

## **WRITTEN MOTION TO SEVERE CO-DEFENDANTS AND FOR SEPARATE TRIAL**

Use the attached form motion if you are scheduled for a jury trial and you will be tried with other co-defendants and the joinder of all defendants into one jury trial will prejudice you. The Tribal code (found in Chapter Seven of the Rules of Criminal Procedure Section VI, Subsection E.) allows the Tribe join and charge two or more defendants in a single complaint. It also allows two or more defendants to be tried together if they could have been joined in a criminal complaint. If you and other defendants are charged separately involving the same incident you will be tried together. However, if you can think you would be prejudiced with a joint trial, you can file a motion for a separate trial but you will have to demonstrate to the Court that you would be prejudiced if you are tried with the other defendants.

Examples of prejudice would be the nature of the Tribes's case against the individual defendants will require proof of different essential elements and the joinder of the defendants will allow the introduction of evidence against one defendant which would be inadmissible against the co-defendant but is of such a nature that it will prejudice the jury against this defendant and deprive him of a fair and impartial trial; or that joinder of the defendants effectively prevents you from asserting your constitutional right not to testify should the co-defendant take the stand and give testimony and thereby prejudice the jury against you; or that immaterial and irrelevant evidence as to you may be introduced against the co-defendant and the jury will have insurmountable difficulty in distinguishing the evidence to be considered against this defendant and evidence to be considered against the co-defendant, all to the prejudice of this defendant; or that the only way for you to obtain a fair and impartial trial would be by a separate trial from the co-defendant.

Do not file this motion if you have no basis in fact to do so. This means you must show that you will be prejudiced by being tried with the other co-defendants. The Court does not take kindly to entertaining motions that are considered frivolous. Frivolous means there is no evidence or facts to back up your claim that the you will be prejudiced if you are tried with the co-defendants.. If you file a frivolous motion, the Court may not take any other motions you file serious even if they may have merit.

You should also argue that joinder of co-defendants for a jury trial would violate your rights to due process of the law under both the Tribe's Constitution and the Indian Civil Rights Act.

**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 were arrested.
- (3) on this line itemize the charges against as reflected in each count of the Complaint.
- (4) on this line insert the date you sign the motion
- (5) on this line sign the motion

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

(6) 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.

(7) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (6).

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

This motion must be filed well in advance of trial and before any scheduled pretrial conference

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

IN CRIMINAL COURT

Rosebud Sioux Tribe, Plaintiff,  v.  (1) _____, Defendant.	DOCKET #CR _____  MOTION FOR SEVERANCE OF TRIALS OF CO-DEFENDANTS
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Comes now, the above-named Defendant who moves this Honorable Court for an Order severing the trial of the defendant from that of the co-defendant, upon the grounds and for the following reasons:

1. That on (2) \_\_\_\_\_ I was arrested and charged with (3) \_\_\_\_\_  
\_\_\_\_\_.
  2. Also charged is one or more co-defendants whom the Tribe intends to try in the same jury trial as me.
  3. That the nature of the Tribe's case against the individual defendants will require proof of different essential elements and the joinder of the defendants will allow the introduction of evidence against one defendant which would be inadmissible against the co-defendant but is of such a nature that it will prejudice the jury against this defendant and deprive him of a fair and impartial trial;
  4. That joinder of the defendants effectively prevents this defendant from asserting his constitutional right not to testify should the co-defendant take the stand and give testimony and thereby prejudice the jury against this defendant;
  5. That immaterial and irrelevant evidence as to this defendant may be introduced against the co-defendant and the jury will have insurmountable difficulty in distinguishing the evidence to be considered against this defendant and evidence to be considered against the co-defendant, all to the prejudice of this defendant;
  6. That the only way this defendant can obtain a fair and impartial trial would be by a separate trial from the co-defendant.
3. Title Seven Section IV, Subsection E. of the Rules of Criminal Procedure of the Tribal Law and Order Code allows the Tribe join and charge two or more defendants in a single complaint. It also allows two or more defendants to be tried together if they could have been joined in a criminal complaint. However, if the defendant is prejudiced with a joint trial, you can file a motion for a separate trial but you will have to demonstrate to the Court that you would be prejudiced if you are tried with the other defendants.

4. 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.

5. The defendant would be prejudice by joinder of co-defendants for trial and denial of the motion to sever would be a violation of the Rosebud Sioux Tribe Code and Constitution as well as the Indian Civil Rights Act.

WHEREFORE, the defendant requests that the Court issue its Order severing the trial of the defendant from that of the co-defendant.

(4) \_\_\_\_\_

(5) \_\_\_\_\_  
Defendant

CERTIFICATE OF SERVICE

The defendant hereby certifies that on (6) \_\_\_\_\_ 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.

(7) \_\_\_\_\_  
Defendant