

WRITTEN MOTION FOR DISCOVERY

Discovery is a means by which you obtain from the Tribe the evidence the Tribe plans on using against you at trial. It is also a means by which you obtain any exculpatory evidence in the possession of the Tribe. Exculpatory evidence is evidence that could exonerate you or tends to show you may not be guilty of the charges. Discovery will help you understand the evidence the Tribe intends to introduce at trial against you and will allow to prepare your defense and prepare questions to cross examine the Tribe's witness (questions you ask the Tribe's witnesses who testify against you).

Use the attached form motion to get evidence and statements that the Tribal Prosecutor may or may not use at your trial. The Tribal Prosecutor's office will hand over such information without a formal written motion but it is a good tactic to file the motion anyway. There are good reasons for this. The most important reason is that if the Tribal Prosecutor inadvertently or intentionally fails to provide the requested discovery, you may have grounds for an appeal or for a new trial. It is also important so that you know what kind of evidence the Tribe has against you and allows you to judge the strength or weakness of the Tribe's case against you. It will also help you to attack the credible of the Tribe's witnesses against you (for example, if they have a record of convictions for crime(s) of dishonesty or any felonies you can use to impeach the witness. The Court may grant or deny in part some of your request depending on the circumstances. You are entitled to receive the evidence the Court says you can have access to found in an Order of Discovery.

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 your name. If you are charged with a crime(s) you are the defendant.

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

(3) on this line sign the motion

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

(4) on this line date the day you mailed a copy of the motion to the RST Prosecutor's office. You are required to serve a copy of the motion on the RST Prosecutor's office.

(5) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (4).

NOTE: You must file your motion with the RST Clerk of the Criminal Court and mail a copy to Tribe's Prosecutor's office.

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD SIOUX RESERVATION) SS
ROSEBUD, SOUTH DAKOTA)

IN CRIMINAL COURT

<p>Rosebud Sioux Tribe, Plaintiff,</p> <p>v.</p> <p>(1) _____, Defendant.</p>	<p>DOCKET #CR _____</p> <p>MOTION FOR DISCOVERY</p>
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Comes now, the above-named Defendant who moves this honorable Court for its order requiring the prosecution to produce and make available for examination, inspection, copying, and/or hearing of certain items, which are known to or accessible to the prosecution or other law enforcement officers or investigators, or through the exercise of due diligence should become known to or accessible to such persons, to-wit:

1. All relevant written or recorded statements made by the defendant, before and/or after arrest within the possession, custody or control of the Tribal Prosecutor, the existence of which is known, or by the exercise of due diligence my become known to the Tribal Prosecutor;
2. The substance of all relevant, oral statements made by the defendant, before or after arrest in response to interrogation by any person then known to the defendant to be an employee of a law enforcement agency;
3. All relevant written or recorded statements, or the substance of all relevant oral statements, made by the defendant, before or after arrest, which the prosecution intends to offer in evidence at trial, or which could be exculpatory to the defendant;
4. All recordings, reports, books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof known to the prosecution, which are material to the defense, or which the prosecutor intends to offer in evidence at trial, or which were obtained from or belong to the defendant;
5. All results or reports of physical or mental examinations, and of scientific tests or experiments, known to the prosecution, which are material to the defense, or which the prosecution intends to offer in evidence at trial;
6. Any and all statements of the witnesses who will testify for the prosecution;
7. Any prior statements of witnesses the Tribe intends to call at trial;
8. Any prior statements of witnesses or of persons interviewed by the Tribe as part of its investigation of this case, whom the Tribe does not intend to call at trial;

9. All statements considered by the prosecution to be relevant to the alleged crime(s) made by any person which would tend to incriminate or exculpate the defendant, whether reduced to writing or not;

10. A copy of any prior criminal record, as well as records of any pending charges, of all persons the prosecution intends to call as a witness at trial;

11. Copies of any and all search warrants obtained in connection with this case, together with any affidavits submitted in support thereof, and the returns filed in connection with any execution thereof;

12. Any and all considerations or promises of consideration given to or on behalf of each witness or expected or hoped for by the witness. By “consideration: the defendant refers to absolutely anything, whether bargained for or not, which arguably could be of value or use to witness or to persons of concern to the witness, including but not limited to any plea agreements, formal or informal, direct or indirect leniency, favorable treatment or recommendation or other assistance with respect to any pending or potential criminal, parole, probation, pardon, clemency, social service matter, administrative matter or other dispute involving the Rosebud Sioux Tribe or by the Federal Government;

13. Any other evidence, statements, or material known to the prosecution, including law enforcement officers or investigations, which is exculpatory in nature or favorable to the defendant or which may lead to exculpatory material or which aids in the preparation of the defense, including evidence relevant to guilt or innocence of said defendant not otherwise specifically requested by this motion.

This Court has the authority and discretion to order the prosecution to disclose to the defendant all of the above information which is material to the preparation of the defense, pursuant to Rosebud Sioux Tribe Law and Order Code and pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150(1972), the Due Process Clause found in 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 without due process of law).

WHEREFORE, the defendant prays that this Honorable Court grant this Motion for Discovery. It is further requested that this Court’s Order be continuing in effect, and that any evidence, statements or other relevant information and items not presently known to or in the possession , custody or control of the prosecution, law enforcement, or other agencies becomes available subsequent to the making of the Order, it be made available forthwith to the defendant. It is also requested that the Court set a specific date for the production by the prosecution of all matters requested in the Motion.

(2)_____

(3) _____
Defendant

CERTIFICATE OF SERVICE

The defendant hereby certifies that on (4) _____ I did serve a true and correct copy of the Document in the above matter by mail on the Rosebud Sioux Tribal Prosecutor's Office at P.O. Box 500, Rosebud, SD 57570.

(5) _____
Defendant