

WRITTEN MOTION TO SUPPRESS EVIDENCE FOR FAILURE TO ADVISE OF RIGHTS

Use the attached form motion if law enforcement searched and seized items to be used as evidence in violation of your constitutional statutory rights. Only use the attached form motion if there are grounds to suppress the evidence. Please do not file this motion if you have no basis in fact to do so. This means you must have some evidence that there are grounds the evidence or statements should be suppressed. 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 claims that the evidence or statements should be suppressed. If you file a frivolous motion, the Court may not take any other motions you file serious even if they may have merit.

The Tribe's Constitution prohibits the government of the Tribe from searching or arresting any person without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be used against them in a court of law, to have these rights explained at the time of the search or arrest and to ask them if they understand these rights.

If law enforcement failed to inform you of your rights at the time they arrested you or at the time they search you or your premises and seize items of evidence, they potentially violated your constitutional rights. In such a case you should move the court to suppress the evidence. If the Court grants your motion to suppress it means the prosecution cannot use or mention the evidence at your trial.

If the Court denies your motion on these grounds, the written motion asks the Court to suppress the evidence on the grounds it was seized without a warrant and no exception to the warrant requirement applies, such search and seizure was unreasonable and if any warrant was issued it lacked probable cause.

If the Court finds your motion has merit it will schedule a hearing. The Tribe should have the burden of proving that the evidence is admissible. You will have the chance to show the Court the evidence was seized in violation of your constitutional rights with evidence and arguments to the Court.

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 items law enforcement searched for and seized as evidence.
- (5) on this line insert the date you sign the motion
- (6) on this line sign the motion

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

(7) 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.

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

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

Rosebud Sioux Tribe, Plaintiff, v. (1) _____, Defendant.	DOCKET #CR _____ MOTION TO SUPPRESS EVIDENCE FOR FAILURE TO ADVISE OF RIGHTS
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Comes now, the above-named Defendant who moves this Honorable Court for an Order suppressing any and all evidence seized from the defendant prior to and after the defendant's arrest done in violation of the Rosebud Sioux Tribe Constitution and the Indian Civil Rights Act; for the following reasons and upon the following grounds:

1. That on (2) _____ I was arrested on the charges of (3) _____.

2. That prior to and after my arrest, law enforcement searched and seized the following items:
(4) _____

3. Article X Section 1(d) of the RST Constitution prohibits the government of the Tribe from searching or arresting any person without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be used against them in a court of law, to have these rights explained at the time of the search or arrest and to ask them if they understand these rights.

4. That at the time of my arrest, law enforcement failed to advise me of my rights at the time of my arrest as required by Article X Section 1(d) of the RST Constitution. The search and seizure of the evidence was the fruits of an illegal arrest of the defendant.

5. At the time law enforcement searched and seized the above-named items as evidence, law enforcement failed to advise me of my rights at the time of my arrest as required by Article X Section 1(d) of the RST Constitution. The evidence seized by law enforcement were the fruits of an illegal search.

6. By not reading my rights at the time of my arrest as required by Article X Section 1(d) of the

RST Constitution, the Tribe violated my constitutional rights and my due process rights and constitutes an illegal arrest.

7. By not reading my rights at the time they searched for and seized the above-named items of evidence as required by Article X Section 1(d) of the RST Constitution, the Tribe violated my constitutional rights and my due process rights and constitutes an illegal search and seizure.

8. 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.

9. In the alternative, the search and seizure was performed without a warrant and no exception to the warrant requirement applies, such search and seizure was unreasonable and if any warrant was issued it lacked probable cause.

10. Article X Section 1(c) of the RST Constitution prohibits the government of the Tribe from violating the right of the people to be secure in the privacy of their own persons, houses, papers, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search, and the thing to be seized, and any search and seizure taken in violation of this provision shall be excluded.

11. 25 USC Section 1302 (a)(2) of the Indian Civil Rights Act provides that no Indian tribe in exercising the powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

WHEREFORE, the defendant requests that the Court issue its Order suppressing and excluding as evidence the aforementioned items.

(5) _____

(6) _____
Defendant

CERTIFICATE OF SERVICE

The defendant hereby certifies that on (7) _____ 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.

(8) _____
Defendant