

## MOTION FOR STAY PENDING APPEAL

Use the attached form motion only if you filed a motion for stay in the Tribal Court and the Tribal Court denied your motion. Rule 11 of the RST Rules of Appellate Procedure provides that a motion for stay filed with the Supreme Court will not be considered unless the moving party certifies that a Motion for Stay was denied by the Tribal Court. You must also attach a copy of the Tribal Court order, decision, judgment, decree or opinion denying your request for stay.

If you are appealing your case, the judgment against you that was issued by the Tribal Court is still valid and you may have to abide by the judgment unless you file a motion to stay with the Tribal Court that entered the judgment and then you need to file a stay with the Supreme Court if the Tribal Court denies your motion to stay. The Supreme Court will not entertain your motion to stay unless you filed one with the Trial Court and attach a copy of the order denying the stay from the Trial Court. Included in this packet is a Motion to Stay to Stay Proceedings you must file in Tribal Civil Court before you can file a Motion to Stay with the Supreme Court and Motion to Stay Sentence in Tribal Criminal Court before you can file a Motion to Stay with the Supreme Court.

Use the attached Motion to Stay form only if you filed a motion for stay in the Tribal Court and that Court denied your motion for stay. Rule 11 of the RST Rules of Appellate Procedure provides that a motion to stay filed with the Supreme Court will not be considered unless the moving party certifies that a Motion to Stay was denied by the Tribal Court. You must also attach a copy of the Tribal Court order, decision, judgment, decree or opinion denying your request for stay.

In your motion to stay describe any circumstances of why the Court should stay the judgment in a civil case or stay your sentence or probation in a criminal case pending it appeal. For a criminal judgment this could include employment, need to care for a child or disabled adult, you are breast-feeding your child or a medical condition would make serving a jail sentence a hardship. For a case where the Tribal Court changes custody of your children to another party the child insert that the child would be harmed and it would not be in the best interest of the child to abruptly change custody to a virtual stranger with little or no ties to the child.. For a money judgment it could include your inability to pay and would create a hardship on your family if collection on the judgment isn't stayed. You can ask for stay of judgment if you have paid a bond sufficient to pay the judgment. There could be a variety of reasons why the judgment should be stayed.

In the motion to stay you will have to certify that you filed and the Tribal Court denied your motion for stay and attach a copy of order denying your request a for stay.

**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 final judgment was issued by the Tribal Court

(6) on this line insert a description of what the Tribal Court ordered in its final judgment

(7) on this line insert the date you filed your appeal in this matter

(8) on this line explain any circumstances of why the Court should stay the judgment in a civil case or stay your sentence or probation in a criminal case pending its appeal. For a criminal judgment this could include employment, need to care for a child or disabled adult, you are breast-feeding your child or a medical condition would make serving a jail sentence a hardship. For a case where the Tribal Court changes custody of your children to another party the child insert that the child would be harmed and it would not be in the best interest of the child to abruptly change custody to a virtual stranger with little or no ties to the child.. For a money judgment it could include your inability to pay and would create a hardship on your family if collection on the judgment isn't stayed. You can ask for stay of judgment if you have paid a bond sufficient to pay the judgment. There could be a variety of reasons why the judgment should be stayed.

(9) on this line insert the date you sign the motion

(10) on this line sign the motion

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

(11) 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 party.

(12) on this line date the day you mailed a copy of the notice to all opposing parties. You are required to serve a copy of the notice to all opposing parties

(13) on this line sign your name to certify you mailed a copy of the notice on date you inserted on line (12).

**NOTE:** You must file your motion with the RST Clerk of Courts and mail a copy to all parties to the action.

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 STAY</p>
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Comes now, the above-named Appellant who moves this Honorable Court for an Order staying the judgment in this matter pending appeal, upon the grounds and for the following reasons:

1. Appellant certifies that he or she filed for a stay with the Tribal Court and said court denied the stay. The Tribal Court Order denying stay is attached to this motion.

2. That on (5) \_\_\_\_\_ a final judgment was issued by the Tribal Court to (6) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

A copy of the judgment is attached to this motion.

3. That I timely filed an appeal to the Rosebud Sioux Tribal Supreme Court on (7) \_\_\_\_\_  
\_\_\_\_\_.

3. That this Court should stay the final judgment in this case due to the likely success of my appeal.

4. That this Court should stay the judgment because (8) \_\_\_\_\_  
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7. Article X Section 1(f) of the RST Constitution and 25 USC Section 1302 (a)(8) of the Indian Civil Rights Act both prohibit the Tribe from denying any person of liberty or property without due process of law.

8. The Appellant would be prejudiced the judgment is not stayed pending the appeal in this matter.

WHEREFORE, the Appellant requests that the Court stay the judgment pending appeal in this matter.

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

(10) \_\_\_\_\_  
Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I mailed a true and correct copy of this notice upon Appellee(s) last known address(es) by first class mail addressed to the following: (11) \_\_\_\_\_

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(12) \_\_\_\_\_

(13) \_\_\_\_\_  
Appellant