

# TOHONO O'ODHAM RULES OF COURT

## Section 8: Rules of Procedure for Extraordinary Writs

### Rule 1. Writ of Habeas Corpus.

(a) **Availability.** After all trial and appellate procedures have been exhausted and/or timelines have passed, a person may file a writ of habeas corpus to test the legality of his or her current detention or imprisonment. *See* Section 1303 of the Indian Civil Rights Act (as amended by the Tribal Law and Order Act of 2010 (25 U.S.C. § 1303)) and Article III, Section 4 of the Tohono O'odham Constitution.

(b) **Petition for Writ; Filing; Service; Amendments; Notification of Change of Address; Effect of Non-Compliance.**

(1) *Requirements.* The petition must substantially comply with the form in these Rules; must be typed or legibly handwritten and signed in blue or black ink; and must include:

- (A) the name and location of the petitioner;
- (B) the name, title, position and address of the person having or who will have custody of the petitioner (the respondent);
- (C) whether the petitioner is in custody because of a judgment of the trial court, as well as the name of the deciding judge and court;
- (D) the date of the judgment or conviction and the length of confinement;
- (E) the nature of the case or offenses involved and the plea entered;
- (F) all grounds upon which the petitioner asserts he/she is being held unlawfully and a summary of the facts supporting each ground; and
- (G) the relief the petitioner is seeking.

(2) *Filing; Copies; Summons.* The petition, two copies of the petition, and a prepared summons for the respondent must be filed in the Tohono O'odham Civil Court. The summons must substantially comply with the form in these Rules.

(3) *Service of Petition and Summons.*

- (A) **Represented Petitioners.** If represented by counsel, the petitioner must serve the respondent and the Tohono O'odham Office of the Attorney General with the petition and the summons. Service of process must be completed according to the Tohono O'odham Rules of Civil Procedure ("Rules of Civil Procedure").
- (B) **Unrepresented Petitioners.** If a petitioner does not have counsel, the court clerk will provide a court officer with conformed copies of the petition and the summons to be served upon the respondent and the Tohono O'odham Office of the Attorney General. Service of process must be completed according to the Rules of Civil Procedure.

- (4) *Amendment of Application for Writ.* The petition may be amended or supplemented as allowed under the Rules of Civil Procedure. An amended petition may not incorporate or reference any part of the prior petition. Any ground not included in the amended petition is considered dismissed. The amended petition must be served on all parties in accordance with Subsection (3) above.
  - (5) *Notice of Change of Address.* The petitioner must notify the Clerk of Court by filing a notice of change of address if the petitioner's address changes while the case is pending. The petitioner must also serve a copy of the notice on the respondent.
  - (6) *Effect of Non-Compliance.* If the petition and/or service does not substantially comply with the requirements of this Rule, the court may strike or dismiss the petition.
- (c) **Assignment of Judge.** The petition will be heard by a judge who did not preside over the matter for which the petitioner is currently incarcerated.
- (d) **Answer to Petition for Writ.** The respondent's answer must be filed and served upon the petitioner pursuant to the Rules of Civil Procedure within 30 days of receipt of the petition, and the respondent must answer each allegation in the petition and include:
- (1) A copy of the portions of the trial record which the respondent deems relevant to the Court's determination of the claims at hand.
  - (2) A statement of whether the respondent:
    - (A) has the petitioner in his or her custody or under his or her power or restraint, and if so, by what authority, and the cause of such imprisonment or restraint, setting forth any such authority and cause in detail, or
    - (B) has had the party in his or her custody or under his or her restraint at any time before the date of the writ of habeas corpus, but has transferred the custody or restraint to another, and must state at what time and place, for what reason, and by what authority the transfer was made;
  - (3) if the petitioner is restrained by virtue of any writ, warrant, or other written authority, a copy of the document must be attached to the answer and the original must be produced and exhibited to the Court at any hearing;
  - (4) If no answer is filed within the applicable timeframe, and no pre-answer motion is filed pursuant to Subsection (f) below, the petitioner may file for judgment on the petition.
- (e) **No Reply.** No reply will be allowed to any answer filed pursuant to Subsection (d).

- (f) **Pre-Answer Motion; Response.** The respondent may file a pre-answer motion requesting dismissal of part or all of the petition. The pre-answer motion must be served upon the petitioner pursuant to the Rules of Civil Procedure. The petitioner may file a response within 15 days of receipt of the pre-answer motion. No reply will be allowed. The Court may order a hearing and, if the case is not dismissed, set a new date for the respondent's answer to be filed.
- (g) **Motions.** Motions, responses, and replies permitted under Rules of Civil Procedure, including dispositive motions, may be filed in habeas corpus proceedings, subject to the filing and service requirements of the Rules of Civil Procedure.
- (h) **Evidentiary Hearing.** After the respondent's answer is filed, or the time to file the answer has passed, the judge will review the petition, the answer, if any, the transcript, and the record. The judge will determine whether adequate relief can be ordered or whether an evidentiary hearing is required.
  - (1) If an evidentiary hearing is required, it will be held within 30 days of the judge's review, and a decision will be issued promptly after the hearing.
  - (2) If an evidentiary hearing is not required, the judge will render a decision on the petition promptly.
- (i) **Appeal.** The petitioner or respondent may appeal an adverse habeas corpus decision pursuant to the Tohono O'odham Rules of Appellate Procedure.
- (j) **Effect.** All habeas corpus matters pending in the Tohono O'odham Court of Appeals at the time of the adoption of this Rule will be remanded for further proceedings pursuant to this Rule.

## **Rule 2. Writs of Mandamus and Other Extraordinary Writs.**

- (a) **Petition for Writ; Contents.** A party may file a petition for a writ of mandamus or other writ guaranteed by the Tohono O'odham Constitution with the Court. Writs of habeas corpus will be governed by Rule 1 of these Rules. For all other writs, the petitioner must submit a pre-prepared summons in substantial compliance with the summons form in these Rules. The petition must include:
  - (1) the names or titles, addresses, and telephone numbers of the persons against whom relief is sought unless the court determines that including the address or telephone number of any person would place that person in physical jeopardy;
  - (2) a statement of the facts necessary to understand the issues presented;
  - (3) a statement of the issues and the relief sought; and
  - (4) a statement of the reasons why the writ should be issued; and a copy of any order, opinion, final judgment, or parts of the record essential to understanding the petition.
- (b) **Service.** The petitioner must, according to the rules of service in the Rules of Civil Procedure, serve the petition on all parties named as respondents.
- (c) **Answer to Petition for Writ.** The respondent's answer must be filed and served upon the

petitioner pursuant to the Rules of Civil Procedure within 30 days of receipt of the petition, and the respondent must answer each allegation in the petition.

- (d) No Reply.** No reply will be allowed to any answer filed pursuant to Subsection (c).
- (e) Evidentiary Hearing.** After the answer is filed, or the time to file the answer has passed, the judge will review the petition and answer, if any, and determine whether adequate relief can be ordered or whether an evidentiary hearing is required.

  - (1) If an evidentiary hearing is required, it will be held within 30 days of the judge’s review, and a decision will be issued promptly after the hearing.
  - (2) If an evidentiary hearing is not required, the judge will render a decision on the petition promptly.
- (f) Expedited Review and Hearing.** If the petitioner requests an expedited writ and sets forth sufficient grounds for expedited review, the Court may issue a temporary writ and/or set a hearing within 10 days. The Court may also order the parties to appear and order the respondent to show cause why the writ should not be issued.
- (g) Motions.** Motions, responses, and replies permitted under the Tohono O’odham Rules of Civil Procedure may be filed in proceedings concerning extraordinary writs, subject to the filing and service requirements of the Rules of Civil Procedure.
- (h) Effect of Denial.** The denial of a petition for a writ is not a final decision on the merits of any associated case(s).
- (i) Appeal.** The petitioner or respondent may appeal an adverse decision pursuant to the Tohono O’odham Rules of Appellate Procedure.
- (j) Effect.** All writs of mandamus or other extraordinary writs pending in the Tohono O’odham Court of Appeals at the time of the adoption of this Rule will be remanded for further proceedings pursuant to this Rule.

### Section History

Adopted by Administrative Order 04-03 on April 28, 2003 as part of the Tohono O’odham Rules of Appellate Procedure. Reorganized and renumbered by Administrative Order 01-05 on January 4, 2005, and on June 3, 2005 by Administrative Order 03-05. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O’odham Rules of Court on November 1, 2011. Amended and moved to the Tohono O’odham Rules of Procedure for Extraordinary Writs on March 12, 2014. Amended by the 2023 Tohono O’odham Rules of Court. Amended by the 2024 Tohono O’odham Rules of Court.