TOHONO O'ODHAM RULES OF COURT

Section 2: Rules of Civil Procedure

I. SCOPE AND PURPOSE

Rule 1. Scope and Purpose.

Rule 1.1. Scope.

These Rules govern the procedure in all civil actions and proceedings in the Tohono O'odham Court.

Rule 1.2. Purpose.

The Rules should be construed, administered, and used by the Court and parties to secure the just, speedy, and inexpensive determination of every action and proceeding considering Tohono O'odham laws, traditions, customs, and culture.

II. BEGINNING AN ACTION; SERVICE AND PROCESS; PLEADINGS, MOTIONS AND ORDERS; DUTIES OF COUNSEL

Rule 2. Commencement of Action.

There is one form of action–the civil action. A party starts a civil action by filing a civil complaint or petition with the Court.

(a) Civil Cover Sheets.

(1) When filing a civil action, a plaintiff must complete and submit a Civil Cover Sheet in a form approved by the Judicial Branch. The public may obtain this form from the Tohono O'odham Justice Center or on the Justice Center's website at https://tojc-nsn.gov/forms/.

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(2) The Civil Cover Sheet must have:

(A) the plaintiff's correct name and mailing address;
(B) the plaintiff's birthdate;
(C) the plaintiff's ~~counsel's~~ attorney or advocate's name;
(D) the defendant's name(s);
(E) the defendant's mailing address;
(F) the defendant's birthday, if known;
(G) the nature of the civil proceeding;
(H) the main case categories and subcategories designated by the Court Administrator; and,
(I) such other information as the Judicial Branch may require, including the verification.

(b) Verification. A pleading must be verified or supported by an affidavit by the party–or the person acting on the party's behalf who knows the facts–attesting under oath that, to the best of the party's or person's knowledge, the facts in the pleading are true and accurate.

Rule 3. Summonses and Process.

(a) Issuance; Setting of Initial Hearing; Service.

(1) *Issuance and Initial Hearing Date*. On filing a pleading that requires service of a summons, the filing party must create and file a summons for each party to be served and present ~~the~~ all summons for signature and seal. If the summons is properly completed, the Clerk must:

(A) schedule an Initial Hearing date within 45 days and note the date and time on the summons;

(B) sign, seal, and ~~issue~~ return the summons to the filing party for service.~~; and issue a summons for each party to be served.~~

(2) *Service*. A party must serve a summons with a conformed copy of the pleading. Service must be completed as required by this rule, Rule 3.1, or 3.2.

(3) *Pleading Defined*. As used in this rule, Rule 3.1 and 3.2, "pleading" means the pleadings authorized by Rule 7 that bring a party into an action–a complaint, petition, third-party complaint, counterclaim, crossclaim, or post-adjudication petition.

(b) Contents; Replacement Summons; Amendments.

(1) *Contents*. A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the counsel of the party serving the summons or–if unrepresented–the party's name and address;

(D) state the time within which the defendant must appear and defend;

(E) notify the party to be served that a failure to appear and defend will cause a default judgment against that party for the relief demanded in the pleading;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the Court by parties at least three working days in advance of a scheduled court proceeding";

(G) be signed by the Clerk; and,

(H) bear the Court's seal.

(2) *Amendments; Replacement Summons.* Upon written request, the Court may permit a summons to be amended and re-issued as an "amended summons". If a summons is returned without being served, or it has been lost, the party may ask in writing that the Clerk issue a replacement summons in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 3(e) for service of the original summons.

(c) Fictitiously Named Parties; Return. If a pleading identifies a party by a fictitious name under Rule 9(d), the summons may be issued and directed to the person with the fictitious name. The return of service of process on a person identified by a fictitious name must state the true name of the person who was served.

(d) Types of Service. Service of Process ~~may~~ must be made by one of the following:

(1) *Personal Service*. Service may be made on a party by delivering the documents to the party or party's counsel or authorized agent by:

(A) Any person who is not less than 18 years of age,

(B) Tohono O'odham law enforcement or public safety staff as authorized by the Chairman of the Tohono O'odham Nation, or

(C) Tohono O'odham court officers for the Court's own documents as authorized by the Tohono O'odham Judicial Branch.

(2) *Service by Mail*. Service may be made by United States Postal Service certified first class mail, return receipt, to the party or counsel's correct address, or through an alternative mail delivery service that provides proof of delivery. Delivery is presumed five business days after the postage.

(3) *Service by Publication*. Parties may ~~ask permission to~~ serve process by publication under Rule 3.1(f) if the whereabouts of the party to be served are unknown, the party was unavailable for personal service, or was unavailable at the mailing address.

(e) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the Court, with or without a motion, must either dismiss the action against that defendant without prejudice or order that service be made within a specified time. If the plaintiff can show good cause for the failure to serve, the Court must extend the time for service for a period not to exceed 90 days.

(f) Return; Proof of Service.

(1) *Timing*. If service is not accepted or the plaintiff asks the Court to provide service by publication, then the person effecting service must file proof of service with the Court. Return of service should be made when the served party must respond to process.

(2) *Proof of Service*.

(A) *Personal Service.* The serving party must record:
(i) the name of the party upon whom service was made or attempted;
(ii) the date and time service was made or attempted–on each occasion, if more than once;
(iii) the location service was made or attempted for each occasion, and whether the location was the opposing party's home, workplace, or other residence known to be frequented by the opposing party;
(iv) the name of the individual accepting service and, if not the opposing party, a statement affirming that the individual was of suitable discretion over the age of 16; and
(v) the name of the individual who made or attempted service.

(B) *Service by Mail*. If mailed by first class mail, the party must attach the return receipt or other evidence of delivery from US Postal Service. If sent by an alternate mailing service, documentation of delivery must be attached. If a party's address is unknown, service by mail may be sent to the post office at the party's last known address addressed to GENERAL DELIVERY and pursuant to US Post Office regulations.

(C) *Service by Publication*. If the summons is served by publication, the return of the person making such service must be made as provided in Rules 3.1(f) and 3.2.

(3) *Validity of Service*. Failure to make proof of service does not affect the validity of service.

(g) Untimely Service. If a party receives a summons less than 7 days before any hearing, the party may notify the Court in writing that the party objects or contests the late service, and may ask for a continuance.

(h) Amending Process or Proof of Service. The Court may permit process or proof of service to be amended.

(i) Refusal to Accept Service. If a person refuses to accept personal service, the person is considered to have been served if the person is informed of the purpose of the service and offered copies of the papers served.

Rule 3.1. Service of Process on the Tohono O'odham Nation.

(a) Serving an Individual. Unless Rule 3.1(b) or (c) applies, or is governed by another rule, statute, or court order, service is:

(1) delivering a copy of the summons and of the pleading to the individual personally;

(2) leaving a copy of each at the individual's home or usual dwelling place with someone of suitable discretion age 16 or older who lives there;

(3) delivering a copy of each to an agent allowed by appointment or by law to receive service of process;

(4) leaving a copy of each at the individual's place of business or employment; or

(5) service by mail or publication under Rule 3(d)(2) or (3).

(b) Serving a Minor. A minor ~~may~~ must be served by delivering a copy of the summons and the pleading to the minor and the minor's parent or legal guardian in ~~the way~~stated in Rule 3.1(a) for serving an individual. If no parent or legal guardian can be found, then service must be made on any person having the care and control of such minor or with whom the minor lives.

(c) Serving an Incompetent Person.

(1) A person previously declared incompetent or incapacitated to manage his or her own property and for whom a guardian or conservator has previously been appointed may be served by delivering a copy of the summons and the pleading ~~on~~ to the person's guardian or conservator in the way allowed under Rule 3.1(a) for serving an individual.

(2) A person who has not been declared incompetent or incapacitated, but is the subject of a filing for guardian or conservator, must be served by delivering a copy of the summons and the pleading in the way allowed under Rule 3.1(a) for serving an individual.

(d) Serving a Corporation, Partnership, or Association. Unless provided by Tohono O'odham law, a domestic or foreign corporation, partnership, or other unincorporated association subject to suit under a common name must be served by delivering a copy of the summons and the pleading to an officer, a managing or general agent, or any other agent allowed by appointment or by law to receive service of process.

(e) Serving the Tohono O'odham Nation and Its Governmental Branches, Districts, Authorities, Enterprises, Officers, or Employees.

(1) *Tohono O'odham Nation*. To serve the Tohono O'odham Nation, a party must deliver a copy of the summons and the pleading to the Tohono O'odham Attorney General.

(2) *Governmental Branch, District, Authority, Enterprise, Officer, or Employee Sued in an Official Capacity*. A Tohono O'odham governmental Branch, District, Authority, Enterprise, officer or employee in an official capacity is served by delivering a copy of the summons and the pleading to the counsel of the Branch, District, Authority, or Enterprise. If the Branch, District, Authority, or Enterprise does not have counsel,

service is made by delivery to the Branch head, District Council Chairperson, or chief executive officer of the Authority or Enterprise.

(f) Service by Publication by Newspaper or Community Posting.

(1) *When Service by Publication is Available*. Service of process may ~~only~~ be made by publication when a party shows that the service provided in these Rules is impracticable. The Court may, on motion and without notice to the person to be served, order that service be accomplished by publication. A serving party ~~files a motion with the Court alleging service by publication is the best way practicable under the circumstances.~~ may initiate the service by publication described in these Rules prior to moving for such an order or while a motion is pending. The motion should provide reasons that service by publication is needed, such as that the person to be served:

(A) is one whose current residence and/or address is unknown to the party seeking service,

(B) was not available to be personally served on two occasions of attempted service,

(C) was not available at the mailing address and the posted documents were returned to the sender by the United States Postal Service, or alternate mail delivery service; or

(D) has avoided service of process.

(2) *Motion; Contents*. A party asking for service of process by publication must provide the reasons that service by publication is needed and document what attempts to serve process were attempted. If service was not attempted because the whereabouts of the party to be served are unknown, the party will document what good faith efforts were made to determine the whereabouts of the party to be served by publication.

(3) *What Must be Published*. Service of process by publication will be made by publishing the summons, and a statement with the name of the person to contact for service, and a brief description of the pleading. For example, "Please contact Jane Smith at 520-555-5555 or 1234 N Street, Sells, AZ 85634. This is a guardianship [probate, divorce, etc.] matter ~~by publishing the summons and a statement of how a copy of the pleading being served may be obtained.~~ For juvenile matters, the child's name must be redacted but enough information needs to be available so that those seeing the posting will know who is the subject of the matter and potential person who is trying to be notified.

(4) *Frequency and Location of Publication in a Newspaper*.

(A) The summons and statement will be published at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to be served.

(B) When the mailing address of the person to be served is known, the party making service will also, by the date of the first publication, mail the summons and pleading, postage pre-paid, to the person's mailing address.

(C) The service will be complete 30 days after the first publication.

(5) *Frequency and Location of Publication by Community Posting*.

(A) The summons and statement must be posted for 30 days on a bulletin board at a Tohono O'odham Nation district office or community meeting place in the district that the person to be served is most recently known to have lived within the exterior boundaries of the Nation.

(B) When the mailing address of the person to be served is known, the party making service will also, by the date of the first posting, mail the summons and pleading, postage pre-paid, to the person's mailing address.

(C) The service will be complete 30 days after the first posting.

(6) *Proof of Service by Publication or Community Posting.* Upon completion of the service of process by publication, the party must file a printed copy of the publication and an affidavit indicating the method and dates of the publication or posting. The affidavit is evidence of compliance with this rule.

Rule 3.2. Service of Process Outside the Tohono O'odham Nation.

Service upon a person subject to the jurisdiction of the Tohono O'odham Nation may be made anywhere; if service is made outside of the Nation, it will be made under the rules of that jurisdiction.

Rule 4. Responsibility to Serve Documents.

(a) Service Generally.

(1) *Scope*. This rule governs service on other parties after service of the summons and complaint, petition, counterclaim, third-party complaint, or post-adjudication petition.

(2) *When Required*. Unless these Rules provide otherwise, a conformed copy of these documents must be served on every party by a method stated in Rule 4(c):

(A) an order stating that service is required;

(B) a pleading filed after the original complaint;

(C) a discovery or disclosure document required to be served on a party, unless the Court orders otherwise;

(D) a written motion, except motions that may be heard without notice to the other side; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar document.

(3) *If a Party Fails to Appear*. A pleading that asserts a new claim for relief against such a party must be served on that party under Rule 3, 3.1, or 3.2.

(b) Service; Parties Served; Continuance. If there are several defendants, and some are served with process but others are not, the plaintiff may choose to proceed against those who have been served or move to defer disclosure until more parties are served.

(c) Service After Appearance; Service After Judgment; How Made.

(1) *Serving Counsel*. If a party is represented by counsel, service under this rule must be made on counsel, unless the Court orders, or a specific rule requires, service on the party.

(2) *Service in General*. A document is served under this rule by:

(A) handing it to the person;

(B) leaving it:
(i) at the person's office with a Clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
(ii) if the person has no office or the office is closed, at the person's home or usual dwelling with someone of suitable age and discretion age 16 or older who lives there;

(C) mailing it by U.S. mail to the person's last known address or to GENERAL DELIVERY if the address is unknown–in which event service is presumed complete 5 day after mailing; or

(D) delivering it by any other means, including electronic means, if the recipient consents in writing to that method of service or if the Court orders service in that manner–in which event service is complete upon transmission.

(3) *Certificate of Service*. The date and manner of service must be noted on the last page of the original of the document or in a separate certificate, in a form substantially:

A copy has been or will be mailed/emailed/hand-delivered [select one] on [insert date] to:

[Name of opposing party or counsel]

[Address of opposing party or counsel]

If the precise manner of service is not noted, it will be presumed that the document was served by mail provided the Court has sufficient evidence and information to find service has actually been made.

(4) *Service After Judgment*. After the time for appeal from a judgment or the judgment has become final, a motion, petition, complaint, or other pleading requesting modification, vacation, or enforcement of that judgment must be served in the same manner listed in Rule 3, 3.1, or 3.2.

(d) Constitutional Challenge to a Statute–Notice, Certification, and Intervention.

(1) *Notice by a Party*. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a Tohono O'odham law, rule, regulation, resolution, or ordinance must promptly:

(A) serve a copy of the pleading, written motion, or other paper raising the constitutional issue on the Attorney General of the Tohono O'odham Nation if the parties do not include the Tohono O'odham Nation, one of its agencies, or one of its officers or employees in an official capacity; and

(B) serve a copy on the Office of the Legislative Attorney.

(2) *Intervention; Final Decision on the Merits*. Unless the Court sets a later time, the Attorney General and Legislative Attorney may intervene within 60 days after service of the pleading, motion, or other document challenging constitutionality is filed. Before the time to intervene ends the Court may reject the constitutional challenge, but may not enter a final judgment holding the law or rule unconstitutional.

(3) *No Forfeiture*. A party's failure to file and serve the notice does not close a constitutional claim or defense that is timely asserted.

Rule 4.1. Filing Pleadings and Other Documents.

(a) Filing with the Court Defined. Filing documents with the Court is done by filing them with the Clerk, either directly or via fax or e-filing. If a judge permits, a party may submit a document directly to a judge during a hearing. The judge must give it to the Clerk for filing and tell the Clerk when it was received. The Clerk will stamp the document with the date and time it was accepted.

(b) Effective Date of Filing.

(1) *Generally*. Except for documents submitted directly to a judge under Rule 4.1(a), a document is considered filed on the date and time the Clerk stamps it received. If a document is filed by fax or via e-filing, it is considered filed on the date the Clerk receives it as shown by the file stamp, unless a required filing fee is not paid or the Clerk later rejects the document. If a filing is rejected because of a deficiency or failure to pay filing fees, the Clerk must promptly provide the filing party with an

explanation for the rejection.

(2) *Documents Submitted Directly to a Judge*. If a document is submitted directly to a judge under Rule 4.1(a) and is later transmitted to the Clerk for filing, the document is considered filed on the date the judge receives it.

(3) *Late Filing Because of an Interruption in Service*. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may ask the Court to accept the document as timely filed. On showing good cause, the Court may enter an order allowing the document to be considered filed on the date the person originally tried to send the documents by fax or by e-filing.

(4) *Late Filing Because of Court Emergency.* If a person fails to meet a deadline for filing a document because the Court was closed during regular business hours, the person may ask the Court to accept the document as timely filed. On showing good cause, the Court may enter an order allowing the document to be considered filed on the date that the person originally tried to file the document.

(5) *Incarcerated Parties*. If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the Court must treat the document as filed on the date it was delivered to corrections authorities to mail.

(c) Service with Filing and Documents Not to Be Filed.

(1) *Filing and Service*. After a complaint's filing, if a document must be filed within a specified time, it must be both filed and served within that period.

(2) *Documents Not to Be Filed*. These documents may not be filed separately but may be filed as attachments or exhibits to other documents only if relevant to determining an issue before the Court:

(A) **Subpoenas**. Any subpoena, and any affidavit of service of a subpoena, except for post-judgment proceedings;

(B) **Discovery and Disclosure Documents**. Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(C) **Proposed Pleadings**. Any proposed pleading, unless filing is necessary to preserve the record on appeal;

(D) **Prior Filings**. Any document previously filed in the action, which may be called to the Court's attention by incorporating it by reference;

(E) **Authorities Cited in Memoranda**. Copies of authorities cited in memoranda,

unless necessary to preserve the record on appeal.

(3) *Attachments to Judge*. Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 4.1(c)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge must also be provided to all other parties.

(4) *Sanctions*. If this rule is violated, the Court may order removal of the offending document from the record and any other sanction.

(d) Proposed Orders; Proposed Judgments.

(1) *Required Format*. With any motion, stipulation, or other request, a proposed order or judgment must be submitted.

(A) The proposed order or judgment must be submitted as a separate document and may not be included as a part of the motion, stipulation, or other document.

(B) The proposed order or ~~proposed~~ judgment must be prepared under this rule, and must follow Rule 4.2, except the practitioner/attorney's identification block, as discussed in 4.2(a)(1), ~~should~~ must not be placed at the top of a proposed order or judgment.

(C) On the signature page, there must be at least two lines of text above the judge's signature and there must be no other language below the judge's signature.

(2) *Basic Content*. A proposed order or ~~proposed~~ judgment must include a finding of facts section and the proposed order or judgment and must include options for both "Denied," and "Granted."

(3) *Service and Filing*. Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the Court. The certificate of service, foregoing, or form approvals must be attached on a separate page. The Clerk ~~may~~ will not conform a proposed order or ~~proposed~~ judgment. A party may file an unsigned proposed order or ~~proposed~~ judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the Court, required by rule, or done to preserve the record on appeal.

(4) *Stipulations and Motions; Proposed Forms of Order*.

(A) All written stipulations must have a proposed order. If the proposed order is signed and entered, the Court does not need to issue a ~~minute entry~~separate court order.

(B) If a motion has a proposed order, and if the judge signs and enters that order, the Court does not need to issue a ~~minute entry~~separate court order.

Rule 4.2. Form of Documents.

(a) Caption. Documents filed with the Court must have the following information as single-spaced text, typed or printed, on the first page of the document:

(1) To the left of the center of the page starting at line 1:

(A) the filing counsel's (or self-represented litigant's) name, office name if applicable, address, telephone number, and email address; and

(B) identification of the party being represented by the counsel (*e.g.,* plaintiff, defendant, third-party plaintiff);

(2) centered on or below line 6 of the page, the title of the court;

(3) below the title of the court and to the left of the center of the page, the title of the proceeding;

(4) opposite the title, in the space to the right of the center of the page, the case number of the proceeding;

(5) immediately below the case number, a brief description of the document; and

(6) below the document description, the judge to whom the case is assigned (if known).

(b) Document Format. Unless the Court orders otherwise, all filed documents–other than a document submitted as an exhibit or attachment to a filing–must follow this rule:

(1) *Text and Background*. The text of every document must be black on a plain white background. All documents filed must be single-sided and ~~should~~ have line numbers at double-spaced intervals along the left side of the page.

(2) *Type Size and Font*. Every typed document must use at least a 12-point type size. The Court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, Calibri, or Comic. Footnotes must be in at least 12-point type size and must not appear in the space required for the bottom margin.

(3) *Page Size*. Each page of a document must be 8 1/2 by 11 inches.

(A) Exhibits, attachments to documents, or documents from other jurisdictions larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(C) An exhibit, attachment to a document, or document from a different jurisdiction that does not follow these provisions may be filed only if compliance is not reasonably practicable.

(D) **Margins and Page Numbers**. Margins must be set: at the top of the first page of not less than 2 inches; at the top of each subsequent page of not less than 1½ inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

(E) **Handwritten Documents**. Handwritten documents are discouraged, but if a document is handwritten, the text must be in blue or black ink, legibly printed, and not include cursive writing or script.

(F) **Line Spacing**. Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.

(G) **Headings and Emphasis**. Headings must be underlined, or be in italics or bold type. Underlining, italics, or bold type may also be used for emphasis.

(H) **Citations**. Case names and citation signals must be in italics or underlined.

(I) **Originals**. Only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.

(J) **Court Forms**. Printed court forms may be single-spaced, but those requiring a judge's signature must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging.

(K) **Signatures**. All documents must be signed in blue or black ink. A person who is in custody is exempted from this requirement.

(L) **Electronic Signatures**. An electronic signature (i.e., using /s/ with the signer's printed name, or a scanned document where an original signature is clear) is accepted as original when a document is filed with the court via fax or e-filing. *See* Rule 10(a)(2) below.

(c) Faxed or E-filed Documents. A party filing a document by fax or e-filing does not have to file an original signature document.

(d) Electronic Filing. Except as otherwise provided in the Court Rules, any pleading, document, or other paper filed with the Court may be filed by electronic mail (email) under this section.

(1) Parties filing by email ~~will~~ must physically sign the document, or enter /s/ and their typed named, and submit it, along with any attachments or exhibits, in a .PDF format. Submissions are to be sent to TONJudicialCourt@tonation-nsn.gov with the case number and submitting party in the subject line.

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(A) The email must be from a valid email address identified in the document as the filing party's email address of record.

(B) The filing party must maintain a transmission record of the submission in their records.

(C) The PDF file is to be named in the following way: casename–document being filed–case number. For example, Tohono O'odham Nation v. Smith–Motion to Continue–CR2022-0000-1.

(D) Only one document should be saved to each PDF file. For example, if a party is filing a Response, a Motion, and a Notice of Appearance, there will be three separate PDFs attached to the email.

(E) Service on other parties remains as required by the Nation's laws and rules. A courtesy copy may be sent to opposing parties; however, an email does not provide proof of service which must be done under the Rules.

(2) The Clerk will deliver written confirmation, via email, of the date and time the email was received to the filing party, and record the filing date as the date stamped by the Clerk of Court's Office. Filing parties will be emailed a filed, stamped copy (conformed copy) of the filed documents. If necessary, the Clerk will deliver written confirmation that the Court is still waiting for payment of the filing fee.

(3) Electronic filings may be submitted at any time; however, they will be recorded as received only during the hours of 8 a.m. to 3:30 p.m., Monday through Friday, except Court holidays. Electronic filings received after 3:30 p.m. will be considered received as of the next business day.

(4) Applicable filing fees for documents filed electronically must be paid in full to the Court within three business days of the Clerk's written confirmation. Failure to submit a filing fee will result in the filing being rejected by the Clerk.

(5) Pleadings, including exhibits and attachments, must be electronically sent as PDFs. Defective pleadings will not be considered filed and will be rejected like a defective pleading delivered directly to the Court.

(6) In the event of an equipment malfunction or transmission failure, the pleading will be considered to have been transmitted as of the date represented by the filing party only if that party produces evidence generated by the sending program showing that the electronic transmission occurred on the date and time presented by the filing party.

Rule 5. Computing and Extending Time.

(a) Computing Time. When computing any period specified in these Rules, or in any court order or statute:

(1) *Day of the Event Excluded*. Exclude the day of the act, event, or default that begins the period.

(2) *Exclusions if the Deadline is Less than 11 Days*. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) *Last Day*. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(4) *Next Day*. The "next day" is determined by continuing to count forward when the period is measured after an event, and backward when measured before an event.

(5) *Extending Time*. When an act may or must be done within a specified time, the Court may, for good cause, extend the time:

(A) with or without a motion or notice if the Court acts, or the request is made, before the original time or its extension ends; or

(B) on motion made after the time has ended if the party did not act because of excusable neglect.

(b) Additional Time After Service Under Rule 3(d)(2). When a party may or must act within a specified time after service and service is made under Rule 3(d)(2), no additional time is added other than the five extra days presumed for service under Rule 3(d)(2). The extra service time presumed by Rule 3(d)(2) does not apply to the Clerk's distribution of notices– including notice of entry of judgment under Rule 18(c) ~~minute entries~~ court orders, or other court-generated documents.

(c) Court Orders ~~Minute Entries~~ and Other Court-Generated Documents. Notices, court orders~~minute entries~~, and other court-generated documents are entered on the date they are filed by the Clerk. Unless the Court orders otherwise, if an order states that an act may or must be done within a specified time after the order is entered, the date of filing is "the day of the act, event, or default" under Rule 5(a)(1).

Rule 6. Duties of Counsel.

(a) Counsel of Record.

(1) Counsel may not appear in any action or file anything in any action without first filing a Notice of Appearance, as counsel of record.

(2) Counsel from the same office may participate in hearings for counsel of record on counsel of record's behalf and is expected to communicate the events, deadlines, schedules, and all other outcomes from the hearing to counsel of record.

(3) Counsel of record will be responsible in all matters before and after judgment until

the time for appeal from a judgment has ended, a judgment has become final after appeal, or until there has been a formal withdrawal or substitution of counsel. Judges shall enter a final order, decree, decision within a reasonable time following the last date of a trial or the entry of a stipulation which addresses the relief requested by filing of a Petition and/or Response, and that shall constitute a final order in the case. That final order may include an Order that the Advocates/Attorneys are relieved of further responsibility in the case once the time for appeal has run. Once the time for Appeal on that final Order has run, the Attorney/Advocate will no longer be considered Counsel of Record, and must file a new Notice of Appearance should the case reopen by Motion, or other means.

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(b) Withdrawal and Substitution. In an open, pending case, ~~any matter, even if it has gone to judgment~~, there must be a formal substitution or association of counsel before any counsel, who is not counsel of record, may appear. No counsel may withdraw or be substituted as counsel of record in any open and pending action except by formal written order, supported by a written motion setting forth the reasons, with client's name, mailing address, and telephone number, and:

(1) Where the motion bears the written approval of the client, it must come with a proposed written order and may be presented to the Court without notice to the other side. The withdrawing counsel must give prompt notice of the entry of such order, with the name and mailing address of the client, to all other parties or their counsel.

(2) Where the motion does not bear the written approval of the client, it must be served upon the client and all other parties or their counsel, by the means identified in Rule 4 of the Tohono O'odham Rules of Practice, Section 2, Rules of Civil Procedure. The motion must state the reasons for the request to withdraw. If the client and/or opposing party fails to respond to the Motion within five days, the Motion will be granted. ~~have a certificate of the counsel making the motion that:~~

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(A) ~~the client has been notified in writing of the case's status, including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanction, or~~

(B) ~~the client cannot be found or cannot be notified about the pending motion and the case's status.~~

(3) No counsel may withdraw as counsel of record after an action has been set for trial, unless:

(A) either the substitute counsel signs the motion and states that counsel will be prepared for trial or the client signs the motion and states that the client will be prepared for trial, or

(B) the Court is satisfied for good cause shown that counsel should be allowed to withdraw.

(c) Responsibility to Court.

(1) Each counsel is responsible for keeping advised of the status of cases in which counsel has appeared, or their positions on the calendars of the court and of any assignments for hearing or argument.

(2) Upon relocation, each counsel must advise the Clerk of court of the counsel's current office address and telephone number.

(d) Notice of Settlement. The parties have a duty to notify the Court about any settlement on any case or matter set for trial, hearing, or argument before the trial; or hearing, argument, or other matter, awaiting court ruling. If any unreasonable delay occurs in giving such notice, the Court may impose sanctions against counsel or the parties.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Documents.

Only these pleadings are allowed: a complaint; an answer to a complaint; a petition; a response to a petition; a counterclaim; an answer to a counterclaim; an answer to a crossclaim; a third-party complaint; an answer to a third-party complaint; and, if the Court orders one, a reply to an answer.

Rule 7.1. Motions.

(a) Requirements.

(1) *Generally*. Unless a motion is made on the record during a hearing or trial, an application to the Court for an order must be by written motion which states the specific grounds for granting the motion, and set forth the relief or order sought from the Court.

(2) *Supporting Memorandum*. All motions must have a memorandum setting forth the reasons for granting the motion, with citations to the specific parts or pages of supporting authorities and evidence.

(3) *Responsive and Reply Memoranda*. Unless stated otherwise, an opposing party must file a responsive memorandum within 10 days after the motion and supporting memorandum are served. The moving party must file a reply memorandum within 5 days after a responsive memorandum is served. The reply memorandum must address only matters raised in the responsive memorandum.

(4) *Affidavits and Other Evidence*. Affidavits and other evidence submitted to support any motion or memorandum must be filed with the motion or memorandum unless the Court orders otherwise.

(5) *Motions in Open Court*. The Court may waive these requirements for motions made in open court.

(b) Effect of Noncompliance or Waiver. The Court may summarily grant or deny a motion

if:

(1) the motion, supporting memorandum, or responsive memorandum does not follow Rule 7.1(a);

(2) the opposing party does not file a responsive memorandum; or

(3) counsel for any moving or opposing party fails to appear at the time and place designated for oral argument.

(c) Rulings on Motions. The Court, at any time or place, may make orders for the advancement, conduct, and hearing of motions on such notice, if any, as the court considers reasonable.

(d) Oral Argument. The Court may limit the length of oral argument. The Court may decide motions without oral argument, even if oral argument is requested.

(e) Motions for Reconsideration.

(1) *Generally*. A party seeking reconsideration of a court order or ruling may move for reconsideration.

(2) *Procedure*. All such motions, however titled, must be submitted within 10 days of the order. The opposing party does not need to file a responsive memorandum, unless the court orders otherwise. If the Court finds that there are grounds for the motion, the Court will order the opposing party to file a responsive memorandum. The Court will not grant a motion for reconsideration until all the other parties have had an opportunity to respond.

(3) *No Effect on Appeal Deadline*. A motion for reconsideration is not a substitute for a motion filed under Rule 16(b) or Rule 19, and will not extend the time within which a notice of appeal must be filed.

(f) Limits on Motions to Strike.

(1) *Generally*. Unless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is allowed by statute or rule. A party may file a motion to strike if it seeks to strike any part of a filing or submission because it is prohibited, or not authorized, by a specific statute, rule, or court order.

(2) *Procedure*. Unless the motion to strike permitted by Rule 7.1(f)(1) is allowed by rule or statute:

(A) it may not exceed 2 pages, including its supporting memorandum;

(B) any responsive memorandum must be filed within 5 days after service of the motion and may not exceed 2 pages; and

(C) no reply memorandum may be filed unless the Court orders otherwise.

(3) *Objections to Admission of Evidence on Written Motions*.

(A) **Objections**. Any objections or arguments about the admissibility of the evidence offered to support or to oppose a motion must be presented in the objecting party's responsive or reply memorandum. The objections or arguments may not be presented in a separate motion to strike or other filing.

(B) **Response to Objections**. Any response to an objection must be included in the responding party's reply memorandum and may not be presented in a separate responsive memorandum.

(C) **Objections to Evidence Offered in a Reply Memorandum**. If evidence is offered for the first time in a reply memorandum, an objecting party may file a separate objection limited to addressing the new evidence within 5 days after the reply memorandum is served. No responsive memorandum may be filed unless the Court orders otherwise.

(g) Good Faith Consultation Certificate. When these rules require that a "good faith consultation certificate" accompany a motion or that the parties consult in good faith, the moving party must attach to the motion a separate statement certifying that the moving party has tried in good faith to resolve the issue by conferring with–or trying to confer with–the party or person against whom the motion is directed in person or by telephone.

Rule 8. General Rules of Pleading.

(a) Claim for Relief. A pleading that states a claim for relief must have:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) *Generally*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials–Responding to the Substance*. A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials*. A party who intends in good faith to deny all the allegations of a pleading–including the jurisdictional grounds–may do so by a general denial subject to the obligations provided in Rule 10(a). A party who does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation*. A party who intends in good faith to deny only part of an allegation must admit to the part that is true and deny the rest.

(5) *Lacking Knowledge or Information*. A party who lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny*. An allegation–other than one relating to damages–is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is denied or avoided.

(c) Affirmative Defenses.

(1) *Generally*. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction;
(B) arbitration and award;
(C) assumption of risk;
(D) contributory negligence;
(E) duress;
(F) estoppel (a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true);
(G) failure of consideration;
(H) fraud;
(I) illegality;
(J) laches (unreasonable delay in pursuing a right or claim in a way that prejudices the party against whom relief is sought);
(K) license;
(L) payment;
(M) release;
(N) res judicata (an issue that has been settled by judicial decision);
(O) statute of frauds;
(P) statute of limitations; and
(Q) waiver.

(2) *Mistaken Designation*. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the Court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) *Generally*. Each allegation of a pleading must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense*. A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses*. A party may state as many separate claims or defenses as they have, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed to do justice.

(f) Claims for Damages. In all actions where a party is pursuing a claim other than for a sum certain or for a sum which can be made certain by computation, no dollar amount or figure for damages sought needs to be stated in the pleading.

Rule 9. Form of Pleadings.

(a) Caption; Names of Parties. Every pleading must have a caption in the form required by Rule 4.2(a), with the pleading's designation under Rule 7. The title of the complaint must name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation "*et al*."

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence–and each defense other than a denial–must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) Using a Fictitious Name to Identify a Defendant. If the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceedings by any name. If the defendant's true name is discovered, the pleading or proceeding should be amended with permission from the Court for cause shown.

Rule 10. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person.

(a) Signature.

(1) *Generally*. Every pleading, written motion, and other document filed or served must be signed in blue or black ink by at least one counsel of record in the counsel's name–or by a party personally if the party is unrepresented. The Court must strike an

unsigned document unless the omission is promptly corrected after being called to the filer's attention.

(2) *Electronic Signatures*. An electronic signature (i.e., using /s/ with the signer's printed name, or a scanned document where an original signature is clear) is accepted as original when a document is filed with the court via fax or e-filing. See also Rule 4.2(b)(3)(L).

(3) *Notary Requirement*. When, under any statute, rule, regulation, or order, a document must be supported, evidenced, established, or proved by a sworn written declaration, verification, certificate, oath, or affidavit, the document must be signed in blue or black ink by the person making the declaration, verification, certificate, oath, or affidavit. The signature must be notarized by a qualified notary public.

(4) *Filings by Multiple Parties*. A person filing a document containing more than one place for a signature–such as a stipulation–may sign on behalf of another party only if the person has authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other people with authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission."

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney and/or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, changing, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are needed on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) *Generally*. If a pleading, motion, or other document is signed in violation of this rule, the Court–on motion or on its own–may impose an appropriate sanction. The sanction may include an order to pay to the other party or parties reasonable expenses incurred because of the filed document, including counsel's fees.

(2) *Consultation*. Before filing a motion for sanctions under this rule, the moving party must:

(A) try to resolve the matter by good faith consultation as provided in Rule 7.1(g); and

(B) if the matter is not satisfactorily resolved by consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 10(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 10(c)(3).

(3) *Motion for Sanctions*. A motion for sanctions under this rule must:

(A) be made separately from any other motion;

(B) describe the specific conduct that allegedly violates Rule 10(b);

(C) be accompanied by a Rule 7.1(g) good faith consultation certificate; and

(D) attach a copy of the written notice provided to the opposing party under Rule 10(c)(2)(B).

(4) *Assisting Filing by a Self-Represented Person*. A legal practitioner may help draft a pleading, motion, or other document filed by a self-represented person, and the practitioner need not sign that pleading, motion, or other document. In providing assistance, the legal practitioner may rely on the self-represented person's representation of facts, unless the practitioner has reason to believe that such representations are false or materially insufficient. If the practitioner believes the representations are false or materially insufficient, the practitioner must make an independent reasonable inquiry into the facts.

Rule 11. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses; Pretrial Hearing.

(a) Time to File and Serve a Responsive Pleading.

(1) *Generally*. Unless another time is specified by rule or statute, a defendant must file and serve an answer or other responsive pleading to a complaint, petition, counterclaim, or crossclaim:

(A) within 20 days after being served with the summons and complaint, or
(B) within 30 days after the date the summons and complaint is mailed if the summons and complaint were served by mail.

(2) *Replies to Responses*. If permitted by rule, statute, or court order, a party may file and serve a reply within 5 days of service of the response.

(3) *Effect of a Motion*. Unless the Court sets a different time, serving a motion under this rule alters these periods:

(A) if the Court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the Court's action; or

(B) if the Court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert these defenses by motion:

(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert any defense to that claim at trial. A party does not waive a defense or objection by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed–but before the date on which dispositive motions must be filed–a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside of the Pleadings. If matters outside of the pleadings are presented to, and not excluded by, the Court, on a motion under Rule 11(b)(6) or (c), the motion must be treated as one for summary judgment. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. If a pleading to which a responsive pleading is allowed is vague or ambiguous such that the responding party cannot reasonably frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details or clarification desired. If the Court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the Court sets, the Court may strike the pleading or issue any other order.

(f) Motion to Strike. The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Court may act:

(1) on its own; or,

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after the pleading is served.

(g) Joining Motions.

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions*. A party who makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party, but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) *When Some are Waived*. A party waives any defense in Rule 11(b)(2) through (5) by:

(A) omitting it from a motion in the circumstances described in Rule 11(g)(2); or

(B) failing to either:
(i) make it by motion under this rule; or
(ii) include it in a responsive pleading or in an amendment allowed by Rule 13(a)(1).

(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a required person, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7;

(B) by a motion under Rule 11(c); or,

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction*. If the Court determines at any time that it lacks subject-matter jurisdiction, the Court must dismiss the action.

(i) Preliminary Hearings. If a party so moves, any defense in Rule 11(b)(1) through (7)–whether made in a pleading or by motion–and a motion under Rule 11(c) must be heard and decided before trial unless the Court orders a deferral until trial.

Rule 12. Counterclaim and Crossclaim.

(a) Compulsory Counterclaim.

(1) *Generally*. A pleading must state as a counterclaim any claim that–at the time of its service–the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject of the opposing party's claim; and

(B) does not require adding another party over whom the Court cannot acquire jurisdiction.

(2) *Exceptions*. The pleader need not state the claim if:

(A) when the lawsuit was filed, the claim was the subject of another pending action; or,

(B) the pleader shows that Court would not have personal jurisdiction over the opposing party as to the claim.

(b) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds the amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against the Tohono O'odham Nation. These Rules do not create or expand the right to assert a counterclaim–or to claim a credit–against the Tohono O'odham Nation or one of its officers or agencies.

(e) Counterclaim Maturing or Acquired After Pleading. The Court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Crossclaim Against a Coparty.

(1) *Generally*. A party may file a crossclaim against a coparty if the claim arises out of the same transaction, occurrence, or event that is the subject of the original action or if the claim relates to any property that is the subject of the original action. The crossclaim may include a claim that the coparty is, or may be, liable to the cross-claimant for any part of a claim asserted against the cross-claimant.

(2) *When Codefendants Must Present Crossclaims*. A defendant's crossclaim against a codefendant must be stated when the defendant files an answer or other response to the complaint or counterclaim, unless an amendment is later allowed under Rule 13(a).

Rule 13. Amended and Supplemental Pleadings.

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course*. A party may amend its pleadings once:

(A) Within 21 days after serving it if the pleading is one that no responsive pleading is allowed; or,

(B) Within 21 days after a responsive pleading is served if the pleading is one that a responsive pleading is required or, if a motion under Rule 11(b), (e), or (f) is served, by the date on which a response to the motion is due, whichever is earlier.

(2) *Other Amendments*. In all other instances, a party may amend its pleading only with the Court's permission or with the written consent of all opposing parties who have appeared in the action.

(3) *Effect on Pending Motions*. After filing a motion under Rule 11(b), (e), or (f), amending a pleading does not, by itself, make moot the motion on the adequacy of the pleading's allegations in the amended pleading. Amending the pleading does not relieve a party opposing the motion from filing a timely response.

(4) *Proposed Pleading as an Exhibit*. A party asking to amend a pleading must attach a copy of the proposed amended pleading as an exhibit. The exhibit must show the respects in which the proposed pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.

(5) *Filing and Response*. If a motion to amend is granted, the moving party must file and serve the amended pleading within 10 days after the entry of the order granting the motion, unless the Court orders otherwise. If the pleading is one that a responsive pleading is required, an opposing party must answer or respond to an amended pleading within the time remaining for a response to the original pleading or within 10 days after the amended pleading is served, whichever is later. The Court may order a different date.

(b) Amendments During and After Trial.

(1) *Based on an Objection at Trial*. If a party objects that evidence is not within the issues raised in the pleadings, the Court may permit the pleadings to be amended. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the Court that the evidence would unfairly prejudice that party's claim or defense on the merits. The Court may grant a continuance to enable the objecting party to respond to the evidence.

(2) *For Issues Tried by Consent*. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated as if it had been raised in the pleadings. A party may move–at any time, even after judgment–to amend the pleadings to conform to the evidence and to raise an unpleaded issue. Failing to amend in this circumstance does not affect the result of the trial.

(c) Relation Back of Amendments.

(1) *Amendment Adding Claim or Defense*. An amendment relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or tried to be set forth, in the original

pleading.

(2) *Amendment Changing Party*. An amendment changing the party against whom a claim is asserted relates back if:

(A) Rule 13(c)(1) is satisfied; and,

(B) within the applicable limitations period–plus the period provided in Rule 3(e) for the service of the summons and complaint–the party to be brought in by amendment:

(i) has received such notice of the action;
(ii) will not be prejudiced in maintaining a defense on the merits; and,
(iii) knew or should have known that, but for a mistake about the identity of the proper party, the action would have been brought against the party.

(3) *Service*. Service of process that follows Rule 3.1(d) or (e) satisfies Rule 13(c)(2)(B)(i) and (ii) about the governmental agency or corporation–or any agency or officer of those entities–to be brought into the action as a defendant.

(d) Supplemental Pleadings. On motion and reasonable notice, the Court may permit a party to file a supplemental pleading setting forth any transaction, occurrence, or event that happened after the pleading was supplemented. The Court may permit supplementation even though the original pleading is defective in stating a claim for relief or defense. The Court may order the opposing party to answer or respond to the supplemental pleading within a specified time.

Rule 14. Scheduling and Management of Actions.

Under Rule 1.2, the Court must manage a civil action with these goals:

(a) expediting a just disposition;

(b) establishing early and continuing control so the action will not be protracted because of lack of management;

(c) making sure discovery is proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' access to information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit;

(d) discouraging wasteful, expensive, and unnecessary pretrial activities;

(e) improving the quality of case resolution through more thorough and timely preparation;

(f) encouraging the appropriate use of alternative methods to resolve disputes;

(g) conserving parties' resources;

(h) managing the court's calendar to eliminate unnecessary trial settings and continuances; and

(i) adhering to applicable standards for timely resolution of civil actions.

Rule 14.1. Initial Hearing.

(a) Purpose. The purpose of the initial hearing is to identify the essential issues and to avoid unnecessary or burdensome discovery and other pretrial procedures while preparing for trial.

(b) Subjects for Consideration. At the Initial Hearing, the Court should consider:

(1) the status of the parties and pleadings;
(2) whether a joint report and proposed scheduling order is appropriate;
(3) whether a joint pretrial statement is desirable;
(4) determining whether severance, consolidation, or coordination with other actions is desirable;
(5) scheduling motions to dismiss or other preliminary motions;
(6) scheduling discovery proceedings, and setting discovery limits;
(7) issuing protective orders;
(8) any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;
(9) any agreements reached by the parties or assertions of privilege or of protection of trial-preparation materials after production;
(10) scheduling settlement conferences;
(11) determining whether the requirements and timing for disclosure should be varied;
(12) scheduling expert disclosures and whether scheduling expert disclosures is needed;
(13) scheduling dispositive motions;
(14) adopting a uniform numbering system for documents and establishing a document depository;
(15) determining whether electronic service of discovery materials and pleadings is needed;
(16) determining whether expedited trial proceedings are desired or appropriate;
(17) scheduling further conferences as necessary;
(18) use of technology, videoconferencing and/or teleconferencing;
(19) determining whether the issues can be resolved by summary judgment, summary trial, trial to the court, or some combination of these procedures;
(20) determining whether the matter is ready to go to trial and if a pretrial conference is desired or appropriate; and,
(21) such other matters as the Court or the parties consider appropriate in managing or expediting the action.

Rule 14.2. Pretrial Hearings.

(a) Generally. If the Court did not set a trial date at the Initial Hearing, the Court must set a Pretrial Hearing within 90 days to set a trial date. If the trial date is not set at the Pretrial

Hearing, the Court must schedule another Pretrial Hearing within 90 days until a trial date is set or the case is resolved.

(b) Subject Matter. Besides setting a trial date, the Court may discuss at the Pretrial Hearing any subject considered at the Initial Hearing, and:

(1) the status of discovery and any dispositive motions that have been or will be filed;

(2) imposing time limits on trial proceedings; and

(3) other matters that the Court considers appropriate.

Rule 14.3. Orders.

After any hearing held under Rule 14.1 or 14.2, the Court must enter an order reciting the action taken. This order controls the action unless modified by a later court order.

Rule 14.4. Sanctions.

(a) Generally. Unless a party shows good cause, the Court–on motion or on its own–must enter such orders as are just if a party or counsel:

(1) fails to obey an initial or pretrial order or fails to meet the deadlines set in the order;

(2) fails to appear at the Initial Hearing, Pretrial Hearing, or any other hearing set by the Court;

(3) is substantially unprepared to participate or fails to participate in good faith in the hearings; or,

(4) fails to participate in good faith to prepare any joint reports or statements ordered by the Court.

(b) Trial Date. The fact that a trial date has not been set does not prevent sanctions under this rule, including the sanction of excluding from evidence untimely disclosed information.

Rule 15. Subpoenas.

(a) General Requirements; Subpoenas to the Nation.

(1) *General Requirements*. Every subpoena must:

(A) state the name of the Tohono O'odham Court from which it issued;

(B) state the title of the action and its civil action number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and testify at a deposition, hearing, or trial;
(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or
(iii) permit inspection of the premises.

(D) be substantially in the form in these rules.

(2) *Issuance by Clerk*. That party must complete the subpoena before bringing it to the court. The Clerk will only issue a subpoena that is properly filled out.

(b) Subpoenas for Deposition, Hearing, or Trial; Duties; Objections.

(1) *Combining or Separating a Command to Produce or to Permit Inspection*. A command to produce documents, electronically stored information, or tangible things, or to permit inspection of the premises, may be included in a subpoena commanding attendance at a deposition, hearing, or trial. A party may list the command in a separate subpoena.

(2) *Command to Attend a Deposition–Notice of Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(3) *Objections; Appearance Required*. Objections to a subpoena commanding attendance at a deposition, hearing or trial may be made by timely motion under Rule 15(e)(2). Unless excused from doing so by the party or counsel serving a subpoena, by a court order, or by this Rule, a person who is properly served with a subpoena must testify at the date, time, and place specified in the subpoena.

(c) Subpoena for Production of Documentary Evidence or for Inspection of Premises; Duties; Objections; Production to Other Parties.

(1) *Electronically Stored Information*.

(A) **Specifying the Form for Electronically Stored Information**. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) **Form for Electronically Stored Information Not Specified**. If a subpoena does not specify a form for producing electronically stored information, the person responding may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person.

(C) **Electronically Stored Information Produced in Only One Form**. The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information**. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the Court may still order discovery from such sources if the requesting party shows good cause. The Court may specify conditions for the discovery.

(2) *Appearance Not Required*. A person commanded to produce documents, electronically stored information, tangible things, or to permit inspecting the premises, need not appear in person at the place of production or inspection unless the subpoena orders the person's attendance at a hearing, trial or deposition.

(3) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business, or organize and label them with the categories in the demand.

(4) *Objections*.

(A) Form and Time for Objection.

(i) A person ordered to produce documents, electronically stored information, or tangible items, or to permit inspection, may serve a written objection to producing, inspecting, copying, testing, or sampling any of the materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's counsel, serving the objection.

(ii) The objection must be served on the party or counsel serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time and place specified in the subpoena, unless excused as proved in Rule 15(b)(3).

(B) Procedure After Objecting.

(i) A person objecting to a subpoena to produce materials or to permit inspection need not follow those parts of the subpoena that are the subject of the objection, unless ordered to do so by the Court.

(ii) The party serving the subpoena may move to compel compliance with the subpoena. The motion must be served on the subpoenaed persons and all

other parties under Rule 4(c).

(iii) Any order to compel issued by the Court must protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

(5) *Production to Other Parties*. Unless stipulated by the parties or ordered by the Court, a party receiving documents, electronically stored information, or tangible things in response to a subpoena must promptly make such materials available to all other parties for inspection and copying with any other required disclosures.

(d) Service.

(1) *Generally*. The party requesting a subpoena must serve the subpoena on the subpoenaed person, and the party must deliver a copy of the subpoena and any proof of service to every other party under Rule 4(c).

(2) *Service*. A subpoena may be served anywhere.

(3) *Proof of Service*. Proof of service may not be filed except as allowed by Rule 4.1(c)(2)(A). Any such filing must include the server's certificate stating the date and manner of service and the names of the persons served.

(4) *Service to the Tohono O'odham Nation*. Subpoenas to the Nation or a governmental branch, district, authority, enterprise, officer, or employee in an official capacity must be served on counsel of the branch, district, authority, or enterprise. If the branch, district, authority, or enterprise does not have counsel, the subpoena must be served on the branch head, district council chairperson, or chief executive officer of the authority or enterprise.

(e) Protecting a Person Subject to a Subpoena; Motion to Quash or Modify.

(1) *Avoiding Undue Burden or Expense; Sanctions*. A party or counsel responsible for serving a subpoena must try to avoid imposing undue burden or expense on a person subject to the subpoena.

(2) *Quashing or Modifying a Subpoena*.

(A) When Required. On timely motion, the Court must quash or modify a subpoena if it:

(i) fails to allow a reasonable time to comply;
(ii) requires disclosure of privileged or other protected matter, if no exception or waiver applies;
(iii) subjects a person to undue burden; or
(iv) the person or entity to whom the subpoena is directed is immune from service or enforcement of the subpoena.

(B) When Permitted. On the timely filing of a motion to quash or modify a subpoena,

the Court may quash or modify the subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;
(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute or results from the expert's study that were not requested by a party;
(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or
(iv) justice so requires.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 15(e)(2)(B), the Court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions:

(i) if the party or counsel serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and
(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or counsel serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

(D) Time for Motion. A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) Service of Motion. Any motion to quash or modify a subpoena will be served on the party or counsel serving the subpoena. The party or counsel who served the subpoena must serve a copy of any such motion on all other parties.

(f) Contempt. The Court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena or any order related to it.

Rule 16. Findings and Conclusions by the Court; Judgment on Partial Findings.

(a) Findings and Conclusions.

(1) *Generally*. If requested before trial, the Court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion, ~~minute entry~~ separate court order or memorandum of decision filed by the Court. Judgment must be entered under Rule 18.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunction, the Court must state the findings and conclusions that support its action as provided in Rule 16(a)(1).

(3) *For a Motion*. The Court does not have to state findings or conclusions when ruling on a motion under Rule 11 or, unless these Rules provide otherwise, on any other motion.

(4) *Questioning the Evidentiary Support*. A party may later question the sufficiency of the evidence supporting the findings, whether the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(5) *Setting Aside the Findings*. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses.

(b) Amended or Additional Findings. On a party's motion filed within 15 days after the entry of judgment, the Court may amend its findings–or make more findings–and may amend the judgment. This deadline may not be extended by stipulation or court order, except as allowed by Rule 5(b)(2). The motion may accompany a motion for a new trial.

(c) Judgment on Partial Findings. If a party has been fully heard on an issue during trial and the Court finds against the party on that issue, the Court may enter judgment against that party on a claim or defense. The Court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law if requested as required by Rule 16(a).

(d) Submission on Agreed Statement of Facts. The parties may submit a matter in controversy to the Court on an agreed statement of facts, signed by them and filed with the Clerk. The Court must decide based on the agreed statement unless it finds the statement to be insufficient.

IV. JUDGMENT

Rule 17. Judgment; Form of Proposed Judgments.

(a) Judgment and Decision Defined. "Judgment" as used in these Rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings or a record of earlier proceedings. For this rule, a "decision" is a written order, ruling, or ~~minute entry~~separate court order that adjudicates at least one claim or defense.

(b) Judgment on Multiple Claims or Involving Multiple Parties. If an action presents more than one claim for relief–whether as a claim, counterclaim, crossclaim, or third-party claim–or if multiple parties are involved, the Court may direct entry of a final judgment to one or more, but fewer than all, claims or parties only if the Court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 17(b). If there is no such express determination and recital, any decision, however titled, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to the claims or parties and may be revised before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Judgment on All Claims and Parties. A judgment on all claims and parties is not final

unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 17(c).

(d) Demand for Judgment; Relief to be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(e) Entry of Judgment After Party's Death. Judgment may be entered on a verdict or decision after a party's death on an issue of fact rendered while the party was alive.

Rule 18. Entering Judgment.

(a) Form of Judgment; Objections to Form.

(1) *Proposed Forms of Judgment*. Proposed forms of judgment must be served on all parties and must follow Rule 4.1(d).

(2) *Objections to Form*.

(A) A judgment may not be entered until 5 days after the proposed form of judgment is served, unless:

(i) the opposing party endorses on the judgment its approval of the judgment's form;
(ii) the Court waives or shortens the 5-day notice requirement for good cause; or
(iii) the judgment is against a party in default.

(B) An opposing party not in default may file an objection to the proposed form of judgment within 5 days after it is served. If an objection is made:

(i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and
(ii) after that time ends, the Court may decide the matter with or without a hearing.

(b) Entering Judgment.

(1) *Written Document*. All judgments must be in writing and signed by a judge.

(2) *Time and Manner of Entry*. A judgment is not effective before entry, but the Court may direct the entry of a retroactive judgment in such circumstances and on such notice as justice requires, stating the reasons on the record. A judgment, including a judgment in a minute entry, is entered when the Clerk files it.

(c) Notice of Entry of Judgment.

(1) *Manner of Notice*.

(A) By the Clerk. Right after the entry of a judgment, or the entry of a minute entry constituting a judgment, the Clerk must:

(i) distribute notice in the form required by Rule 18(c)(2), either electronically, by U.S. mail, or legal practitioner drop box, to every party not in default for failing to appear; and
(ii) make a record of the distribution.

(B) By Any Party. Besides the Clerk's notice under Rule 18(c)(1)(A), any party may serve notice of entry of judgment in the way provided in Rule 4(c).

(2) *Form of Notice*. Notice of entry of judgment must be in this form:

(A) a written notice of the entry of judgment;
(B) a minute entry; or
(C) a conformed copy of the file-stamped judgment.

(3) *Lack of Notice*. Lack of notice of the entry of judgment by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party from failing to appeal within the allowed time.

Rule 19. Relief from Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The Court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The Court may do so on motion or on its own, with notice. After an appeal has been filed and while it is pending in the Appellate Court, such mistakes may be corrected only with the Appellate Court's permission. After a mistake in the judgment is corrected, execution must conform to the corrected judgment.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding:

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial;
(3) fraud, misrepresentation, or other misconduct of an opposing party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason justifying relief.

(c) Timing and Effect of the Motion.

(1) *Timing*. A motion under Rule 19(b) must be made within a reasonable time–and for reasons (1), (2), and (3), no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later. This deadline may not be extended by stipulation or court order, except as allowed by Rule 5(b)(2).

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the Court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
(2) grant relief to a defendant served by publication; or
(3) set aside a judgment for fraud on the Court.

(e) Reversed Judgment of Foreign Jurisdiction. If a judgment was rendered on a foreign judgment from another jurisdiction and the court of that jurisdiction reverses or sets aside the foreign judgment, this Court must set aside, vacate, and annul its judgment.

Rule 20. Judge's Inability to Proceed.

If a judge conducting a hearing or trial cannot proceed, any other judge may proceed with the hearing or trial upon certifying familiarity with the record and determining that the action may be completed without prejudice to the parties. In a hearing or trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor judge may also recall any other witness.

V. FINAL REMEDIES; SPECIAL PROCEEDINGS

Rule 21. Seizing a Person or Property.

The remedies authorized by law are available even if the remedy is ancillary to the action or requires an independent action.

Rule 21.1. Garnishment.

(a) Definitions. In this rule:

(1) "creditor" means a person or party to whom a money judgment has been awarded, other than a judgment for child support;

(2) "debtor" means the person or party against whom a money judgment has been awarded; and

(3) "employer" means the garnishee of the debtor.

(b) Application for Garnishment.

(1) *Generally*. A creditor seeking garnishment of a judgment must file an application

signed under oath and provide a statement that "All statements contained herein are true and correct to the best of my knowledge and belief."

(2) *Contents*. The application must have:

(A) the name and last known mailing address of the parties;
(B) whether the creditor was a party to a lawsuit to whom a judgment was awarded;
(C) the date the order was entered;
(D) whether the judgment is final with no pending appeal, or is not final;
(E) whether any subsequent orders vacating, modifying, or reversing the judgment have been entered;
(F) the outstanding balance;
(G) the name and address of the employer or the employer's authorized agent; and
(H) why the creditor believes the debtor to be employed by the employer.

(3) *Certified Copy of Judgment*. A copy of the judgment to be enforced must be attached to the application. The copy will, at minimum, be certified by the Clerk or registrar of the court issuing the judgment as a true and correct copy. A record is certified if it has language substantially stating that the copy is true and correct, is signed and dated by the Clerk or registrar of the court issuing the judgment, and bears the seal of the issuing court. Judgments containing language that the copy is true and correct that have been exemplified (signatures by the Clerk of court and deputy Clerk and two seals) or authenticated (signatures by the Clerk of court, deputy Clerk of court, and a judge, and three seals) may also be submitted.

(c) Preliminary Garnishment Order. Upon finding the application complete, the Court will issue a preliminary garnishment order to the employer.

(1) *Contents*. The order must have:

(A) the name and address of the employer;
(B) the name and address of the creditor and any counsel;
(C) the name and mailing address of the debtor; and
(D) an order for the employer to:

(i) stop payment to the debtor or for the debtor's benefit any nonexempt earnings until further order of the Court; and
(ii) file an answer within 10 business days of service of the order.

(2) *Service*.

(A) On Employer. Within 5 days after the Court issues the preliminary garnishment order, the creditor must serve the employer with a copy of the application, two copies of the preliminary garnishment order; and two copies of the Notice to Debtor and Request for Hearing form. Service must be made in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2.

(B) On Debtor. Within 3 days after serving the employer, the creditor must serve the

debtor a copy of the application, the preliminary garnishment order, and the Notice to Debtor and Request for Hearing form. Service must be made in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2.

(3) *Continuing Effect of Preliminary Garnishment Order*. If no timely answer or objection is filed, the preliminary order remains in effect until modified or terminated by a subsequent order.

(d) Answer by Employer. Within 10 days of service of the order, the employer must file with the Court a certified answer signed by an authorized representative of the employer. The employer is not subject to a filing fee for the answer.

(1) *Contents of Answer*. The answer must have:

(A) whether the debtor was employed by the employer on the date the order was served;
(B) whether the employer expects owing earnings to the debtor within 60 days after the date the order was served;
(C) if the employer cannot identify the debtor as an employee after making a good faith effort to do so, a brief statement of the effort made, and the reason for the inability to identify;
(D) the dates of the debtor's next two pay periods after the date the order was served;
(E) the amount of earnings and disposable earnings payable to the debtor on the next two pay periods as defined by 4 T.O.C. Ch. 3 § 3103(I),(K);
(F) the pay period of the debtor, whether weekly, biweekly, semimonthly, monthly, or other specified period;
(G) the outstanding judgment now due and owing as stated in the order;
(H) whether the employee is subject to another garnishment, and if so, a description of that garnishment and to whom it is owed, including the name, address, and telephone number;
(I) the name, address, and telephone number of the creditor; and
(J) the date and manner of service the employer will use to serve a copy of the certification on the debtor and creditor.

(2) *Service of Answer and Notice to Debtor and Request for Hearing*. Upon filing the answer, the employer must mail or hand-deliver a copy of the answer to the creditor and debtor. The employer must mail or hand-deliver a copy of the Notice to Debtor and Request for Hearing form to the debtor.

(e) Objection and Request for Hearing. Within 10 days after receipt of the application, preliminary garnishment order, or answer, any party may file a written objection stating the grounds for the objection, and request a hearing. Upon a finding of good cause, the Court may accept a late filing. The party must serve in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2 or, if the party has entered an appearance under Rule 4(c).

(f) Garnishment Hearing.

(1) *Setting of Hearing and Notice*. The Court will set a hearing within 15 days of filing a request for hearing and notify the parties of the date and time within 5 business days before the hearing.

(2) *Burden and Standard of Proof*. The debtor must prove by clear and convincing evidence that relief should be granted.

(3) *Considerations*. The Court must consider:

(A) whether the application and preliminary garnishment order is valid against the debtor;
(B) when the preliminary garnishment order was served;
(C) The outstanding balance due on the judgment when the order was served;
(D) whether the debtor was employed by the employer when the preliminary garnishment order was served; and
(E) whether the employer owed the debtor nonexempt earnings when the preliminary garnishment order was served or would be owed within 60 days after service of the order.

(g) Garnishment Order.

(1) *Absence of Objection*. If no timely objection is filed, and the Court finds the employer owed nonexempt earning to the debtor when the garnishment order was served or that nonexempt earnings would be owed within 60 days, the Court will order that:

(A) the employer pay the creditor the withheld nonexempt earnings;
(B) the garnishment is an order against the debtor's future nonexempt earnings until the judgment is paid in full;
(C) on the tenth day of each month following the first payment from the employer, the creditor is to file and serve a written report on the employer and debtor under 4 T.O.C. Ch. 3 § 3413;
(D) the employer file a notice of remittance with the Court after each remittance; and
(E) the creditor must file for satisfaction of the judgment and request for release of the garnishment order right after the judgment is satisfied, and serve a copy on the employer and debtor under Rule 4(c).

(2) *Determination Upon Objection*.

(A) Affirmative Determination. If the Court finds that all of Rule 21.1(f)(3)(A) through (E) applicable, the Court will order that:

(i) the employer pay the debtor the withheld nonexempt earnings;
(ii) the garnishment is an order against the debtor's future nonexempt earnings until the judgment is paid in full;
(iii) on the tenth day of each month following the first payment from the employer, the creditor is to file and serve a written report on the employer and debtor under 4 T.O.C. Ch. 3 § 3413;
(iv) the employer file a notice of remittance with the Court after each

remittance; and

(v) the creditor must file for satisfaction of the judgment and request for release of the garnishment order right after the judgment is satisfied, and serve a copy on the employer and debtor under Rule 4(c).

(B) *Discharge; Dismissal*. If the Court finds that not all of Rule 21.1(f)(3)(A) through (E) applies to the employer, the Court will order the employer discharged from the garnishment. If the Court finds clear and convincing evidence under Rule 21.1(f)(3) that relief should be granted to the debtor, the Court may dismiss the garnishment action without prejudice.

(C) *Permission to Amend*. The Court may, upon the creditor's request and for good cause shown, permit the creditor to amend the application.

(h) Contempt. The Court may, upon motion by any party or on its own, set a hearing for why a creditor should not be sanctioned for violating the duties under Rule 21.1. If the Court determines that a failure to comply is not the result of mistake, inadvertence, or excusable neglect, the Court may hold the creditor in contempt and award the petitioner or affected party:

(1) compensation for actual losses caused by failing to comply;
(2) reasonable legal practitioner's fees, if the affected party was represented at a hearing;
(3) court costs; or
(4) an additional amount not less than $100 nor more than $1000.

Rule 22. Injunctions and Restraining Orders.

(a) Preliminary Injunction or Temporary Restraining Order.

(1) *Notice*. Except as provided in Rule 22(b), the Court may issue a preliminary injunction or a temporary restraining order only with notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits*.

(A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the Court may advance the trial on the merits and consolidate it with the hearing on the motion.
(B) If consolidation is ordered after the preliminary injunction hearing begins, the Court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other orders.

(3) *Motion to Dissolve or Modify*. After an answer is filed, a party may ask to dissolve or modify a preliminary injunction with notice to the opposing party. If the motion is opposed, the Court must hold a hearing and let the parties present evidence. If the Court determines that there are insufficient grounds for the injunction, or that it is overbroad, the Court may dissolve or modify the preliminary injunction.

(b) Temporary Restraining Order Without Notice.

(1) *Issue Without Notice*. The Court may issue a temporary restraining order without written or oral notice to the adverse party only if:
   (A) specific facts in an affidavit or a verified complaint show that immediate and irreparable injury, loss, or damage will likely result to the moving party before the adverse party can be heard in opposition, or that prior notice will likely cause the adverse party to take action resulting in such injury, loss, or damage; and
   (B) the moving party certifies in writing any efforts made to give notice or the reasons it should not be required.

(2) *Contents*. Every temporary restraining order issued without notice must:

   (A) state the date and hour it was issued;
   (B) describe the injury and state why it is irreparable;
   (C) state why the order was issued without notice; and
   (D) be promptly filed in the Clerk's office and entered in the record.

(3) *Expiration*. A temporary restraining order issued without notice ends after the period set by the Court–not to exceed 10 days. For good cause, the Court may extend the period–not to exceed 10 days, or for longer if the adverse party consents. The reasons for the extension must be entered in the record.

(4) *Expediting the Preliminary Injunction Hearing*. If an order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion. If the party does not, the Court must dissolve the order.

(5) *Motion to Dissolv*e. On two-day's notice to the party obtaining an order without notice–or on shorter notice if set by the Court–the adverse party may move to dissolve or modify the order. The Court must hear and decide any such motion as promptly as justice requires.

(c) Contents and Scope of Injunction or Restraining Order.

(1) *Contents*. Every order granting an injunction and every restraining order must:

   (A) state the reasons it was issued;
   (B) state its terms specifically; and
   (C) describe in reasonable detail, without referring to the complaint or other documents, the act or acts restrained or required.

(2) *Persons Bound*. An order binds only the following parties who receive actual notice of it by personal service or otherwise:
   (A) the parties;
   (B) the parties' officers, agents, servants, employees, and counsels; and
   (C) other persons who are in active concert or participation with anyone described in Rule 22(c)(2)(A) or (B).

Section History

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