

TOHONO O'ODHAM RULES OF COURT

Section 7: Protective Order Procedures

Rule 1. Applicability of Rules.

- (a) **Scope of these Rules.** These Rules govern the procedures for protective orders, which are orders for the safety and protection of individuals, specifically Orders of Protection (*See* 7 T.O.C. § 8.10), Injunctions Against Harassment, and Injunctions Against Workplace Harassment. These Rules do not govern temporary restraining orders.
- (b) **Applicability of Other Rules.** To the extent that they do not conflict with these Rules, the Tohono O'odham Rules of Civil Procedure apply.

Rule 2. Definitions.

(a) Parties.

- (1) *Defendant.* The Defendant is the person against whom the Plaintiff or other party is seeking protection.
- (2) *Plaintiff and Other Appropriate Requesting Parties.*
- (A) Plaintiff. The Plaintiff is the person or other appropriate requesting party who files the petition for a protective order.
- (B) Other Appropriate Requesting Parties
- (i) Parent, Legal Guardian, or Legal Custodian of a Minor. If the person needing protection is a minor, then the parent, legal guardian, or person with legal custody of the minor may file the petition. The petition must name the parent, guardian, or custodian as the Plaintiff, and the minor as a specifically named person.
- (ii) Third Party on Behalf of a Minor. If a parent, legal guardian, or legal custodian named under Subsection (i) of this Rule is unavailable or is the Defendant, a third party may file for a protective order for a minor. The third party must show cause why the Court should let the third party file for the minor.
- (iii) Third Party on Behalf of a Person Unable to Request an Order. If a person cannot seek an order of protection, a third party, as defined by 7 T.O.C. § 4101(A), may request that order. After hearing the request, the Court will first decide if the third party is a proper requesting party.

(C) *Protected Persons.* Protected persons are those specifically named in the Order.

- (b) **Protective Orders.** A protective order includes:

- (1) *Injunction Against Harassment.* The Court grants this to prevent a person from committing acts of harassment against another person. No relationship is required.
- (2) *Injunction Against Workplace Harassment.* This protective order lets an employer seek a court order preventing a person from being on the premises of the employer. The order also prevents a person committing acts of harassment against the employer, the workplace, the employer's employees, or any other person on or at the employer's property or place of business or who is performing official work duties.
- (3) *Order of Protection.* The Court may grant this protective order to prevent a person from engaging in certain activity, and it is limited to parties in specific relationships. See 7 T.O.C. §§ 8.9–8.10.

Rule 3. Children as Protected Persons.

The Court will not include a minor child of the Defendant in a protective order unless there is reasonable cause to believe:

- (a) physical harm has resulted or may result to the child, or
- (b) alleged acts of domestic violence involving the child.

Rule 4. Commencement of Action; Defendants.

- (a) **Commencement of Action.** A Plaintiff must file a verified petition asking for a protective order with the Adult Civil Division Clerk.
- (b) **One Defendant Per Petition.** Only one Defendant may be listed on a petition asking for a protective order. A Plaintiff must file a separate petition for each Defendant.

Rule 5. Family Law Matters.

- (a) **Assignment to Civil Judge.** If an action for maternity, paternity, annulment, custody, dissolution of marriage or legal separation is pending and a party files for a protective order against the opposing party in the pending civil matter, the clerk will transfer the documents to the judge assigned to the civil matter.
- (b) **Child Custody and Parenting Time.**

- (1) Except as otherwise provided in this Rule, the Court will not decide child custody, parenting time, maternity, paternity, child support, dissolution of marriage, or legal separation issues when considering a protective order.
- (2) A protective order may restrain the Defendant from contacting or coming near named persons. Before the Court grants a protective order restricting contact with a child for whom the Defendant is legally responsible, the Court must consider these factors:

- (A) whether the Defendant's contact may harm the child,

(B) whether unsupervised contact may endanger the child.

- (3) If there is no legal relationship between the Defendant and the child, the Court may, on request, prohibit the Defendant's contact with the child based on danger to the Plaintiff.

Rule 6. Ex Parte Issuance; Hearing; Dismissal.

- (a) **Issuance of Protective Order.** If the Court finds reasonable cause exists that the Defendant has committed or may commit acts of domestic violence or harassment against the Plaintiff or other person for whom protection is requested, the Court may issue an ex parte protective order. The Defendant may file an objection and ask for a hearing under Rule 7.
- (b) **Ex Parte Hearing.** If the Court determines more information is needed from the plaintiff, the Court may hold an immediate ex parte hearing.
- (c) **Dismissal.** If the Court decides that no reasonable cause exists to grant the petition, either ex parte or after a hearing pursuant to Rule 6(b) above, the Court may deny the petition or schedule a further hearing within 10 days with notice to the defendant.
- (d) **Hearing Order.** The Clerk will send a copy of the order to the Tohono O'odham Police Department for service and placement in appropriate databases.

Rule 7. Objection to Protective Order; Hearing.

Any Defendant served with an ex parte protective order may file a request for a hearing within ten business days of service. The Clerk will set a protective order hearing within ten business days of the Defendant filing the request. The Clerk will issue a Notice of Hearing to the parties.

Rule 8. Motion to Modify Protective Order; Motion to Dismiss Protective Order.

- (a) **Motion to Modify.** A Plaintiff may move to modify a protective order. A motion to modify made after a hearing cannot be granted without setting a hearing and the Plaintiff giving notice to the Defendant.
- (b) **Motion to Dismiss.** A Plaintiff may move to dismiss a protective order. The Court must hold a hearing before dismissal.

Rule 9. Service of Protective Orders; Return of Service.

- (a) **Service of Protective Orders.** The clerk will send the protective order, including temporary protective orders, and a copy of the Defendant's Guide to Protective Orders document to an authorized agent for service.
- (1) *Authorized Agents.* Law enforcement or public safety personnel will serve protective orders as authorized by the Chairman of the Tohono O'odham Nation. Court officers

may serve protective orders on judicial property.

- (2) *Service on the Nation, Branch, District, or Other Entity.* An Authorized Agent will serve a protective order directed at the Tohono O'odham Nation, a Tohono O'odham governmental branch, district, authority, enterprise, or officer or employee in an official capacity on counsel for the named branch, district, authority, or enterprise. If the named branch, district, authority, or enterprise does not have counsel, the Authorized Agent will serve the branch head, district council chairperson, or chief executive officer of the authority or enterprise.

(b) Return of Service.

- (1) *Successful Service.* On completion of service, the Authorized Agent will file the Certificate of Service.
- (2) *Unsuccessful Service.* If the Authorized Agent cannot complete service after five attempts, he or she must file a Certificate of Non-Service in the Court, detailing the dates, places, and times of attempted service. The Authorized Agent should attach the protective order documents in Subsection (a) to the Certificate of Non-Service.
- (3) *Request for Additional Information.* When the clerk receives a Certificate of Non-Service, the clerk will send the Plaintiff a one-time courtesy letter asking for more addresses to serve, noting the Order is not effective until served. No further letters will be issued, and the case will be closed after one year if the Order remains unserved. If the Plaintiff timely files more addresses, the clerk will resend the protective order documents to an Authorized Agent for a final attempt at service. It is the Plaintiff's responsibility to know whether the protective order has been served and to communicate with the Authorized Agent for that purpose.

Rule 10. Term of Protective Order; Request to Extend Protective Order.

- (a) **Term of Protective Order.** Protective orders are effective for six months after service on the Defendant.

NOTE: Orders of protection are valid for 2 years in the state of Arizona. Plaintiffs may domesticate the Order to or from another jurisdiction.

- (b) **Request to Renew Protective Order.** Before the order expires, a Plaintiff may file a request to extend a protective order for an extra six months. The Plaintiff must serve a copy of the request per the Tohono O'odham Rules of Civil Procedure.

Rule 11. Administrative Dismissal.

If a protective order is not served within one year after being issued, the Court will administratively dismiss the case.

Section History

Adopted by the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2023 Tohono O'odham Rules of Court. Amended by the 2024 Tohono O'odham Rules of Court.