

# TOHONO O'ODHAM RULES OF COURT

## Section 9: Judicial Review of Administrative Decisions (Administrative Appeals)

### Rule 1. Definitions.

In this section, the following definitions apply unless other context is provided:

- (a) “Administrative agency” or “agency” means every agency, board, commission, department or officer authorized by Tribal law to exercise rulemaking powers or to adjudicate contested cases, whether created by constitutional provision or legislative enactment. This definition does not include any agency of the Tohono O’odham Judicial Branch.
- (b) “Administrative decision” or “decision” means any decision, order, or determination of an administrative agency that is rendered in a case that affects the legal rights, duties, or privileges of any person and terminates the proceeding before the administrative agency. Where a statute or rule of the administrative agency requires or permits a rehearing or other review, and the party has requested a rehearing or review, the decision is not final until the rehearing or review is completed. This does not include:
  - (1) Rules, standards, or statements of general policy issued by an administrative agency to implement, interpret, or specify the legislation it enforces or administers, unless the validity of the rule, standard, or statement of policy is being challenged in a proceeding before that agency.
  - (2) Rules about the internal management of the agency that do not affect private rights or interests.

### Rule 2. Scope of Section.

This section applies to and governs:

- (a) Every action to judicially review a final decision of an administrative agency, including where the law provides for judicial review of agency decisions, except for decisions made under federal or state law.
- (b) Unless review is sought of an administrative decision within the time and in the way provided in this section, the parties to the proceeding before the administrative agency will be barred from obtaining judicial review of the decision. If the period for filing an appeal from an Administrative Agency’s decision conflicts with these Rules, the appeal period of the Administrative Agency will control and supersede the period provided under Rule 4(A). If the law provides that an administrative decision becomes final because the party failed to file an objection, protest, request for a hearing, or otherwise challenge the decision within a specified time, the decision is not subject to judicial review under this section. This section does apply if a party is questioning the jurisdiction of the administrative agency over the person or subject matter.

**Rule 3. Commencement of Action; Transmission of Record.**

- (a) A party starts a judicial review action by filing a Notice of Appeal and Request for Record with the Tohono O’odham Adult Civil Court and the Administrative Agency within 30 days from the date the administrative decision became final or was served on the party. Documents requiring a signature must be signed using blue or black ink. The method of service of the decision will be as provided by the rules of the agency. If no method is provided in the agency’s rules, a decision will be considered to have been served when personally delivered or mailed to the party’s last known residence. Service is considered complete on personal service or five days after the date that the final administrative decision is mailed.
- (b) The party seeking judicial review must file a Notice of Appeal and Request for Record with the agency that conducted the hearing. The administrative agency must send the records to the Adult Civil Court. The records must include the following, at a minimum, and must be delivered to the Court within 15 days. The agency must also deliver a copy of the records to the requesting party.
  - (1) The original agency action from which review is sought.
  - (2) Any motions, memoranda or other documents submitted by the parties named in the appeal.
  - (3) Any exhibits admitted as evidence at the administrative hearing.
  - (4) The decision being appealed and any subsequent revisions or modifications to the decision.
  - (5) A copy of the transcript of the administrative hearing, if the party seeking judicial review wants a transcript to be included in the record and provides for preparation of the transcript at the party’s own expense. Any other party may have a transcript included in the record by filing a notice with the agency that conducted the hearing within 10 days after receiving the complaint. The party seeking judicial review is responsible for the costs for preparing the transcript.
- (c) Within 15 days of the Court receiving the record, the party seeking judicial review must file a written complaint or brief with the Adult Civil Court detailing the basis for the appeal and all supporting arguments.

**Rule 4. Jurisdiction and Venue; Jury Trials Unavailable.**

- (a) **Jurisdiction and Venue.** Jurisdiction to review final administrative decisions is vested in the Tohono O’odham Adult Civil Court. If a law or the agency’s rule(s) require a different venue, then that venue will control.
- (b) **Jury Trials.** Jury trials are not available for judicial review of final administrative decisions.

**Rule 5. Service of Process.**

The party must serve the complaint under the service of process rules in the Tohono O’odham Rules of Civil Procedure.

**Rule 6. Appearance of Defendant and Answer.**

Within 20 days after service of the summons and complaint/brief, the defendant agency and all other defendants must answer or respond to the complaint.

**Rule 7. Parties.**

In an action to review a final decision of an administrative agency, the agency and all persons who are parties of record in the proceedings, other than the plaintiff, will be made defendants.

**Rule 8. Pleadings and Record on Review.**

- (a) The complaint must include a statement of the findings and decision sought to be reviewed, and must clearly specify the grounds upon which review is sought. It must also state whether a transcript is to be designated as part of the record under Rule 3(b)(5).
- (b) Except as otherwise provided, the defendant must file an answer. If the Court orders, or all the parties stipulate to it, the record may be shortened or supplemented.
- (c) If the case is remanded to the administrative agency and the party appeals the new administrative decision, the original and supplemental record will be the record on review.

**Rule 9. Scope of Review.**

- (a) **Timing.** An action to review a final administrative decision will be heard and determined with convenient speed. After receiving an answer, the Court will hold an evidentiary hearing. At the hearing, the Court will hear testimony and arguments, and the Court will make a decision under Rule 10. The Court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.
- (b) **Exhibits and Testimony.** Exhibits and testimony may be admitted that were not offered during the administrative hearing, and any objections that a party did not make at the administrative hearing may also be considered.
- (c) **Standard of Review.**
  - (1) *Normal Standard of Review.* Unless subsection (2) applies or Tohono O'odham law provides a different standard of review, the Court will review final administrative decisions for violations of due process.
  - (2) *De Novo Review.* The Court will review final administrative decisions *de novo* only if:
    - (A) either party requests *de novo* review in the complaint or answer; and
    - (B) the agency did not hold a hearing, or a transcript/recording of the agency's hearing is not available.
- (d) **Court Record.** The record in the Adult Civil Court will consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the

trial *de novo*.

**Rule 10. Court Powers.**

**(a) The Adult Civil Court may:**

- (1) Stay the decision in whole or in part pending final disposition, with or without bond, unless required by the authority of which the administrative decision was entered, and after notice to the agency and for good cause shown.
- (2) Affirm the agency decision.
- (3) Reverse the agency decision if it is not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion.
- (4) Make any order that it considers proper for the amendment, completion, or filing of the record of the proceedings of the administrative agency.
- (5) Allow substitution of parties because of marriage, death, bankruptcy, assignment, or other cause.
- (6) Dismiss parties.
- (7) Modify or remand the decision.
- (8) Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
- (9) When a hearing has been held by the agency and the record shows that the decision was based on insufficient or incomplete evidence, remand the case to the administrative agency to take more evidence.
- (10) In the case of affirmation or partial affirmation of an administrative decision requiring payment of money, enter judgment for the amount indicated by the record and for costs.

**(b)** Technical errors in the proceedings before the administrative agency or the agency's failure to observe the rules of evidence are not grounds for reversing the agency's decision. The Court may reverse the decision if the error or failure substantially affected the party's rights and resulted in a substantial injustice.

**(c)** The Court will make findings of fact and state conclusions of law.

**Rule 11. Appellate Review.**

A party may appeal the final decision, order, judgment, or decree of the Court to the Tohono O'odham Court of Appeals. Appeals must be filed within 30 days.

**Rule 12. Tohono O'odham Court of Appeals.**

Where applicable, the Tohono O'odham Rules of Appellate Procedure will apply to the proceedings except as otherwise provided in this section.

Section History

Adopted March 13, 2002 under Administrative Order 01-02 and affirmed on April 28, 2003 by Administrative Order 04-03. Amended, renumbered, and reorganized to combine the

Rules of Procedure for Administrative Appeals

Administrative Orders into 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.