

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."

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.