

# TOHONO O'ODHAM RULES OF COURT

## Section 13: Canons of Conduct for Judges of the Tohono O'odham Nation

### I. PREAMBLE.

In order to preserve the integrity and respect due to the courts of the Tohono O'odham Nation, judges must be held to a high standard of conduct equal to their office and position of leadership. Under the authority granted to the Court in Article VIII, Section 10 of the Tohono O'odham Constitution of 1986, the Court adopts these canons of conduct for all judges of the Tohono O'odham court system. These canons of conduct describe the minimum standards of conduct required of all judges of the Tohono O'odham Nation. These canons are to be liberally construed to further the best interests of the Tohono O'odham Nation in maintaining a competent tribal court system and to best meet the needs of the members of the Tohono O'odham Nation.

### II. DEFINITIONS.

For these canons, the following definitions apply:

<u>Nation or Tribe:</u>	The Tohono O'odham Nation.
<u>Chief Judge:</u>	The acting chief judge of the courts of the Tohono O'odham Nation.
<u>Constitution:</u>	The amended Constitution of the Tohono O'odham Nation, adopted by the Nation and signed into law by the Secretary of the Interior in 1986.
<u>Court of Appeals:</u>	The Tohono O'odham Court of Appeals designated by Article VIII, Section 7 of the Tohono O'odham Constitution.
<u>Judiciary Committee:</u>	The Judicial Affairs Committee authorized and organized by the Legislative Council of the Tohono O'odham Nation.
<u>Judges:</u>	All judges, full-time and pro tempore, of the courts of the Tohono O'odham Nation.
<u>Legislative Council:</u>	The lawmaking body of the Tohono O'odham Nation, authorized and established by Article V of the Constitution of the Tohono O'odham Nation.

### III. CANONS OF CONDUCT.

#### **CANON 1: Judiciary Responsibilities.**

These canons apply to all judges appointed to the bench, whether trial or appellate, of the Tohono O’odham Nation.

- (a) **Judges Pro Tempore.** A judge pro tempore is a judge who is appointed to act as a judge for the Nation on a temporary basis. A temporary judge:
  - (1) must comply with these canons;
  - (2) may not practice law in the Tohono O’odham Nation courts while serving as a judge pro tempore; and,
  - (3) may not appear as an advocate in a proceeding in which he or she has presided as a judge or in any related matter.
- (b) **Oath of Office.** All judges sitting in the Nation’s Courts must take an Oath of Office before the Chief Judge before assuming his or her duties. A written recitation of the oath will be signed and given to the Court Administrator for filing and will be available for review upon request. Conduct in violation of the oath or any part of it may subject the judge to disciplinary action under these canons. The judicial oath is as follows:

I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the Tohono O’odham Nation against all enemies; that I will faithfully and impartially carry out the duties of my office to the best of my ability; and that I will promote and protect the best interest of the Nation in accordance with its Constitution, laws, and ordinances, so help me God.

#### **CANON 2: Honesty and Independence of the Judiciary.**

An independent and honorable tribal judiciary is essential to justice in the community. A judge must help create and maintain such a judiciary and must observe high standards of conduct toward meeting this goal.

- (a) **Separation of Branches.** A judge must recognize a separation between the Trial Court and the Court of Appeals of the Judicial Branch, and between the Judicial Branch and other branches of the tribal government. A judge must avoid any conduct or action that violates such separation or raises an appearance of impropriety.
- (b) **Decision-Making.** A judge may not participate in legislative or executive decision-making unless such participation is in accordance with the customs and traditions of the Nation.

**CANON 3: Impropriety and the Appearance of Impropriety.**

A judge must avoid impropriety and the appearance of impropriety in all of his or her activities.

- (a) **Honesty and Integrity.** A judge must respect and follow the laws, customs, and traditions of the Nation and must, at all times, act in a way that promotes public confidence in the honesty and integrity of the Tohono O’odham Judiciary.
- (b) **Outside Influences.** A judge may not allow family, social, or other personal relationships to influence his or her judicial conduct. A judge can not use the prestige of his or her office to advance the private interests of themselves or others, nor may the judge convey the impression that anyone has special influence on the court.

**CANON 4: Diligence and Impartiality.**

A judge must perform the duties of the judiciary impartially and diligently. The judicial duties of a tribal judge take precedence over all other activities. The judicial duties of the judge include all duties of the office prescribed by tribal law, customs, or traditions. In the performance of these duties, these standards apply:

- (a) **Adjudicative Responsibilities.**
  - (1) A judge must adhere to the laws, customs, and traditions of the Nation. The judge must not be swayed by partisan interests, public clamor, political pressure, or fear of criticism and must resist influences on the Court by other officials, governmental or otherwise, trying to improperly influence the Court.
  - (2) A judge must be patient, dignified, and courteous to litigants, jurors, witnesses, counsel, and others with whom the judge associates in his or her official capacity. The judge will require similar conduct of other persons in court proceedings and of those court personnel who are subject to the judge’s direction and control.
  - (3) A judge must allow every person who is a party in a proceeding the right to be heard according to tribal laws and traditions. Unless allowed by law, a judge must avoid all ex parte communications on the merits of the case with tribal officials, agents, or others, excepting other judges and court officials, about a pending proceeding outside of the presence of all parties or their advocates or spokespersons.
  - (4) A judge should maintain order in his or her court. The judge may not interfere with a proceeding unless necessary to protect the rights of the parties. A judge may not take an advocate’s role and may rely only on the procedures prescribed by the Rules of Court, and the laws and customs of the Nation.
  - (5) A judge must dispose promptly of the business of the Court.

- (6) A judge may not comment publicly on any pending proceeding in the Court and must also prohibit other court staff from making such public comment.

**(b) Administrative Responsibilities.**

- (1) A judge must diligently perform his or her administrative responsibilities as delegated by the Chief Judge.
- (2) A judge must require his or her staff and court officials to observe high standards of honesty and integrity.
- (3) A judge who is aware of another judge's unprofessional conduct must initiate the appropriate disciplinary measures, pursuant to the Tohono O'odham Nation's Code, Title 6, Chapter 4.
- (4) A judge must treat all members of the judiciary, including judges, administrators, and staff, with respect and civility.

**(c) Disqualification.** A judge must disqualify himself or herself in a proceeding in which his or her impartiality may be questioned, including instances where:

- (1) The judge has a personal bias or prejudice about a party or personal knowledge of disputed evidentiary facts;
- (2) The judge served as an advocate or personal representative before the Court, or a person with whom the judge has been associated in a professional capacity served as an advocate or personal representative about the matter;
- (3) The judge knows that he or she individually, or any member of the judge's family or a person living in his or her house, has a financial interest or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or
- (4) The judge, or his or her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:
  - (A) is a party to the proceeding or is an officer, director, or trustee of a party to the proceeding;
  - (B) is acting as an advocate in the proceeding;
  - (C) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding, or
  - (D) is, to the judge's knowledge, likely to be a material witness in the

proceeding.

- (5) A judge may not recuse himself or herself from a case without an adequate reason, such as those listed above.
- (d) **Alternative to Disqualification.** A judge with a potential disqualification under the terms of Canon 4(c)(3) or (4) may, instead of withdrawing from the proceeding, disclose on the record the basis of his or her potential conflict. If, after such disclosure, the parties and their advocates or spokespersons, independent of the judge's participation, all agree on the record that the judge's participation is not prejudicial or that his or her financial interest is insubstantial, the judge may participate in the proceeding.
- (e) **Necessity.** A judge with a potential disqualification under the terms of Canon 4(c) where that judge is the only judge available to hear a matter requiring immediate judicial action, such as an initial appearance setting release conditions or a temporary restraining order, must:
  - (1) Disclose on the record the basis for possible disqualification;
  - (2) Make sure that neither party gains a procedural, substantive, or tactical advantage; and,
  - (3) Make utmost efforts to transfer the matter to another judge as soon as possible.

#### **CANON 5: Improvement of the Legal System.**

A judge may engage in activities to improve the law, the legal system, and the administration of justice. A judge may engage in these activities if, in doing so, the judge does not cast doubt on his or her capacity to impartially decide any issue that may come before his or her court.

- (a) **Education.** A judge may speak, write, lecture, teach, or participate in activities about tribal law and customs, the legal system of the Nation, and the administration of justice.
- (b) **Public Hearings.** A judge may appear at a public hearing before a tribal executive, legislative body, or official on matters about the tribal legal system and the administration of justice. The judge may otherwise consult with a tribal executive, legislative body, or official but only on matters about the general administration of justice.
- (c) **Participation in Organizations and Boards.** A judge may serve as a member, officer, or director of an organization, board, or tribal government agency devoted to the improvement of tribal law, the Nation's legal system, or the administration of justice. A judge may not serve as a member, officer, or director of any other tribal governmental entity.

## **CANON 6: Extra-Judicial Activities.**

A judge must regulate his or her extra-judicial activities to reduce the risk of conflict of interest with his or her judicial duties.

- (a) **Avocational Activities.** A judge may write, lecture, teach, or speak on non-legal subjects and engage in the arts, sports, and other social and recreational activities if the activities do not interfere with the performance of his or her duties.
- (b) **Civic and Charitable Activities.** A judge may participate in civic, charitable, and other activities that do not reflect on his or her impartiality or interfere with the performance of his or her judicial duties. A judge may participate in any educational, charitable, or similar organization; however, a judge should not participate if the organization will likely be involved in proceedings which would ordinarily come before the Court or will likely be involved in adversary proceedings in any court.
- (c) **Financial Activities.**
  - (1) A judge should avoid financial and business dealings that reflect adversely on his or her impartiality, interfere with the performance of his or her judicial duties, exploit his or her position as a judge, or involve such judge in frequent transactions with attorneys, advocates, or others likely to come before the Court regularly.
  - (2) A judge may participate in the operation of a business so long as the activity does not interfere with his or her judicial responsibilities or reflect adversely on the judge or the tribal judiciary.
  - (3) Except as allowed by the laws and traditions of the Nation, neither a judge nor a member of his or her family living in the judge's household should accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her fairness or impartiality in any judicial proceedings that come before the judge.
- (d) **Extra-Judicial Appointments.** Unless allowed by tribal laws or traditions, a judge may not accept appointment to any tribal governmental entity or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the tribal legal system, or the administration of justice. A judge may, however, represent the tribe on ceremonial occasions or with historical, educational, or cultural activities.

## **CANON 7: Political Activities of Tribal Judiciary.**

A judge must refrain from political activity inappropriate to his or her office. Unless allowed by tribal laws or traditions, a judge may not engage in any tribal political activity except on behalf of measures to improve the law, the tribal justice system, or the administration of justice.

### **Section History**

Adopted by Administrative Order 01-05 effective January 4, 2005. Amended, reorganized, and renumbered to combine the 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.