

ROSEBUD SIOUX TRIBAL COURT

STANDARD OPERATING PROCEDURES

Please read all the local rules. The local rules are available from the Court upon request and will be available on the Court's website.

These Standard Operating Procedures are applicable to professional attorneys and lay advocates. These Operating Procedures do not apply to pro se litigants representing themselves in Rosebud Sioux Tribal Court although they are encouraged to follow these procedures to the extent possible.

A. Notice of Appearance.

An attorney or lay advocate must make their appearance known to the Court by either signing the initial pleading with the attorney's or lay advocate's address and telephone number or by filing a notice of appearance with the Court as soon as possible after taking on a case, whether civil or criminal (except the Tribal Prosecutor or Defenders office), containing the case caption of the case they are taking on along with the attorney's or lay advocate's address and telephone number and serving the same upon all parties to the action.

B. Form of Pleadings.

Please pay close attention to the requirements of pleadings found in Rules 7, 8, 9 and 10 of the Rules of Civil Procedure in the RST Law and Order Code.

Rule 10(a) requires that every pleading shall have a caption setting forth the name of the Court, the title of the action and an identification of the type of pleading (i.e. Complaint, Answer, Counterclaim, Motion, etc.)

Rule 10(b) requires that allegations in a complaint, counterclaim, defense or motion be made in numbered paragraphs and the contents of each paragraph be limited as far as practical to a statement of a single set of circumstances. Each claim founded upon a separate transaction or occurrence and each defense other than a denial shall be stated in a separate count or defense whenever separation would facilitate the clear presentation of the matters alleged.

All pleadings must be on 8 1/2 x 11 inch sized paper. Each paragraph can be single-spaced and double-spaced between paragraphs. Margins must be 1 inch on all four sides. Fonts must be 12-point and Times New Roman typeface font must be used.

C. Personal Information.

The following personal information should not be used by parties in any pleading with the Court:

1. Social Security Number or Tax Identification Number. The last four digit may be used only if

necessary.

2. A minor's name. Only a minor's initials should be used when referring to a minor in a pleading. This does not apply to a Children's Court, minor guardianship or adoption filings as those files are not a matter of public record. Any notice however published must use the minor child's initials only.
3. Dates of birth. Only the year of birth should be used when necessary.
4. A domestic abuse victim's address or place of residence.

D. Motions.

Rule 7(b) requires that all applications to the Court for an Order shall be made by motion which shall set forth the relief sought. The Court may also allow oral motions at a hearing or a trial.

Counsel should supplement any written motion raising a question of law with either a written brief or memorandum of law briefly containing legal arguments in support of such motion.

Counsel must submit a proposed order with each motion asking for an Order of the Court based on the motion.

All written motions must be on 8 1/2 x 11 inch sized paper. Each paragraph can be single-spaced and double-spaced between paragraphs, quotations longer than two lines should be indented and single spaced. Headings and footnotes must be single spaced. Margins must be 1 inch on all four sides. Fonts must be 12-point and Times New Roman typeface font must be used.

E. Briefs/ Memorandums of Law.

All briefs and memorandums of law must be on 8 1/2 x 11 inch sized paper. The text must be double-spaced, but quotations longer than two lines must be indented and single spaced. Headings and footnotes must be single spaced. Margins must be 1 inch on all four sides. Fonts must be 12-point and Times New Roman typeface font must be used.

F. Withdrawal of Counsel.

1. Counsel who has made an appearance in a case may move the Court to withdraw and will only be allowed withdraw by Order of the Court. The moving counsel must serve the motion upon all parties to the action including the client(s) with proof of service to each party and the client(s).
2. The Court, within its discretion and for good cause shown, may grant the motion to withdraw if:
 - a. The withdrawing counsel certifies that substitute counsel has been obtained and provided that substitution of counsel takes place 21 days or more in advance of trial.
 - b. Withdrawal without substitution of counsel if the client consents and there is mor than 60 days

or more in advance of trial.

c. For any other good cause such as breakdown of the attorney-client relationship.

G. Telephonic Appearance by Parties, Witnesses and Counsel.

1. In certain situations a party may appear at hearing or trial telephonically based on the following criteria:

a. The party lives out of state or more than 200 miles from Rosebud, South Dakota,

b. The party has a medical condition that prevents travel,

c. The party is in treatment, a medical or psychiatric facility or incarcerated in another jurisdiction, or

d. Any other reason that would cause undue hardship for the requesting party and where the Court finds good cause to grant the request.

A party requesting to appear by telephone must request to do so by motion stating the reasons for the request and provide a telephone number where the clerk of courts can call the party for the hearing if the request is granted. The party requesting to appear by telephone must serve the motion upon all parties to the action with proof of service to each party. The opposing party may object.

If the request is granted the requesting party must be available at the time of the hearing and at the telephone number provided. Failure to be available or answer the telephone number at the time of the hearing or for an hour after the scheduled will be treated as a failure to appear and could result in dismissal of the case if the requesting party is the plaintiff or petitioner or a default judgment will be entered if the requesting party is the defendant or respondent.

2. An attorney, lay advocate or witness may similarly appear by telephone using the same criteria and request in Section 1 above.

H. Continuances.

A case will not be continued without an order of the Court. All motions for continuance must be submitted to the Court at least 3 days prior to the scheduled hearing except for good cause shown such as an emergency. The motion must set out the factual basis for the request for continuance. The Court will only grant a continuance for good cause shown or with the opposing party's consent. Any motion for continuance must be served upon all parties to the action with proof of service to each party. The Court has discretion to grant or deny a motion to continue. The Court has the discretion to grant a continuance in an emergency where the other party(s) to the action cannot be served with the motion if there is good cause shown and good cause as to why the other parties cannot be served with the motion to continue.

I. Court Files.

1. The following Court files may not be viewed without the Court's authorization: any Children's Court file, adoption and minor guardianship files, domestic abuse or elder abuse files, parts of

any file containing HIPAA information, medical or financial information or any portion of a file sealed by Court order.

2. Any other civil or criminal file may be viewed at the desk of and under the supervision of the Clerk of Court or other Court personnel designated by the Clerk of Courts.

3. Any file or part of file allowed to be viewed may be photocopied with the Court's authorization and under the supervision of the Clerk of Courts or other Court personnel designated by the Court at the cost of .25 cents per page or the applicable Court Fee Schedule rate.

4. No Court file shall be removed from the Courthouse and never be out of the possession of Court personnel.

J. Exhibits

1. Attorney's must pre-mark the exhibits they intend to introduce at trial or hearing. Plaintiff's exhibits shall be pre-marked numerically starting with the number 1 and each successive number there after. For example, "Plaintiff's Exhibit 1" for Plaintiff's first exhibit, "Plaintiff's Exhibit 2" for Plaintiff's second exhibit and so on. Defendants exhibits shall be pre-marked alphabetically starting with the letter A and each successive alphabetical letter there after. For example, "Defendants's Exhibit A" for Defendant's first exhibit, "Defendant's Exhibit B" for Defendant's second exhibit and so on.

2. No exhibit offered or admitted into evidence shall be removed from the courtroom or from the custody of the Clerk of Courts unless otherwise authorized by the Court.

3. Return of Exhibits. After the appeal time has run, a party may move the Court for return of an Exhibit they have offered into evidence and the Court may or may not grant the request depending on the circumstances of the request and whether the exhibit is contraband.

4. Disposition of Exhibits. After 30 days after the appeal time has run on the case and the Court so orders destruction of the exhibits, they may be destroyed by the Clerk of Courts or other Court personnel at the direction of the Clerk of Courts unless good cause is shown that the exhibits should be preserved.

5. Any Exhibits offered by the Tribal Prosecutor's Office and in the custody of tribal law enforcement may be returned to tribal law enforcement evidence storage at any time for storage and/or disposal under law enforcement rules (after the appeal time has run).

K. Discovery.

Discovery should be handled informally and the parties should request and exchange relevant discovery without filing a motion for discovery. A party may file a motion for discovery when the opposing party fails to informally provide discovery of relevant information or if there is a

dispute over the relevancy of the information requested.

L. Certificate of Readiness for Trial in Civil Cases.

Rule 40(b) provides that any party (plaintiff or defendant) wishing to secure a trial date in a civil jury or civil non-jury case where a responsive pleading has been filed shall make application for trial date by a certificate of readiness and the certificate of readiness must be served on the opposing party or their counsel. See the Rule for contents of the certificate of readiness and Court form for a certificate of readiness. If the opposing party feels in good faith the case is not ready for trial, they shall file a resistance to the certificate of readiness within 10 days of receipt of the certificate of readiness. If the opposing party resists the Court will hold a hearing on the readiness of the case for trial. If there is no resistance the Court will set a trial date. If a party wants a trial date they must file and serve a certificate of readiness when all requirements of Rule 40(b) are present. Failure to do so may result in dismissal under Rule 41(c). Rule 40(b) applies when Complaints are filed in Court and there is a Plaintiff(s) and a Defendant(s) involved in the case. It ordinarily doesn't apply to Petitions filed in Court unless there is both a Petitioner(s) and a Respondent(s) named in the Petition. Most commonly, when a Petition is filed the Clerk of Courts will schedule a hearing and notices will be either be served or mailed to interested parties. If no action is taken on a Petition then this rule may be used by a party wishing to secure a hearing date.

Rule 55 provides that when a party has failed to make an appearance or plead or of otherwise defend their default can be proved by affidavit and judgment by default can be entered by the Court but if the party has appeared then they shall be served with a written notice of the application for default three days before hearing on the application for default. The Court will set the matter for hearing on the application for default. This rule applies when a Summons and Complaint is filed by a plaintiff(s) against a defendant(s) and not to a Petition filed where there is only a Petitioner such as a probate or guardianship proceeding. A default judgment should be used instead of a certificate of readiness if the other party has failed to make an appearance or file an answer to your complaint or a reply to a counterclaim.

Rule 41(c) provides that if the Plaintiff fails to prosecute or substantially comply with the rules or any Order of the Court a Defendant may move for dismissal of the action. Rule 41(d) further provides that the Court on its own motion may dismiss any action where the records of the Clerk of Courts indicate that the case has been inactive for a period of two years. It is incumbent upon the parties to keep the case moving by filing a certificate of readiness if the defendant has filed a responsive pleading and the case is ready for trial or by making an affidavit or application for default judgment if the defendant has failed to make an appearance or plead in the matter. Rule 41 applies to Complaints and Petitions. If the Complaint or Petition is dismissed with prejudice it may not be re-filed. If the Complaint or Petition is dismissed without prejudice it may or may not be re-filed depending on whether the Statute of Limitations has run. The statute of limitations require that the action be filed within two years after the cause of action accrued except when the cause of action is based upon fraud or misrepresentation in which case the cause of action until the aggrieved party discovers the facts constituting fraud or misrepresentation. Any cause of action against the Tribe or its officers or employees arising from their official

duties must be brought within one year the of action accrues. This may present an affirmative defense of sovereign immunity which means that the Tribe or its officers or employees are immune from suit for acts arising from their official duties unless the Tribe's sovereign immunity from suit is specifically waived by Tribal Council Ordinance or Resolution.

M. Pre-trial Conference in Criminal Jury Trial Cases.

1. Pretrial hearings are scheduled two weeks before the scheduled jury trial date.

2. The following must be done at or before the pretrial conference:

a. all pretrial motions will be filed/disposed of at the conference if not before. Any pretrial motions that could have been filed/disposed of at the pretrial conference and raised at the jury trial may be denied.

b. the Tribe shall make plea offers. If the offer is rejected the defendant must appear and be prepared to proceed at the scheduled jury trial. This rule does not prevent the parties from entering into a plea agreement before the jury trial date but the Court encourages that plea bargains be entered into well before the jury trial.

c. any witness who any party intends to call at as a witness at the scheduled jury trial must be subpoenaed to appear at the pretrial conference to meet with the subpoenaing party's attorney.

(1) The Tribe should move to dismiss the case if a subpoenaed witness fails to appear and meet with the attorney or who does appear but won't cooperate with the prosecution and the case cannot go forward without the subpoenaed witness.

d. Jury Instructions any party intends to propose must be presented to the Court with two copies of each proposed instruction with a case caption and one being labeled as "Proposed Jury Instruction" and the other labeled as "Jury Instruction #_____".

(1) Any Proposed Jury Instruction that could have been proposed at the pretrial conference but proposed at the scheduled jury trial maybe rejected by the Court unless new or unknown evidence would require a new jury instruction.

N. Communications with Judges

No one other than Court personnel shall have any form of ex parte communications with Judges of the Rosebud Sioux Tribal Courts regarding any matter pending before the court until final resolution of the case. Communications means any type of communication including but not limited to oral, written, telephone or electronic device. Ex Parte communication does not include communication dealing with administrative matters, such as scheduling.

O. Court Decorum

1. No weapons are allowed in the Rosebud Sioux Tribal Courthouse except those carried by official law enforcement personnel acting in their official duties.

2. Be on time for Court hearings. Failure to do so could end up your case being dismissed or parties and counsel being held in contempt of court and sanctioned accordingly.

3. Be respectful of all others including court staff, judges, counsel, litigants and witnesses.
4. Rise and remain standing when the Judge enters and leaves the courtroom.
5. No food or drink is allowed in the courtroom.
6. All electronic devices must be turned off when court is in session. No court proceedings shall be recorded or video taped.
7. Advise your clients and witnesses of court decorum.

P. Sequestration of Witnesses.

All witnesses will automatically be sequestered outside the courtroom except when testifying. Instruct your witnesses of this automatic sequestration. The following will not be sequestered from the courtroom: a party to the action including one primary tribal law enforcement officer in a criminal case who will act as a party for the Tribe and any expert witness whose testimony will be based on testimony of witnesses testifying. Witnesses are to be instructed by counsel not to discuss their testimony or the case with other witnesses while sequestered outside the courtroom.

Q. Findings of Facts and Conclusions of Law.

Rule 52 requires that in all actions tried without a jury, the Court shall find the facts specially and state separately its conclusions of law thereon unless waived by the parties or failure of a party to appear.

The Court may order the prevailing party represented by counsel to prepare the Findings of Facts and Conclusions of Law for the Court's review and implementation.

The Court may also order the prevailing party represented by counsel to prepare the Court Order for the Court's review and implementation.