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PUBLIC SERVICE ANNOUNCEMENT

Administrative Order 2024-05 Updates to 2024 Rules of Court

Effective March 20, 2024

<https://tojcnnsn.gov/>

The Tohono O'odham Judiciary has issued Administrative Order 2024-05, dated March 19, 2024, making changes to the Service of Process sections of the Rules of Civil Procedure – Rules 3 and 4, as well as Chapter 1 of the Rules of Children's Court. Please take time to review and familiarize yourself with these changes.

/s/

03/19/2024

Rene Alcoverde, Jr., Chief Judge

Date

TOHONO O'ODHAM RULES OF COURT

Section 2: Rules of Civil Procedure

I. SCOPE AND PURPOSE

Rule 1. Scope and Purpose.

Rule 1.1. Scope.

These Rules govern the procedure in all civil actions and proceedings in the Tohono O'odham Court.

Rule 1.2. Purpose.

The Rules should be construed, administered, and used by the Court and parties to secure the just, speedy, and inexpensive determination of every action and proceeding considering Tohono O'odham laws, traditions, customs, and culture.

II. BEGINNING AN ACTION; SERVICE AND PROCESS; PLEADINGS, MOTIONS AND ORDERS; DUTIES OF COUNSEL

Rule 2. Commencement of Action.

There is one form of action—the civil action. A party starts a civil action by filing a civil complaint or petition with the Court.

(a) Civil Cover Sheets.

- (1) When filing a civil action, a plaintiff must complete and submit a Civil Cover Sheet in a form approved by the Judicial Branch. The public may obtain this form from the Tohono O'odham Justice Center or on the Justice Center's website at <https://tojc-nsn.gov/forms/>.
- (2) The Civil Cover Sheet must have:
 - (A) the plaintiff's correct name and mailing address;
 - (B) the plaintiff's birthdate;
 - (C) the plaintiff's counsel's name;
 - (D) the defendant's name(s);
 - (E) the nature of the civil proceeding;
 - (F) the main case categories and subcategories designated by the Court Administrator; and
 - (G) such other information as the Judicial Branch may require, including the verification.

(b) Verification. A pleading must be verified or supported by an affidavit by the party—or the person acting on the party's behalf who knows the facts—attesting under oath that, to the

best of the party's or person's knowledge, the facts in the pleading are true and accurate.

Rule 3. Summons and Process.

(a) Issuance; Setting of Initial Hearing; Service.

- (1) *Issuance and Initial Hearing Date.* On filing a pleading that requires service of a summons, the filing party must present the summons for signature and seal. If the summons is properly completed, the Clerk must:
 - (A) schedule an Initial Hearing date within 45 days and note the date on the summons;
 - (B) sign, seal, and issue the summons to the filing party for service; and
 - (C) issue a summons for each party to be served.
- (2) *Service.* A party must serve a summons with a conformed copy of the pleading. Service must be completed as required by this rule, Rule 3.1, or 3.2.
- (3) *Pleading Defined.* As used in this rule, Rule 3.1 and 3.2, "pleading" means the pleadings authorized by Rule 7 that bring a party into an action—a complaint, petition, third-party complaint, counterclaim, crossclaim, or post-adjudication petition.

(b) Contents; Replacement Summons; Amendments.

- (1) *Contents.* A summons must:
 - (A) name the court and the parties;
 - (B) be directed to the party to be served;
 - (C) state the name and address of the counsel of the party serving the summons or—if unrepresented—the party's name and address;
 - (D) state the time within which the defendant must appear and defend;
 - (E) notify the party to be served that a failure to appear and defend will cause a default judgment against that party for the relief demanded in the pleading;
 - (F) state that "requests for reasonable accommodation for persons with disabilities must be made to the Court by parties at least three working days in advance of a scheduled court proceeding";
 - (G) be signed by the Clerk; and
 - (H) bear the Court's seal.
- (2) *Amendments; Replacement Summons.* Upon written request, the Court may permit a summons to be amended and re-issued as an "amended summons". If a summons is returned without being served, or it has been lost, the party may ask in writing that the Clerk issue a replacement summons in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 3(e) for service of the original summons.

(c) Fictitiously Named Parties; Return. If a pleading identifies a party by a fictitious name

under Rule 9(d), the summons may be issued and directed to the person with the fictitious name. The return of service of process on a person identified by a fictitious name must state the true name of the person who was served.

(d) Types of Service. Service of Process may be made by:

- (1) *Personal Service.* Service may be made on a party by delivering the documents to the party or party's counsel or authorized agent by:
 - (A) Any person who is not less than 18 years of age,
 - (B) Tohono O'odham law enforcement or public safety staff as authorized by the Chairman of the Tohono O'odham Nation, or
 - (C) Tohono O'odham court officers for the Court's own documents as authorized by the Tohono O'odham Judicial Branch.
- (2) *Service by Mail.* Service may be made by United States Postal Service certified first class mail, return receipt, to the party or counsel's correct address, or through an alternative mail delivery service that provides proof of delivery. Delivery is presumed five business days after the postage.
- (3) *Service by Publication.* Parties may ~~ask permission to~~ serve process by publication under Rule 3.1(f) if the whereabouts of the party to be served are unknown, the party was unavailable for personal service, or was unavailable at the mailing address.

(e) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the Court, with or without a motion, must either dismiss the action against that defendant without prejudice or order that service be made within a specified time. If the plaintiff can show good cause for the failure to serve, the Court must extend the time for service for a period not to exceed 90 days.

(f) Return; Proof of Service.

- (1) *Timing.* If service is not accepted or the plaintiff asks the Court to provide service by publication, then the person effecting service must file proof of service with the Court. Return of service should be made when the served party must respond to process.
- (2) *Proof of Service.*
 - (A) *Personal Service.* The serving party must record:
 - (i) the name of the party upon whom service was made or attempted;
 - (ii) the date and time service was made or attempted—on each occasion, if more than once;
 - (iii) the location service was made or attempted for each occasion, and whether the location was the opposing party's home, workplace, or other residence known to be frequented by the opposing party;
 - (iv) the name of the individual accepting service and, if not the opposing party,

a statement affirming that the individual was of suitable discretion over the age of 16; and

(v) the name of the individual who made or attempted service.

(B) *Service by Mail.* If mailed by first class mail, the party must attach the return receipt or other evidence of delivery from US Postal Service. If sent by an alternate mailing service, documentation of delivery must be attached. If a party's address is unknown, service by mail may be sent to the post office at the party's last known address addressed to GENERAL DELIVERY and pursuant to US Post Office regulations.

(C) *Service by Publication.* If the summons is served by publication, the return of the person making such service must be made as provided in Rules 3.1(f) and 3.2.

(3) *Validity of Service.* Failure to make proof of service does not affect the validity of service.

(g) **Untimely Service.** If a party receives a summons less than 7 days before any hearing, the party may notify the Court in writing that the party objects or contests the late service, and may ask for a continuance.

(h) **Amending Process or Proof of Service.** The Court may permit process or proof of service to be amended.

(i) **Refusal to Accept Service.** If a person refuses to accept personal service, the person is considered to have been served if the person is informed of the purpose of the service and offered copies of the papers served.

Rule 3.1. Service of Process on the Tohono O'odham Nation.

(a) **Serving an Individual.** Unless Rule 3.1(b) or (c) applies, or is governed by another rule, statute, or court order, service is:

- (1) delivering a copy of the summons and of the pleading to the individual personally;
- (2) leaving a copy of each at the individual's home or usual dwelling place with someone of suitable discretion age 16 or older who lives there;
- (3) delivering a copy of each to an agent allowed by appointment or by law to receive service of process;
- (4) leaving a copy of each at the individual's place of business or employment; or
- (5) service by mail or publication under Rule 3(d)(2) or (3).

(b) **Serving a Minor.** A minor may be served by delivering a copy of the summons and the pleading to the minor and the minor's parent or legal guardian in the way in Rule 3.1(a) for serving an individual. If no parent or legal guardian can be found, then on any person having the care and control of such minor, or with whom the minor lives.

(c) **Serving an Incompetent Person.** A person declared incompetent or incapacitated to

manage his or her own property and for whom a guardian or conservator has been appointed may be served by delivering a copy of the summons and the pleading on the person's guardian or conservator in the way allowed under Rule 3.1(a) for serving an individual.

(d) Serving a Corporation, Partnership, or Association. Unless provided by Tohono O'odham law, a domestic or foreign corporation, partnership, or other unincorporated association subject to suit under a common name must be served by delivering a copy of the summons and the pleading to an officer, a managing or general agent, or any other agent allowed by appointment or by law to receive service of process.

(e) Serving the Tohono O'odham Nation and Its Governmental Branches, Districts, Authorities, Enterprises, Officers, or Employees.

- (1) *Tohono O'odham Nation.* To serve the Tohono O'odham Nation, a party must deliver a copy of the summons and the pleading to the Tohono O'odham Attorney General.
- (2) *Governmental Branch, District, Authority, Enterprise, Officer, or Employee Sued in an Official Capacity.* A Tohono O'odham governmental Branch, District, Authority, Enterprise, officer or employee in an official capacity is served by delivering a copy of the summons and the pleading to the counsel of the Branch, District, Authority, or Enterprise. If the Branch, District, Authority, or Enterprise does not have counsel, service is made by delivery to the Branch head, District Council Chairperson, or chief executive officer of the Authority or Enterprise.

(f) Service by Publication by Newspaper or Community Posting.

- (1) *When Service by Publication is Available.* Service of process may ~~only~~ be made by publication when a party shows that the service provided in these Rules is impracticable. The Court may, on motion and without notice to the person to be served, order that service be accomplished by publication. A serving party ~~files a motion with the Court alleging service by publication is the best way practicable under the circumstances.~~ may initiate the service by publication described in these Rules prior to moving for such an order or while a motion is pending. The motion should provide reasons that service by publication is needed, such as that the person to be served:
 - (A) is one whose current residence and/or address is unknown to the party seeking service,
 - (B) was not available to be personally served on two occasions of attempted service,
 - (C) was not available at the mailing address and the posted documents were returned to the sender by the United States Postal Service, or alternate mail delivery service; or
 - (D) has avoided service of process.
- (2) *Motion; Contents.* A party asking for service of process by publication must provide the reasons that service by publication is needed and document what attempts to serve process were attempted. If service was not attempted because the whereabouts of the

party to be served are unknown, the party will document what good faith efforts were made to determine the whereabouts of the party to be served by publication.

- (3) *What Must be Published.* Service of process by publication will be made by publishing the summons and a statement of how a copy of the pleading being served may be obtained.
- (4) *Frequency and Location of Publication in a Newspaper.*
 - (A) The summons and statement will be published at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to be served.
 - (B) When the mailing address of the person to be served is known, the party making service will also, by the date of the first publication, mail the summons and pleading, postage pre-paid, to the person's mailing address.
 - (C) The service will be complete 30 days after the first publication.
- (5) *Frequency and Location of Publication by Community Posting.*
 - (A) The summons and statement must be posted for 30 days on a bulletin board at a Tohono O'odham Nation district office or community meeting place in the district that the person to be served is most recently known to have lived within the exterior boundaries of the Nation.
 - (B) When the mailing address of the person to be served is known, the party making service will also, by the date of the first posting, mail the summons and pleading, postage pre-paid, to the person's mailing address.
 - (C) The service will be complete 30 days after the first posting.
- (6) *Proof of Service by Publication or Community Posting.* Upon completion of the service of process by publication, the party must file a printed copy of the publication and an affidavit indicating the method and dates of the publication or posting. The affidavit is evidence of compliance with this rule.

Rule 3.2. Service of Process Outside the Tohono O'odham Nation.

Service upon a person subject to the jurisdiction of the Tohono O'odham Nation may be made anywhere; if service is made outside of the Nation, it will be made under the rules of that jurisdiction.

Rule 4. Responsibility to Serve Documents.

(a) Service Generally.

- (1) *Scope.* This rule governs service on other parties after service of the summons and complaint, petition, counterclaim, third-party complaint, or post-adjudication petition.

(2) *When Required.* Unless these Rules provide otherwise, a conformed copy of these documents must be served on every party by a method stated in Rule 4(c):

- (A) an order stating that service is required;
- (B) a pleading filed after the original complaint;
- (C) a discovery or disclosure document required to be served on a party, unless the Court orders otherwise;
- (D) a written motion, except motions that may be heard without notice to the other side; and
- (E) a written notice, appearance, demand, or offer of judgment, or any similar document.

(3) *If a Party Fails to Appear.* A pleading that asserts a new claim for relief against such a party must be served on that party under Rule 3, 3.1, or 3.2.

(b) Service; Parties Served; Continuance. If there are several defendants, and some are served with process but others are not, the plaintiff may choose to proceed against those who have been served or move to defer disclosure until more parties are served.

(c) Service After Appearance; Service After Judgment; How Made.

(1) *Serving Counsel.* If a party is represented by counsel, service under this rule must be made on counsel, unless the Court orders, or a specific rule requires, service on the party.

(2) *Service in General.* A document is served under this rule by:

(A) handing it to the person;

(B) leaving it:

- (i) at the person's office with a Clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
- (ii) if the person has no office or the office is closed, at the person's home or usual dwelling with someone of suitable age and discretion age 16 or older who lives there;

(C) mailing it by U.S. mail to the person's last known address or to GENERAL DELIVERY if the address is unknown—in which event service is presumed complete 5 day after mailing; or

(D) delivering it by any other means, including electronic means, if the recipient consents in writing to that method of service or if the Court orders service in that manner—in which event service is complete upon transmission.

(3) *Certificate of Service.* The date and manner of service must be noted on the last page of the original of the document or in a separate certificate, in a form substantially:

A copy has been or will be mailed/mailed/hand-delivered [select one] on [insert date] to:

[Name of opposing party or counsel]

[Address of opposing party or counsel]

If the precise manner of service is not noted, it will be presumed that the document was served by mail provided the Court has sufficient evidence and information to find service has actually been made.

- (4) *Service After Judgment.* After the time for appeal from a judgment or the judgment has become final, a motion, petition, complaint, or other pleading requesting modification, vacation, or enforcement of that judgment must be served in the same manner listed in Rule 3, 3.1, or 3.2.

(d) Constitutional Challenge to a Statute—Notice, Certification, and Intervention.

- (1) *Notice by a Party.* A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a Tohono O’odham law, rule, regulation, resolution, or ordinance must promptly:
 - (A) serve a copy of the pleading, written motion, or other paper raising the constitutional issue on the Attorney General of the Tohono O’odham Nation if the parties do not include the Tohono O’odham Nation, one of its agencies, or one of its officers or employees in an official capacity; and
 - (B) serve a copy on the Office of the Legislative Attorney.
- (2) *Intervention; Final Decision on the Merits.* Unless the Court sets a later time, the Attorney General and Legislative Attorney may intervene within 60 days after service of the pleading, motion, or other document challenging constitutionality is filed. Before the time to intervene ends the Court may reject the constitutional challenge, but may not enter a final judgment holding the law or rule unconstitutional.
- (3) *No Forfeiture.* A party’s failure to file and serve the notice does not close a constitutional claim or defense that is timely asserted.

Rule 4.1. Filing Pleadings and Other Documents.

- (a) **Filing with the Court Defined.** Filing documents with the Court is done by filing them with the Clerk, either directly or via fax or e-filing. If a judge permits, a party may submit a document directly to a judge during a hearing. The judge must give it to the Clerk for filing and tell the Clerk when it was received. The Clerk will stamp the document with the date and time it was accepted.
- (b) **Effective Date of Filing.**

TOHONO O'ODHAM RULES OF COURT

Section 6a: Rules of Children's Court

Chapter 1. Children's Civil

Rule 1. Classification of Children's Court Cases.

The Children's Court has exclusive original jurisdiction over proceedings filed under Chapter 1 of the Tohono O'odham Children's Code ("Children's Code"), or other proceedings defined in 25 U.S.C. § 1903(1) for termination of parental rights, adoptions, and children's custodianships and guardianships. 3 T.O.C. Ch. 1, §§ 1202, 1301.

Rule 2. Closed Proceedings; Confidentiality.

In all Children's Court proceedings, the public is excluded, except as permitted by the Children's Code. 3 T.O.C. Ch. 1 § 1306. A person admitted to a Children's Court proceeding may not divulge information identifying the child or the family involved in the proceeding.

Rule 3. Service of Process; Child in Need of Care Notice of Hearing.

(a) **Service of Process.** Service of process for all matters heard by the Children's Court is governed by the Tohono O'odham Rules of Civil Procedure ("Rules of Civil Procedure"), unless otherwise specified under these rules.

(b) **Notice of Hearing in Child in Need of Care Cases.** When a Child in Need of Care petition is filed, the party will present a Notice of Hearing form directed to the parent or guardian of the child, or any other party in compliance with Section 1502(C) of the Children's Code to the clerk. The Notice of Hearing must contain a statement in substantial compliance with: "To the parents or guardian: You have the right to have counsel represent you at your own expense."

(c) **Notice to parents or alleged parents.** In every case, unless parental rights have been severed, notice must be given for all proceedings as governed by the Rules of Civil Procedure.

Rule 4. Removal Hearing.

Rule 4.1. Notice of Removal; Filing of Notice.

Following removal of a child by the Tohono O'odham Nation, the Nation must file a verified notice of the removal. The notice must have the name and birth date of the child, the names and addresses of the parent or guardian, a brief statement of why removal was required, and the date and time of the hearing. The date and time of the hearing will be set according to the table in Rule 4.2.

Rule 4.2. Removal Hearing Schedule.

- (a) **Hearing Date.** Upon removal of a child under the Children’s Code, the Nation must, in writing, provide the parent or guardian notification of temporary custody in compliance with Section 1502(B)(1) of the Children’s Code. The notice must also include the time and date of the temporary custody hearing. The time and date of the hearing will be set according to this schedule:

| Day Child Removed | Date of Hearing Based on Time of Child’s Removal | |
|--------------------|--|---------------------|
| | Bef. 11:00 a.m. | Aft. 11:00 a.m. |
| Monday | Thu. at 11:00 a.m. | Fri. at 11:00 a.m. |
| Tuesday | Fri. at 11:00 a.m. | Mon. at 11:00 a.m. |
| Wednesday | Mon. at 11:00 a.m. | Tue. at 11:00 a.m. |
| Thursday | Tue. at 11:00 a.m. | Wed. at 11:00 a.m. |
| Friday | Wed. at 11:00 a.m. | Thur. at 11:00 a.m. |
| Saturday or Sunday | Thur. at 11:00 a.m. | Fri. at 11:00 a.m. |

- (b) **Holidays.** If a holiday falls within the three-day period, another day will be added to the calculation. For example, if a child is taken into custody on a Thursday, and Friday is a holiday, the time frames would change from Tuesday or Wednesday to Wednesday or Thursday.

Rule 5. Subpoenas.

Subpoenas in Children’s Court must substantially follow the Rules of Civil Procedure.

Rule 6. Duties of Counsel.

The duties of counsel are governed by the Rules of Civil Procedure. In Child in Need of Care cases, the Tohono O’odham Attorney General does not have to file a notice of appearance.

Rule 7. Child Support.

- (a) **Applicable Procedure.** In cases involving child support, the Tohono O’odham Rules of Family Law and Will Procedures apply where they do not conflict with these Rules.
- (b) **Exclusive Jurisdiction of Children’s Court.** When the Children’s Court has exclusive jurisdiction, any petition or application for child support, modification of child support, or enforcement of child support must be filed in the Children’s Court.
- (c) **Child Support in Child in Need of Care Cases.**

(1) *Initial Request for Child Support; Nation’s Duty to Notify; Stay.*

- (A) Request for Child Support. The Nation may ask for child support in its disposition report and must attach all forms required by the Tohono O’odham Rules of Family Law and Will Procedures to the report.
- (B) Nation’s Duty to Notify of Civil Matters. The request for child support must state

whether the child is the subject of any pending or past child support, custody, or paternity matter in the Civil Court. If applicable, the request must include the case name, case number, and description of the matter in Civil Court. If the Nation later discovers a pending or past child support, custody, or paternity matter, the Nation must file a notice with the Children's Court within 10 business days of discovery with the case information set forth above.

- (C) Children's Court Notice. After notification of a pending or past civil case involving the child, the Children's Court will immediately issue a notice to the Civil Court that a Child in Need of Care matter is pending.
- (D) Stay by Civil Court. Upon receipt of the Children's Court's notice of a pending Child in Need of Care matter, the Civil Court will issue an order staying the ongoing case pending the outcome of the Child in Need of Care case. In Civil Court cases involving multiple children in a child support, custody, or paternity matter, the stay will only apply to the specific child or children subject to the Child in Need of Care case.

(2) *Termination of Child in Need of Care.*

- (A) Permanency Plan Child Support Recommendation. If child support is ordered in a Child in Need of Care matter, the Nation must recommend in the permanency plan:
 - (i) whether arrearages are owed, to whom arrearages are owed, and the amount;
 - (ii) the date any child support paid to the Nation stops; and
 - (iii) whether any person should have to pay child support, to whom, the amount, and the date child support should begin.
- (B) Child Custody, Support, and Paternity with No Pending Civil Matter. If a child is returned to a parent and child support is awarded, the Children's Court must:
 - (i) issue the order separately from the permanency order;
 - (ii) make and state the findings for awarding arrearages, if any, and child support;
 - (iii) order arrearages, if any, and child support based on the proper child support guidelines; and
 - (iv) provide a copy of the order to the Civil Court, which will create a case file for the matter and adopt the order.
- (C) Child Custody, Support, and Paternity with a Pending or Prior Civil Matter. When the Children's Court issues its final order regarding the custody, support, or paternity of a child who is the subject of a civil court matter, the Court will:
 - (i) issue the order separately from the permanency order;
 - (ii) make and state the findings for the custody, support, or paternity order;
 - (iii) award custody, support, or paternity, and any arrearages based on the proper child support guidelines; and

(iv) provide a copy of the order to Civil Court, which will lift the stay and adopt the order.

(D) Continuing Duty to Update the Court. The parties have a duty to notify the Children's Court if the child is returned to a parent's custody or if a change in circumstances could affect a past child support order.

Section History

Original rules adopted by Administrative Order 05-07 on October 12, 2007. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended March 12, 2014 to follow 3 T.O.C. Ch. 1 § 1306 and 3 T.O.C. Ch. 1, Art. 12. Amended by the 2017 Tohono O'odham Rules of Court. Amended by the 2023 Tohono O'odham Rules of Court. Amended by the 2024 Tohono O'odham Rules of Court.