

## **WRITTEN MOTION TO SUPPRESS STATEMENTS FOR FAILURE TO ADVISE OF RIGHTS**

Use the attached form motion if you made incriminating statements to law enforcement the prosecutor plans on using as evidence in violation of your constitutional statutory rights. Only use the attached form motion if there are grounds to suppress the statements. 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 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 right to remain silent and to have access to an attorney or fail to inform you that anything they say can be used against them in a court of law at the time they arrested you or at the time they search you or your premises and seize items of evidence and made incriminating statements to law enforcement, they potentially violated your constitutional rights. In such a case you should move the court to suppress the statements. If the Court grants your motion to suppress it means the prosecution cannot use or mention the statements at your trial.

The attached written motion to suppress statement(s) also has alternative grounds to suppress the statements. It includes when your statement(s) were not given free and voluntarily or was the product of coercion by law enforcement (questioning for hours without any breaks or given water) or law enforcement continue to question you after you request an attorney.

It is not advisable to speak to or give statements to law enforcement if they are investigating you for a crime or crimes. You should ask for any attorney before giving any statements to law enforcement or just remain silent, it is your right. Never volunteer statements to law enforcement that can be used against you.

If the Court denies your motion on these grounds, the written motion asks the Court to suppress the statements on the grounds the statements were not given freely or voluntarily.

If the Court finds your motion has merit it will schedule a hearing. The Tribe should have the burden of proving that the statements are admissible. You will have the chance to show the Court the statements were given in violation of your constitutional rights by offering evidence and arguments to the Court at a hearing on the motion.

**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.

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 STATEMENT(S) FOR FAILURE TO ADVISE OF RIGHTS
--	--

Comes now, the above-named Defendant who moves this Honorable Court for an Order suppressing all statements made by the defendant to law enforcement, as such statements were obtained 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. After my arrest, I made statements to law enforcement.

3. That at the time of my arrest, law enforcement failed to advise me of my rights at the time of the my arrest as required by Article X Section 1(d) of the RST Constitution. The statements made by the defendant were the fruits of an illegal arrest of the defendant.

4. My statements were made after I was searched or arrested and before being advised of my rights enumerated in Article X Section 1(d) of the RST Constitution Article X Section 1(d) of the RST Constitution.

5. 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.

6. By not advising me of 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. The statements are the fruits of an illegal arrest of the defendant.

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 without due process of law.

8. 25 USC Section 1302 (a)(4) of the Indian Civil Rights Act (Federal Law) prohibits the Tribe from compelling any person in a criminal case to be a witness against himself.

9. In the alternative, the statements were not free and voluntary and were the product of coercion by law enforcement. Prior to making said statements, I did not freely, voluntarily, knowingly and intelligently waive my right to remain silent, my right to the presence of an attorney before any questioning, and my right to have an attorney appointed for me if I could not afford to hire my own attorney prior to any questioning.

10. In the alternative, the defendant's statements were made he/she after the defendant was searched or arrested and before being advised of his/her rights enumerated in Article X Section 1(d) of the RST Constitution.

11. In the alternative, law enforcement continued to interrogate and elicited the statements from me after I invoked my right to have an attorney in violation of the defendant's rights under the safeguards established by Article X Section 1(d) of the RST Constitution and the Tribe should adopt the legal standards similar to those made by the U.S. Supreme Court in U.S. v. Miranda, 384 U.S. 436 (1966) and Edwards v. Arizona, 451 U.S. 477 (1981).

WHEREFORE, the defendant requests that the Court issue its Order suppressing as evidence the aforementioned statements.

(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