

WRITTEN MOTION TO DISMISS APPEAL FOR FAILURE TO FILE A TIMELY APPEAL

If you are the appellee (meaning the other party filed the initial appeal) and the appellant (meaning the party who filed the initial appeal) has failed to file a timely appeal as required by Rule 2 of the Rules of Appellate Procedures, you should file a motion to dismiss the appeal for failure to timely file their appeal. Rule 11 requires that an Appellee file their motion to dismiss for lack of jurisdiction within 15 days after the Appellant files their notice of appeal. Failure to do so will cause your motion to be dismissed.

There are sensitive time lines you must abide by or you will lose your right to appeal. The Appellant must file a Notice of Appeal with the Clerk of Court of the Tribal Court (Rules 2) within 30 days of notice of entry of judgment in all Civil cases and within 10 days of notice of entry of the final judgment or other appealable order in all Criminal cases. Work days, weekends and holidays are counted as days when computing time. Don't count the first day but count the last day unless the last day falls on a Saturday, Sunday or legal holiday in which case the last day is the end of the following day (Rule 8 (4)).

No extensions of these deadlines will be granted. So failure to file your appeal within these time frames will result in the appeal being rejected or dismissed.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out the attached form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

- (1) on this line insert the name of the party who was the plaintiff in the case at the trial court level, it will either be you or the other party. Look at a case caption of the trial court pleadings to determine who the plaintiff is.
- (2) on this line insert Appellant if the plaintiff is the party that filed the appeal or insert Appellee if the defendant is the party that filed the appeal
- (3) on this line insert the name of the party who was the defendant in the case at the trial court level, it will either be you or the other party. Look at a case caption of the trial court pleadings to determine who the defendant is.
- (4) on this line insert Appellant if the defendant is the party that filed the appeal or insert Appellee if the plaintiff is the party that filed the appeal
- (5) on this line insert the date of the notice of entry of the final judgment. The notice of entry of the judgment should be attached to the final judgment they you received from the court.
- (6) on this line insert the date that is file stamped on Appellant's Notice of Appeal. It should be file stamped at least 30 days after the date on the notice of entry of judgment.
- (7) on this line insert the date you sign the motion
- (8) on this line sign the motion

Note: Your motion must be signed and dated before the Clerk can accept it for filing and service

- (9) on this line insert all the parties to the action by name and last known address you mailed a copy of the motion to each opposing party.

(10) on this line date the day you mailed a copy of the motion to all parties to the action. You are required to serve a copy of the motion to all parties to the action

(11) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (10).

NOTE: You must file your motion with the RST Clerk of the Supreme Court and mail a copy to all parties to the action you listed in the certificate of service.

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

<p>(1) _____ _____, Plaintiff and (2) _____</p> <p>v.</p> <p>(3) _____ _____, Defendant and (4) _____</p>	<p>SC# _____</p> <p>MOTION TO DISMISS APPEAL FOR FAILURE TO FILE A TIMELY APPEAL</p>
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Comes now the Appellee and moves this Court to dismiss the appeal for the following reasons:

1. The Appellant failed to file his/her Notice of Appeal within 30 days of the judgment as required by Rule 2 of Rules of Appellate Procedure.
2. The notice of entry of judgment of the final judgment in this matter is dated (5) _____ and the Notice of Appeal is file stamped with a date of (6) _____.
3. More than 30 days has elapsed between the date of the judgment and the filing of the Notice of Appeal in violation of Appellate Procedure Rule 2.

WHEREFORE, Appellee requests this Court to dismiss the appeal.

(7) _____

(8) _____
Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I mailed a true and correct copy of this motion upon Appellant(s) last known address(es) by first class mail addressed to the following: (9) _____

(10) _____

(11) _____
Appellee