

TOHONO O'ODHAM RULES OF COURT

Section 1: General Rules of Practice

Rule 1. Rules of Court.

The Rules of this Section apply to all Sections of the Tohono O'odham Rules of Court, provided a specific Section does not set its own rule or procedure. The rules should always be construed, administered, and employed by the Court and parties to secure the just, speedy, and inexpensive determination of every action and proceeding, given Tohono O'odham laws, traditions, customs, and culture. The Courts of the Tohono O'odham Nation will apply these rules in the following sequence:

- (a) Rules enacted within the laws of the Tohono O'odham Nation;
- (b) Rules of the Tohono O'odham Judicial Branch;
- (c) The Arizona Rules of Court, specifically the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Juvenile Court, and Rules of Evidence. Where applicable to the facts and circumstances of a case, the Arizona rules will be followed to the extent that they do not conflict with a written Tohono O'odham law or rule, directly or indirectly.

Rule 2. Holiday Schedule.

- (a) **Purpose.** The Tohono O'odham Nation observes the holidays of New Year's Day, Good Friday, National Indian Day, Feast of Saint Francis, All Souls' Day, Thanksgiving, and Christmas. The Court makes the following accommodations to allow for holiday preparations.
- (b) **Restricted Schedule.** Only arraignments, emergency hearings (i.e., protective orders, expedited hearings, etc.), and court proceedings required by law to be held within a set time (i.e., initial appearances, shelter care hearings, etc.) will be set during the weeks containing: January 1 (New Year's), Good Friday, October 4 (Feast of St. Francis), November 2 (All Souls' Day), Thanksgiving, and December 25 (Christmas). No other hearings, including jury trials, will be set during these periods.
- (c) **Designation of Timeframe.** If the holiday falls on a Saturday with Friday as the day off, no hearings will be scheduled the week preceding the holiday. If the holiday falls on a Sunday with Monday as the day off, then no hearings will be scheduled the week following that holiday.

Rule 3. Attorneys and Advocates.

Only attorneys and advocates certified as legal practitioners before the Tohono O'odham Courts may file or appear on behalf of clients in any litigation or matter before the court.

Rule 4. Time Computations; Additional Time After Service by Mail.

- (a) **Time Computations.** In computing any period of time specified by these rules, by court order, or by any applicable statute, the day from which the designated period of time begins to run will not be included. When the period of time specified or allowed is less than 11 days, exclusive of any additional time allowed under subsection (b), intermediate Saturdays, Sundays, and legal holidays will not be included in the computation. When the period of time is 11 days or more, intermediate Saturdays, Sundays, and legal holidays will be included in the computation. The last day of the period will be included, unless it is a Saturday, Sunday, or legal holiday, in which the period runs until the end of the next business day that is not a Saturday, Sunday, or legal holiday.
- (b) **Additional Time After Service by Mail.** Whenever a party is required to act within a prescribed period after having been served a notice by mail, 5 calendar days will be added to the prescribed period.
- (c) **Tolled Time.** The Court may issue other Administrative Orders which toll any deadline.

Rule 5. Filings; Motion Practice.

- (a) **Filings.** All filed documents must be signed in blue or black ink and filed at least 3 days before any hearing. A judge may accept and address a filing at the hearing but is not obligated to do so. The Court may, for good cause shown, grant a short recess to allow for a document to be filed.
- (b) **Responses and Replies to Motions.** Unless a different time is set by court order or any court rule, responses to motions must be filed within 10 days of service of the motion. Replies must be filed within 5 days of service of the response.
- (c) **Failure to Respond.** If a party fails to respond to a motion within 10 days without good cause, the Court will accept the motion as uncontested.

Rule 6. Notary Requirement.

Any matter required to be supported, shown, established, or proved by a sworn written declaration, verification, certificate, oath, or affidavit must be notarized by a qualified notary public.

Rule 7. Change of Judge.

Rule 7.1. Change of Judge as of Right.

- (a) **Purpose.** In any civil or criminal action each party may be entitled to one change of judge provided it meets the requirements set out in this Rule. First, it must be filed:
- (1) Within 10 days after the arraignment in a criminal case; or
 - (2) Within 10 days after the first hearing in a civil case; or
 - (3) Within 10 days after notice that a case or particular docket has been reassigned to a

new judge; or

- (4) Within 10 days after the clerk's filing of a mandate issued by an appellate court; or,
- (5) Within 10 days after the Defendant's Counsel files a Notice of Appearance when the Defendant is entitled to counsel as a matter of law.

(b) Change of Judge if Plea Withdrawn. A defendant who withdraws a plea after a presentence report is submitted may request a change of judge within 10 days after the plea is withdrawn if the defendant has not previously exercised that right.

(c) Form of Notice. A party wishing to exercise their one change of judge as of right must file a written "Notice of Change of Judge" containing the following information:

- (1) The name of the judge to be changed;
- (2) That the filing is timely under Rule 7.3 of these Rules;
- (3) That the party has not previously been granted a change of judge as a matter of right in the case; and,
- (4) The notice can be stated on the record if the party cannot write one, and any notice must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney's avowal can supplement, but not replace, the party's avowal. An attorney's avowal is in the attorney's capacity as an officer of the court.

(A) Improper Purpose. "Improper purpose" means:

- (1) for the purpose of delay;
- (2) to obtain a severance;
- (3) to interfere with the judge's or Court's reasonable case management practices;
- (4) to remove a judge for reasons of race, gender, or religious affiliation;
- (5) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, law firm, contract counsel for a government office, or an office of associated counsel; or
- (7) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 7.1(b).

(B) Timing. A party must file notice within the timeframe specified under Rule 7.1(a).

(d) Assignment. The Chief Judge, or his/her designee, will review requests for change of judge as a matter of right. If the motion is filed against the Chief Judge, it shall be assigned to the Deputy Chief Judge. Unless a change of judge is precluded, including a finding that it is made for an improper purpose or does not serve the interests of justice as the reviewing judge may decide, the Chief Judge or designee should decide the motion promptly and may reassign the case if the motion is granted.

(e) Further Actions. After a party files a notice for change of judge and until the change of judge is decided, the named judge should take no action on the case except to make temporary orders that are absolutely necessary to prevent immediate and irreparable harm.

If the Chief Judge or the Chief Judge's designee determines that the party is not entitled to a change of judge, then the judge named in the notice will proceed with the case.

Rule 7.2. Change of Judge for Cause.

- (a) **Purpose.** As well as Rule 7.1, a party may request, for cause, the change of a judge assigned to their case. This Motion may be filed at any time during the case before a trial or sentencing.
- (b) **Form of Motion.** A party wishing to change a judge for cause must file a verified motion entitled "Motion for Change of Judge for Cause" containing the following information:
 - (1) The name of the judge to be changed;
 - (2) That the filing is timely under Rule 7.3; and
 - (3) Specific facts to prove cause, including bias, hostility, ill-will, prejudice, or interest that would prevent a fair and impartial trial or hearing.
- (c) **Assignment.** The motion for a change of judge will be assigned to the Chief Judge or the Chief Judge's designee. If the motion is filed against the Chief Judge, it shall be assigned to the Deputy Chief Judge.
- (d) **Hearing.** A hearing to decide the matter may be held within 5 days of the filing unless otherwise scheduled on the Court's own motion.
- (e) **Further Actions.** After a notice for change of judge is filed and until the change of judge is decided, the named judge should take no action except to make temporary orders that are absolutely necessary to prevent immediate and irreparable harm. If the Chief Judge or the designee determines that the party is not entitled to a change of judge, then the judge named in the motion will proceed with the case. If the motion is granted, the Chief Judge or designee will assign another judge to proceed with the case.

Rule 7.3. Timeliness, Filing, and Service.

- (a) **Time.** Failure to file a timely notice or motion precludes a change of judge under Rules 7.1 and 7.2.
- (b) **Time Exception.** A motion under Rule 7.2 may also be filed within 5 days of the discovery of cause if such cause is found after the time periods of Rule 7.3(a) have ended.
- (c) **Filing and Service.** The movant must file the notice or motion with the Court and deliver copies to the opposing parties, the Chief Judge, and the noticed judge.

Rule 7.4. Punishment for Contempt Prohibited for Filing a Change of Judge.

No judge or court will punish for contempt anyone making, filing, or presenting the notice or motion for change of judge under these rules, or any motion founded on it.

Rule 8. Publication of Tohono O’odham Court Orders.

Rule 8.1. Publication of Tohono O’odham Appellate Decisions.

(a) Final Opinions; Summary; Other Appellate Decisions. All final opinions of the Tohono O’odham Court of Appeals will be published either in full text or as a summary. A final opinion will be published in full unless it lacks precedential value. A final opinion that lacks precedential value will be published as a brief summary, such as when the appeal is withdrawn by the appellant, dismissed due to misfiling, or remanded for rehearing due to an inadequate record. A decision by the Court of Appeals that is not a final opinion will be published if the decision:

- (1) Establishes, alters, changes, or clarifies a rule of law;
- (2) Addresses a rule of law or question of law which has not been addressed or resolved in an earlier decision;
- (3) Addresses constitutionality or criticizes existing law or sections of it;
- (4) Involves a legal or factual issue of unique interest or substantial public importance, or if the disposition of the matter has a separate concurring or dissenting decision.

(b) Timing of Publication. The Chief Judge will publish the decisions of the Court of Appeals as soon as practicable following the final disposition.

Rule 8.2. Publication of Tohono O’odham Trial Court Decisions.

(a) Publication Criteria. A trial court decision will be published if it is challenged and upheld by the Tohono O’odham Court of Appeals. A trial court decision may also be published if the decision has precedential value and any applicable time periods for appeal have run. A decision has precedential value when it:

- (1) Establishes, alters, changes, or clarifies a rule of law;
- (2) Addresses a rule of law or question of law which has not been addressed or resolved in an earlier decision;
- (3) Addresses constitutionality or criticizes an existing law or sections of it;
- (4) Overrules, upholds, or criticizes the holding of another case; or
- (5) Involves a legal or factual issue of unique interest or substantial public importance.

(b) Request for Publication of Trial Court Decision. After the conclusion of a case and the end of any applicable time for appeal, any person may file a written request to the Chief Judge requesting to publish a trial court decision. The request must specify the name of the case, the case number, and provide a detailed reason using the criteria provided in Subsection (a), explaining why the decision merits publication. The Chief Judge’s decision about publication is final.

(c) Timing of Publication of Trial Court Decisions. If a trial court decision is publishable, the Chief Judge will publish the decision as soon as is practicable.

- (d) **Weight of Trial Court Decisions.** Published trial court decisions used for precedential value are persuasive, but not conclusive.

Rule 8.3. Correction of Errors; Removal of Identifying Information; Depublication.

- (a) **Corrections.** All published decisions and decisions arising from the Children’s Court under Subsection (b) below, will be published without changing the substance of the body of the decision. Alterations may be made, however, that do not change the substance of the body of the decision. For instance, correction of captioning errors (i.e., correction of wrong case numbers and misspelled party names), obvious spelling and punctuation errors (i.e., correction of the spelling of “O’odham” and double periods), and editor’s notes to indicate that substantial errors in the opinion appear in the original and not as a result of the publication process (i.e., missing footnotes).
- (b) **Children’s Court Decisions.** To preserve the confidentiality of Children’s Court cases under Tohono O’odham Children’s Code (3 T.O.C. Ch. 1 Art. 12; 3 T.O.C. Ch. 2 § 21701), all appellate decisions arising from Children’s Court cases will be adjusted to change information identifying the child(ren) and/or family by referring to the child(ren) by initials only and referring to the parties by their relationship to the children and/or party status.
- (c) **Depublication.** The Chief Judge may withdraw a trial court order from publication if the holding is superseded by a new law or overruled by an opinion of the Court of Appeals.

Rule 8.4. Format; Availability; Fee Waiver.

- (a) **Print Publication.** The decisions will be published in suitable volumes and will be organized by calendar year with appellate decisions, if any, appearing first and the trial court decisions, if any, appearing second. Each volume will contain a table of contents listing the cases and indicating the last date in which each year’s cases was updated, or, if appropriate, that no cases were published for a given year. The volumes will be made available for public use at the Tohono O’odham Justice Center and may be purchased for a fee approved by the Tohono O’odham Legislative Council. *See* 6 T.O.C. Ch. 1.
- (b) **Electronic Publication.** The Chief Judge may also publish the decisions electronically.
- (c) **Fee Waiver.** The Chief Judge may waive the fees for purchasing copies of court decisions. *See* 6 T.O.C. Ch. 1.

Rule 9. Publication of Tohono O’odham Rules of Court Procedure.

Rule 9.1. Publication of Tohono O’odham Rules of Court Procedure; Availability.

The Tohono O’odham Rules of Court Procedure will be published and updated from time to time, as necessary.

Rule 9.2. Format; Availability; Fee Waiver.

- (a) **Format; Availability.** The Rules of Court will be made available for public use at the

Tohono O’odham Justice Center and may be purchased for a fee approved by the Tohono O’odham Legislative Council. The Rules of Court are published electronically on the Court’s website at tojc-nsn.gov. The Chief Judge may charge a fee for a copy in an amount approved by the Tohono O’odham Legislative Council. *See* 6 T.O.C. Ch. 1.

(b) Fee Waiver. The Chief Judge may waive the fee for purchasing the Rules of Court. *See* 6 T.O.C. Ch. 1.

Rule 10. Court Fees.

(a) Court Fees.

- (1) *When Due.* All court fees are due at the time of filing.
- (2) *Exemption.* The fees apply to all parties, individuals, and entities, unless exempted by Tohono O’odham law. No court fees apply to a party sued in both an official capacity and in a personal capacity in the same litigation.
- (3) *Deferral, Waiver, Reduction.* Court fees may be waived, reduced, or deferred by a court order under this Rule based on financial need.

(b) Financial Affidavit and Request for Deferral, Reduction, or Waiver of Court Fees.

- (1) *Filing.* A party or individual may file with the Court a sworn financial affidavit requesting a deferral, reduction, or a waiver of a court fee. If an applicant is legally married, the spouse’s income and expenses must be included in the application. If an applicant is single, even when living with others, only that person’s income and expenses should be included. An applicant must also include any income other than employment income in their application. Despite Rule 6 of these Rules, the financial affidavit does not need to be notarized. The financial affidavit and request must be submitted with the other filing(s), and substantially comply with the form of these Rules.
- (2) *By Whom Determined.* In all matters in which a court fee may be assessed, the financial affidavit and request will be reviewed and decided by a judge when the request is filed.

(c) Deferral of Fees.

- (1) *Contents of Financial Affidavit.* A request for a deferral must indicate a certain date by which the applicant will have paid the fee in full.
- (2) *No Hearing Required.* If only a deferral is requested, the Court may order the deferral without a hearing.
- (3) *Effect of Failure to Pay.* Failure to pay the fee by the date specified may result in the pleading being stricken from the record. If the filing is a petition or complaint, the case may be dismissed without prejudice.

(d) Waiver or Reduction of Fees.

- (1) *Contents of Financial Affidavit.* Applicants seeking a waiver or reduction of court fees must indicate the applicant’s income and debts to certify he or she cannot pay

the court fees. If an applicant is legally married, the spouse's income and expenses must be included in the application. If an applicant is single, even when living with others, only that person's income and expenses should be included. An applicant seeking a reduction of fees with a deferral of payment must also indicate a certain date by which the applicant will pay the fee in full.

- (2) *Waiver or Reduction Without a Hearing.* The Court may, without a hearing and based upon the information provided in the Financial Affidavit, find good cause to grant or deny a waiver, reduction, or deferral by the date requested by the applicant.
- (3) *Hearing.* The Court may set a hearing to obtain more information to determine whether a waiver or reduction should be granted. If the Court is considering denying the request for waiver or reduction of the fees, the Court will set a hearing within 5 business days. The Court will provide a reason for its denial and allow reconsideration and filing of proof of economic hardship within five business days of such denial. Any hearing under this Section will be ex parte.
- (4) *Reduction of the Fees; Deferral of Fees.* After the hearing, the Court may grant the waiver, deny the waiver, or reduce the fee to one-half of the regular fee. If the Court determines that it is appropriate to defer payment of either the full fee or a reduced fee, the Court will order the applicant to pay the fee by a particular date.
- (5) *Effect of Failure to Pay.* If the Court deferred payment of the fee, failure to pay the fee by the date specified may result in the pleading being stricken from the record. If the filing is a petition or complaint, the case may be dismissed without prejudice.

(e) Final Judgment Must Not be Withheld. The Court must not withhold entry of final judgment for nonpayment of deferred court fees.

(f) Waiver of Fees for Case on Appeal. A waiver or reduction of court fees at the trial court does not automatically transfer if a party files an appeal. A new financial affidavit and request for deferral or waiver must be submitted with the other filing(s) under Subsection (b) of this Rule.

Section History

Original rule adopting the Arizona Rules of Procedure was adopted by Administrative Order III on March 28, 1988. It was amended by the July 15, 1990, Addendum to Administrative Order III, which made Rule 13.5(b) of the Arizona Rules of Criminal Procedure, Altering the Charges; Amendment to Conform to the Evidence, inapplicable on the Tohono O'odham Nation. The 1990 Addendum was rescinded on April 28, 2003 by Administrative Order 01-03. Administrative Order III was repealed and replaced by Administrative Order 01-04 on June 15, 2004. Administrative Order 03-09, adopted April 15, 2009, rescinded and superseded both Administrative Orders III and 01-04. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended on March 12, 2014, to clarify the effect of the General Rules of Practice. Amended by the 2023 Tohono O'odham Rules of Court. Amended by the 2024 Tohono O'odham Rules of Court.