A(8) above;
- (2) one rifle or shotgun and one pistol if the judgment debtor is 16 years of age or older and a resident of the Blackfeet Reservation;
- (3) pensions, including Social Security benefits;
- (4) welfare benefits;
- (5) any possession of Blackfeet Cultural tradition given by ancestor or ceremony;
- (6) any real property belonging to an enrolled member of the Blackfeet Tribe, when such property is found within the exterior boundaries of the Blackfeet Reservation.

(This subsection amended by Ordinance No. 43, Blackfeet Tribe, December 13, 1974, and is an addition hereto).

Section 40. Costs Bill After Judgment.

A. A judgment creditor claiming costs consisting of items made after judgment must serve upon the adverse party, either personally or by mail, and file within six (6) months after such item cost has been incurred, and prior to the time of judgment is fully satisfied, a memorandum of such costs and disbursements. Such memorandum is called a "Cost Bill After Judgment", and it must be verified by each of the

judgment creditor, stating that to the best of his knowledge and belief, the items listed are correct and that they have been summarily or reasonably incurred in the action. If the judgment debtor is dissatisfied with the costs claimed, however, within ten (10) days (plus two (2) days of service is by mail, after the service of a copy of the cost bill after judgment, file with the Court in which the judgment was rendered. Upon hearing such motion, the Court will make an order requesting the costs of disbursements as claimed as the circumstances justify, allowing the same in whole or in part, or disallowing the same.

E. Any costs so approved by the Court shall be included in any execution issued upon the judgment.

Section 41. Examination of Judgment Debtor.

A. When a writ of execution against the property of a judgment debtor may properly be issued, whether or not such writ of execution has been issued or issued and returned unsatisfied, and when the residence or place of business of the judgment debtor is on the Blackfeet Reservation, the judgment creditor is entitled to an order of the Court requiring such judgment debtor to appear, at a time and place specified in the order, and answer questions concerning his property. However, a judgment debtor may not be required to appear and answer more frequently than every six (6) months. The order of the Court setting up such an examination is called "Order for Appearance of Judgment Debtor".

B. The Court may issue a bench warrant for the arrest of the judgment debtor if he fails to appear after being served with a court order for Appearance of Judgment Debtor.

C. At the hearing on the order, the Court may inquire as to any property the defendant holds that may be subject to a writ of execution. The judgment debtor may show to the Court any Claim of Exemption that has been approved by the Court, and may state any changes of circumstances that may bring any additional property under his claim of exemption. The Court in its discretion may add or take away certain property listed in the judgment debtor's Claim for Exemption if such claim was made more than six (6) months previous to the examination of the judgment debtor. The Clerk shall note any such changes and enter such change in the register.

Section 42. Court shall Prescribe Rules of Procedure.

The Small Claims Court shall promulgate and prescribe its own rules or procedure to cover any matter falling within its jurisdiction and not specifically set out in this Chapter, keeping in mind that the goal of the Blackfeet Small Claims Court is the orderly, efficient, and just determination of civil disputes in an atmosphere congenial to the settlement of such disputes.

Section 43. Words used in this Chapter.

For purposes of this Chapter, the following words shall have the prescribed meanings:

- A. "Court" shall always mean Small Claims Court.
- B. "Judge" shall mean the Judge of the Small Claims Court.
- C. "Clerk" shall mean the Clerk of the Small Claims Court.
- D. "Tribal Court" shall mean the Tribal Court of general jurisdiction of the Blackfeet Reservation.

E. "He" or other pronouns in the masculine gender are used in a general manner and refer to either the masculine or the feminine as the case may be.

This Chapter and the provisions thereof approved by Ordinance of the Tribal Business Council of the Blackfeet Reservation, August 21, 1973.

Section 44. Statute of Limitations.

All actions under this Chapter must be commenced within two (2) years from the date the obligation becomes due and owing or from the time when the plaintiff was first aware of the cause of action. In no event shall any action be maintained under this Chapter which is not filed within two (2) years from the date when the plaintiff could first have filed suit hereunder.

(This Section added by Blackfeet Tribal Resolution passed May, 1974).