

## **WRITTEN MOTION TO DISMISS APPEAL FOR FAILURE TO FILE BRIEF**

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 brief by its due date as required by Rule 8 of the Rules of Appellate Procedures you should file a motion to dismiss the appeal for failure to file a brief.

Rule 8 requires the parties to file a brief. Failure of either party to file briefs in a timely manner as required shall be sanctioned by the Court by summary dismissal unless excused by the Court and failure to ask for an extension prior to the Brief due date will result in summary dismissal of your appeal.

The Clerk of the Supreme Court will issue a briefing schedule where the appellant will be required to file its brief by a certain date and where the appellee will be required to file their brief by a certain date. If the appellant fails to file its brief by the due date and has failed to move the Supreme Court for an extension use this motion to dismiss the appeal.

**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 the appellant's brief was due according to the briefing schedule
  - (6) on this line insert the date you sign the motion
  - (7) on this line sign the motion
- Note: Your motion must be signed and dated before the Clerk can accept it for filing and service
- (8) on this line insert all the opposing parties entitled to notice by name and last known address you mailed a copy of the motion to each opposing party.
  - (9) on this line date the day you mailed a copy of the motion to all opposing parties. You are required to serve a copy of the motion to all opposing parties
  - (10) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (9).

**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 BRIEF</p>
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Comes now the Appellee and moves this Court to dismiss the appeal for the following reasons:

The Appellant failed to file a brief as ordered by the Clerk of the Rosebud Supreme Court. The Clerk issued a scheduling order where Appellant was to file his/her brief by (5) \_\_\_\_\_ and Appellant has not filed a brief or has asked for an extension all in violation of Appellate Procedure Rule 8.

WHEREFORE, Appellee requests this Court to dismiss the appeal.

(6) \_\_\_\_\_

(7) \_\_\_\_\_  
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: (8) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(9) \_\_\_\_\_

(10) \_\_\_\_\_  
Appellee