

JANUARY 2002 CROW TRIBAL LEGISLATURE

BILL NO. CLB0201

INTRODUCED BY: Blaine Bulltail – Executive Aide

BY REQUEST OF THE EXECUTIVE BRANCH OF THE CROW TRIBE

A BILL FOR AN ACT ENTITLED: “AN ACT REPEALING THE EXISTING TITLE 3 OF THE CROW TRIBAL LAW AND ORDER CODE AND ESTABLISHING A NEW TITLE 3 OF THE CROW TRIBAL LAW AND ORDER CODE”

WHEREAS, the existing Title 3 of the Crow Tribal Law and Order Code does not comply with the Crow Tribal Constitution; and

WHEREAS, the new Title 3 of the Crow Tribal Law and Order Code complies with Crow Tribal Constitution and clarifies the roles and procedures established for the Crow Tribal Judicial Branch in accordance with the Crow Tribal Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE CROW TRIBE:

REPEAL. Section 1. Upon adoption of this Bill, the existing Title 3 of the Crow Tribal Law and Order Code is hereby repealed. (1) The existing Title 3 of the Crow Tribal Law and Order Code, upon adoption of this Bill by the Crow Tribal Legislative Branch, is to be repealed in its entirety and shall no longer govern the Crow Tribe.

ADOPTION. Section 1. Upon adoption of this Bill, the proposed Title 3 of the Crow Tribal Law and Order Code is hereby adopted. (1) The proposed Title 3 of the Crow Tribal Law and Order Code, upon adoption of this Bill by the Crow Tribal Legislative Branch, is hereby adopted in its entirety and shall govern the Crow Tribe regarding the Crow Tribal Courts and Tribal jurisdiction.

CODIFICATION. Section 1. Codification instruction. This Bill, upon adoption by the Crow Tribal Legislative Branch, is intended to be codified as Title 3 of the Crow Tribal Law and Order Code.



FEB 21 2002

Bill or resolution number CB0201 Introduced by Christina Birdseye Date of Vote _____

Representative	Yes	No	Abstain	No Vote
Bull Tail	✓	—	—	—
Costa	✓	—	—	—
Crooked Arm	—	—	—	—
Little Light	—	✓	—	—
Plain Feather	✓	—	—	—
Stewart	✓	—	—	—
Not Aford	✓	—	—	—
Goes Ahead	✓	—	—	—
Hogan	—	✓	—	—
Old Elk	—	✓	—	—
Passes	—	—	—	—
Pease	—	—	—	—
Medicine Horse	✓	—	—	—
Russell	✓	—	—	—
Real Bird	—	—	—	—
Black Hawk	—	—	—	—
Stone	—	✓	—	—
Clond	✓	—	—	—
Results	<u>9</u>	<u>4</u>	—	—
(If tie vote)				
Vice Chair Goes Ahead	<u>N/A</u>	—	—	—
Results	<u>9</u>	<u>4</u>	—	—

Result of vote: Passed Not Passed Tabled Veto Override

Signature of Officer: Benjamin Clond Date: 2-21-02



CODIFICATION. **Section 1. Codification instruction.** This Bill, upon adoption by the Crow Tribal Legislative Branch, is intended to be codified as Title 3 of the Crow Tribal Law and Order Code.

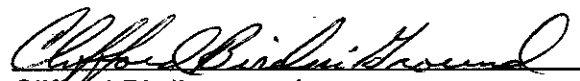


AMENDED CERTIFICATION

I, Clifford Birdinground, Chairman of the Executive Branch of the Crow Tribe of Indians, in accordance with the duties and powers vested in the Executive Branch of the Crow Tribal Government by Article IV, Section 4(a) and Article V, Section 8, of the Crow Constitution, hereby acknowledge receipt of CLB0201 from the Legislative Branch of the Crow Tribal Government which was duly adopted by a majority vote by the Legislative Branch in a duly noticed and called meeting with sufficient quorum attending and voting, hereby find and declare the attached legislation, to be in the best interest of the Crow Tribe of Indians thereby requiring and demanding my approval and signature, immediately enacting such legislation as the Law of the Crow Tribe and the Crow Reservation. Based upon the immediate passage of CLB0201, I further order in accordance with Article IV, Section 4(a) of the Crow Constitution that:

1. The positions for Chief Judge, Associate Judges and Appellate Judge of the Crow Tribal Court are immediately vacant and shall be advertised in accordance with the qualifications and requirements contained in the newly adopted Title III;
2. The former Judges are encouraged to apply for the newly created positions; and,
3. The current Special Judge shall preside on all matters until the search and hiring process is completed by the Executive and Legislative Branches of the Crow Tribal Government in accordance with the Special Judge Contract currently in effect.

Signed and Approved this 13th day of March, 2002.


Clifford Birdinground

Chairman of the Executive Branch of the
Crow Tribal Government



TITLE 3

ESTABLISHMENT OF THE CROW TRIBAL COURTS AND TRIBAL JURISDICTION

CHAPTER I. GENERAL PROVISIONS

3-1-101. Crow Tribal Court. (1) There is hereby established the "Crow Tribal Court."

(2) The Crow Tribal Court shall be a court of general civil and criminal jurisdiction and shall hear appeals from final decisions of the Tribal Administrative bodies.

3-1-102. Crow Juvenile Court. (1) There is hereby established the "Crow Juvenile Court."

(2) The Crow Juvenile Court shall have original and exclusive jurisdiction over all cases arising under the Tribal Juvenile Code as set forth in Title 9 of the Crow Tribal Law and Order Code.

3-1-103. Crow Court of Appeals. (1) There is hereby established the "Crow Court of Appeals."

(2) The Crow Court of Appeals shall have original and exclusive jurisdiction to hear all appeals from final judgments and/or orders of the Crow Tribal Court and the Crow Juvenile Court.

3-1-104. Applicable Law. (1) The laws, ordinances, resolutions, treaties, customs and traditions of the Crow Tribe shall be the law applied in all courts established under this Title.

(2) The laws and treaties of the United States shall be the applicable law in the Courts of the Crow Tribe where they specifically apply to the Crow Indian Reservation or the Crow Tribe as a matter of federal law or where incorporated by reference in tribal law. (3) Wherever the issue in controversy shall not be resolved by federal law or by the laws of the Crow Tribe, the judge may seek authority in the custom, usage, and jurisprudence of the Crow Tribe, traditional or modern, and in common law jurisprudence both in law and equity. (4) State laws and federal laws not applicable to the Crow Tribe or the Crow Indian Reservation shall not be deemed applicable law in any proceeding, except as provided herein, unless agreed to be applicable by the parties by stipulation with consent of the court, but in no event shall they be construed to have any greater authority than the laws, ordinances, resolutions, treaties, or the traditions and customs of the Crow Tribe.



CHAPTER II. JURISDICTION OF THE CROW TRIBAL COURTS

3-2-201. Jurisdiction. The Crow Tribal Court shall be a court of general jurisdiction. It is the intention of the Crow Tribe of Indians to exercise that jurisdictional authority which has not otherwise been abrogated by the United States Supreme Court or by legislation by the United States Congress. The failure of the United States Congress to legislate in a particular area shall not be deemed a waiver of the jurisdictional authority of the Crow Tribe. The jurisdiction of the Crow Tribal Court shall be used to insure due process and equal protection of the law for all persons, as defined herein.

3-2-202. Jurisdiction--Territorial. The jurisdiction of the Crow Tribal Courts shall extend to any and all lands within the exterior boundaries of the Crow Indian Reservation as the same may exist from time to time including all easements, rights-of-way and fee patented lands within such boundaries.

3-2-203. Jurisdiction--Personal. (1) The Crow Tribal Court shall have jurisdiction over all persons who reside, enter, and/or transact business within the exterior boundaries of the Crow Indian Reservation, provided that the Court shall not exercise criminal jurisdiction over non-Indians, unless such jurisdiction is granted by laws of the United States Congress.

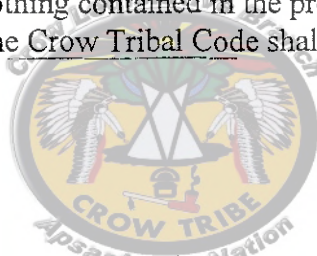
(2) For purposes of jurisdiction "persons" shall include individuals, businesses, partnerships, associations, cooperatives, and corporations.

3-2-204. Jurisdiction--Property. (1) The Crow Tribal Court shall have jurisdiction over all property, real and personal, which is located within the exterior boundaries of the Crow Indian Reservation. Such jurisdiction shall extend to the determination of ownership rights in property, interests in property, and the application of property to the satisfaction of a judgment for which the owner of the property is deemed to be liable.

(2) The jurisdiction of the Crow Tribal Courts shall be limited only by federal law; provided however, that the Crow Tribal Court shall have jurisdiction to render money judgments against persons, businesses, partnerships, corporations, and cooperative associations who are not subject personally to the jurisdiction of the court only if the action is commenced by an attachment of the defendant's property which is located within the exterior boundaries of the Crow Indian Reservation. Unless the defendant subjects himself to the jurisdiction of the court, any judgment in an action commenced by the attachment of property belonging to a party not personally subject to the jurisdiction of the court may be executed only against the property actually attached.

3-2-205. Jurisdiction--Subject Matter. The Crow Tribal Courts shall have jurisdiction over all causes of action arising within the exterior boundaries of the Crow Indian Reservation an over all criminal offenses which are enumerated in Title 8 of the Crow Tribal Code and which are committed within the exterior boundaries of the Crow Indian Reservation.

3-2-206. Sovereign Immunity. Nothing contained in the preceding provisions on jurisdiction, or any other provision of the Crow Tribal Code shall be construed as a waiver of the



sovereign immunity of the Crow Tribe, its officers, or businesses, unless specifically waived by such entity.

CHAPTER III. COMPOSITION OF COURTS

3-3-301. Judges. The Crow Tribal Court shall be composed of a minimum of two (2) judges: one (1) Chief Judge and one (1) Associate Judge.

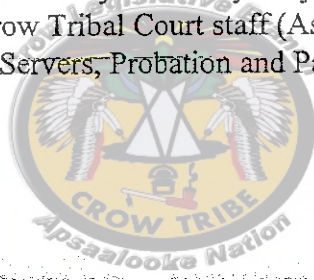
3-3-302. Appointment of Judges. The judges of the Crow Tribal Court shall be appointed by the Chairman of the Crow Tribe. Each Judge's appointment must be approved by a majority vote of the Crow Tribal Legislature at the next quarterly meeting of the Crow Tribal Legislature following the appointment. If the Judge's appointment is not approved by the Tribal Legislature at the quarterly meeting following his/her appointment, the person will no longer be eligible to be an appointed Judge and a new Judge must be appointed by the Chairman until the next quarterly meeting. Each Judge appointed shall serve at his/her position until removed in accordance with this Title. All appointed Judges must meet the minimum requirements for the position as specified in this Title.

3-3-303. Chief Judge. (1) The Chief Judge of the Crow Tribal Court shall have at a minimum the following qualifications:

1. Possess a juris doctorate degree from an ABA accredited law school.
2. Be at least twenty-five (25) years of age.
3. Have never been convicted of a felony and have not been convicted of a misdemeanor offense within five (5) years of appointment, not to include minor traffic offenses.
4. Have experience working in a Court system.
5. Demonstrate a working knowledge of the Crow Tribal Law & Order Code.
6. Meet all other requirements as required under the Crow Tribe's 638 Contract with the Bureau of Indian Affairs for judicial services.

(2) The Chief Judge shall be the head administrator of the Crow Tribal Court system and shall have the following duties and responsibilities:

1. Preside over any civil and criminal cases.
2. Hear and decide cases in a timely manner.
3. Assign and reassign cases to other judges of the Crow Tribal Court and delegate any other such duties as may be required for the efficient operation of the Court.
4. Supervise all civil, criminal, juvenile, peacemaker, and appellate court dockets.
5. Supervise and maintain court records.
6. Compile court statistics.
7. Draft and promulgate necessary court procedures and/or rules of court.
8. Supervise and monitor the performance of tribal probation and parole officers.
9. Design and maintain a law library for use by the judges and general public.
10. Hire and supervise all Crow Tribal Court staff (Associate Judges, Special Judges, Clerks, Bailiffs, Process Servers, Probation and Parole Officers) in accordance



with the Crow Tribal Personnel Practices and Policy Manual.

11. Maintain and update the Crow Tribal Court Law & Order Code and make available for purchase copies for attorneys, lay advocates, and the general public.
12. Compile, maintain, and index all written decisions of the Crow Tribal Court and Court of Appeals.
13. Hire the staff necessary to enable the Chief Judge to be able carry out the duties and responsibilities herein.

3-3-304. Associate Judge(s). (1) Associate Judges shall have at a minimum the following qualifications:

1. Possess a juris doctorate degree from an ABA accredited law school, or have completed a course of study in Indian justice systems or lay advocacy, or have at least five (5) years experience as a lay advocate in a Tribal justice system.
2. Have experience working in a Court system.
3. Have never been convicted of a felony or have not been convicted of any misdemeanor offense within five (5) years of appointment, not to include minor traffic offenses.
4. Be at least twenty-five (25) years of age.
5. Demonstrate a working knowledge of the Crow Tribal Law & Order Code.
6. Meet all other requirements as required under the Crow Tribe's 638 Contract with the Bureau of Indian Affairs for judicial services.
7. Comply with the Crow Court Admissions Criteria under § 3-7-702 of this Title.

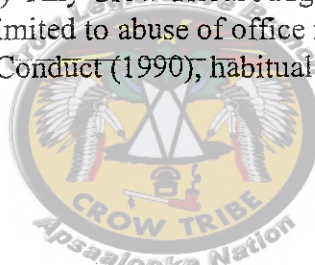
(2) Associate Judges shall have the following duties and responsibilities:

1. Preside over any cases assigned to him/her by the Chief Judge.
2. Hear and decide cases as assigned by the Chief Judge in a timely manner.
3. Apply and follow the rules and procedures for adjudicating cases as established by the Court and under the laws of the Crow Tribe.
4. Participate as an appellate judge when assigned in accordance with § 3-3-307 contained in herein.

3-3-305. Special Judge(s). (1) The Chief Judge, in his/her discretion, may contract with a professional attorney, licensed to practice before the highest court of any state, to sit as a Special Judge of the Crow Tribal Court for a particular matter. In determining whether appointment of a Special Judge is necessary, the Chief Judge shall be guided by the following considerations:

1. The complexity of the legal issues presented in the matter before the court;
2. The relative importance of Crow Tribal custom and tradition to a proper determination of the issues presented;
3. The family or clan relationships of the parties to the matter to the regular Judges of the Crow Tribal Court; or
4. Whether a conflict of interest exists.

3-3-306. Removal of a Judge. (1) Any Crow Tribal Judge may be removed for cause, and cause for removal of a Judge shall be limited to abuse of office in violation of the American Bar Association's Model Code of Judicial Conduct (1990), habitual intemperance, or conviction of



any other offense enumerated in this Code or the laws of the United States or the States of the United States, not to include minor traffic offenses.

(2) Petitions for removal of a Tribal Judge shall be reviewed by the Judicial Ethics Board which shall consist of the Chief Executive Officer of the Crow Tribe, the Speaker of the Crow Tribal Legislature, and either the Chief Judge or Appellate Judge of the Crow Tribe, whichever is not subject to the removal petition. If an Associate Judge is the subject of the removal petition, the Chief Judge shall sit on the Judicial Ethics Board, provided no conflict of interest exists. A majority vote of the Judicial Ethics Board is required to remove a Judge under this part.

3-3-307. Disqualification of a Judge. (1) It shall be the duty of any Crow Tribal Judge to disqualify themselves from sitting on any criminal or civil case where any of the following circumstances exist: (a) the Judge is interested in the outcome of the case by reason of business, financial or professional association; (b) the Judge is related by blood or marriage within the second degree to any party or to counsel of any party; or (c) where the Judge has rendered legal assistance to any party which is the subject of the proceeding.

(2) Any party or his counsel shall have the right to move for disqualification of the presiding Judge at arraignment in a criminal trial or within ten (10) days of trial in a civil proceeding; provided that a motion to disqualify a Judge may be entertained within five (5) days of assignment of a second Judge to replace the judge originally assigned to the case; provided further that if all Crow Tribal and Appellate Judges are disqualified under this part, a Special Judge may be appointed in accordance with § 3-3-305 of this Title.

3-3-308. Court of Appeals. (1) The Crow Court of Appeals constitutes one (1) attorney licensed to practice law in the State of Montana and the Crow Tribal Court.

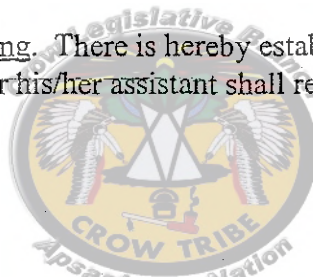
(2) The Crow Tribal Appellate Judge shall be selected through a recommendation of the Chief Judge, the recommended Appellate Judge must then be appointed by the Crow Tribal Chairperson and the Crow Tribal Legislature must approve the appointment of the Appellate Judge by a majority vote in order for the candidate to be seated.

(3) If the Crow Appellate Judge is not able to preside over the appeal due to conflict or other circumstances, the Chief Judge shall at his/her sole discretion have the authority to contract with an additional professional attorney, licensed to practice in the Crow Tribal Court and the State of Montana to sit as an appellate judge for a particular case.

3-3-309. Juvenile Court. The Crow Tribal Juvenile Court shall be composed of all Judges of the Crow Tribal Court to whom juvenile cases, brought under Title 9 of this Code, shall be assigned by the Chief Judge.

CHAPTER IV. TRIBAL PROSECUTOR

3-4-401. Establishment and Hiring. There is hereby established the position of "Tribal Prosecutor." Said Tribal Prosecutor or his/her assistant shall represent the Crow Tribe of Indians



in all criminal prosecutions in the Crow Courts and all civil actions against Tribal members. The Tribal Prosecutor will be hired and supervised by the Crow Tribal Executive Branch in accordance with the Crow Tribal Personnel Practices and Policy Manual with final approval by the Crow Tribal Chairperson.

3-4-402. Qualifications. The Tribal Prosecutor shall have the following minimum qualifications:

1. Possess a juris doctorate from an ABA accredited law school, or shall have completed a course of study on Indian justice systems or lay advocate program, or shall have at least five (5) years relevant experience in a federal, state, or tribal court. In addition, the Tribal Prosecutor must be admitted to practice in the Crow Tribal Court pursuant to §§ 3-6-601 and 3-6-602 of this Title.

3-4-403. Assistant Prosecutor. An assistant prosecutor may be hired if the criminal caseload of the Court so warrants. The Assistant Prosecutor shall meet all the requirements of the Tribal Prosecutor, but must work under the direct supervision of the Tribal Prosecutor. It shall be the responsibility of the Tribal Prosecutor to train Assistant Prosecutors.

3-4-404. Contracting for Prosecutor Services. The Tribal Prosecutor may contract with a licensed attorney to prosecute cases where the Tribal Prosecutor and the Assistant Prosecutor may have a conflict or for other circumstances where both may be unable to prosecute the case.

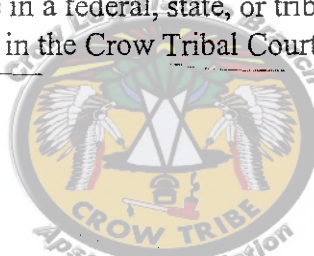
3-4-405. Conflict of Interest. (1) It shall be the duty of any Tribal Prosecutor to disqualify themselves from adjudicating any criminal or civil case where any of the following circumstances exist: (a) the prosecutor is interested in the outcome of the case by reason of business, financial or professional association; (b) the prosecutor is related by blood or marriage within the second degree to any party or to counsel of any party; or (c) where the prosecutor has rendered legal assistance to any party.

CHAPTER V. TRIBAL DEFENDER

3-5-501. Establishment and Hiring. There may be established the position of "Tribal Defender." Said Tribal Defender or his/her assistant may represent certain indigent persons brought before the Crow Tribal Court in criminal actions if the criminal offense charged is punishable by possible incarceration. The Tribal Defender, if the position is established, will be hired and supervised by the Crow Tribal Executive Branch in accordance with the Crow Tribal Personnel Practices and Policy Manual with final approval by the Crow Tribal Chairperson.

3-5-502. Qualifications. The Tribal Defender shall have the following minimum qualifications:

1. Possess a juris doctorate from an ABA accredited law school, or shall have completed a course of study on Indian justice systems or lay advocate program, or shall have at least five (5) years relevant experience in a federal, state, or tribal court. In addition, the Tribal Defender must be admitted to practice in the Crow Tribal Courts pursuant to §§ 3-6-601 and 3-6-602 of this Title.



3-5-503. Assistant Tribal Defender. An assistant tribal defender may be hired if the criminal caseload of the Court so warrants as determined by the Chief Judge. The Assistant Tribal Defender shall meet all the requirements of the Tribal Defender, but must work under the direct supervision of the Tribal Defender. It shall be the responsibility of the Tribal Defender to train the Assistant Defender.

3-5-504. Contracting for Defender Services. The Tribal Defender may contract with a licensed professional attorney to represent indigent clients in cases where the Tribal Defender or Assistant Defender may have a conflict or may for other circumstances be unable to defend a tribal member.

3-5-505. Conflict of Interest. (1) It shall be the duty of any Tribal Defender to disqualify themselves from adjudicating any criminal or civil case where any of the following circumstances exist: (a) the defender is interested in the outcome of the case by reason of business, financial or professional association; (b) the defender is related by blood or marriage within the second degree to any party or to counsel of any party; or (c) where the defender has rendered legal assistance to any party, not including the defendant.

CHAPTER VI. TRIBAL CLERK

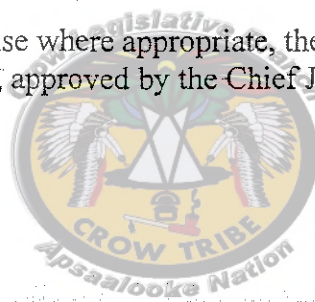
3-6-601. Appointment and Qualifications of Clerk of Court. (1) There is established the office of Clerk of Court, which shall be filled by a qualified applicant hired in accordance with the Crow Tribal Personnel Practices and Policy Manual. The Crow Tribal CLerk of Court shall be supervised by the Chief Judge.

(2) The Clerk of Court must possess at a minimum the following qualifications: (a) high school diploma or G.E.D.; (b) no felony convictions; (c) no misdemeanor convictions within five (5) years of appointment, not to include minor traffic offenses; (d) demonstrate good moral standing; (e) demonstrate the ability and experience required to administer Court or office personnel and proceedings through similar work held in the past.

3-6-602. Duties. (1) As the budget for administering this office allows, the Court may permit, with approval of the Chief Judge, the Clerk to hire such deputies and court reporters as may be required to assist in fulfilling the duties of the Clerk in accordance with the Crow Tribal Personnel and Policy Manual.

(2) The Clerk shall collect fees and fines paid to the Court and deposit the same within a week of collection to the Crow Tribal Finance Director. The Clerk shall make a certified accounting of the same annually to the Tribal Finance Director. The Clerk shall be bonded in an amount sufficient to cover the average annual revenues derived from fees and fines paid to the Court.

(3) As required by statute or otherwise where appropriate, the Clerk shall prepare and make available to unrepresented parties forms, approved by the Chief Judge, for pleadings and service



of process.

(4) The Clerk shall prepare all documents and ledgers incidental to the functions of the Tribal Court and, upon request and payment of a reasonable fee, shall certify copies of the public record of proceedings as true and accurate representations of the official Court record.

(5) The Clerk, or the Clerk's designee, shall attend all proceedings of the Court and keep a written record of the same.

(6) The Clerk shall keep a current docket numbering system and shall preserve and protect the original, official records of all Court proceedings.

(7) The Clerk shall keep, compile, and submit records of Court proceedings to the Bureau of Indian Affairs at such times and in such detail as may be required by federal law.

(8) The Clerk shall make available for inspection and, for a reasonable fee, provide copies of all records of Court proceedings not designated confidential by law.

CHAPTER VII. ADMISSION TO PRACTICE BEFORE THE COURT

3-7-701. General Requirements. (1) The Crow Tribe has legitimate interests in protecting prospective clients and the quality of justice within the Tribe's system of government. Therefore, anyone wishing to represent a party to an action in the Crow Tribal Court must meet the following minimum requirements:

1. At least eighteen (18) years of age;
2. Demonstrate their competency to represent clients as described in this chapter.
3. Demonstrate their good character and fitness to represent clients as described in this chapter.

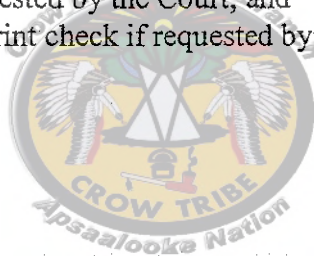
(2) The burden of proof is on the applicant seeking admission to the Court that they meet the requirements as described in this chapter.

3-7-702. Competence Requirements. An applicant shall demonstrate their competency by:

1. Proof of admission to practice law and be in good standing in the highest court of any state; or
2. Successfully passing the Crow Tribal Bar Examination administered from time to time by the Crow Tribal General Counsel.

3-7-703. Character Requirements. An applicant shall demonstrate their good character and fitness to represent clients by:

1. Submitting supporting affidavits from two persons licensed to practice in the Crow Tribal Courts, not relatives, familiar with their integrity, honesty, moral character, judgement, courtesy and self-reliance;
2. Consenting to a background information check and granting permission to contact other references as requested by the Court; and
3. Submitting to a fingerprint check if requested by the Court.



3-7-704. Application Process. (1) The applicant shall request and fill out an application for admission. The applicant shall submit his/her application for admission, affidavits, releases of information, the application processing fee, and any other documentation required in one filing.

(2) The applicant shall respond to any additional requests from the Court within twenty (20) days, or within the amount of time granted by the Court.

(3) The Chief Judge shall grant or deny the applications, or request additional information concerning the admission within thirty (30) days of receiving the request.

3-7-705. Denial of Admission. If an applicant is denied admission to the Court, he/she shall receive written notice of such denial including the reason for denial of admission. A request for review and any additional information the applicant wishes to have considered must be submitted within twenty (20) days of the date of the notice of reason for denial of admission. Any further action on the request for admission is solely at the discretion of the Court. There is no further appeal.

3-7-706. Confidentiality. All information received by the Court in connection with an application for admission is confidential and will be released only upon written authorization of the applicant or by Order of the Court.

3-7-707. Fees. The processing, admission and Tribal BAR fees for new applicants shall be set by the Court. Persons admitted to practice shall pay an annual fee set by the Court.

3-7-708. Suspension or Disbarment. Any party licensed to practice who demonstrates misconduct in appearing before the Court will lose his/her privilege to practice in the Crow Tribal Court. The length and severity of the loss of privilege will be invoked at the discretion of the Court.

