

TOHONO O'ODHAM RULES OF COURT

Section 12: Rules of Appellate Procedure

Rule 1. Scope of Rules; Appellate Rules Primary; Definitions.

- (a) These Rules govern the procedure for all appeals from the Judicial Court of the Tohono O'odham Nation and all other proceedings before the Court of Appeals. These Rules will be cited as the Tohono O'odham Rules of Appellate Procedure.
- (b) In proceedings before the Tohono O'odham Court of Appeals, these Rules will supersede any other appellate procedures.
- (c) As used in these rules:
 - (1) "Advocate" is any person admitted as a legal practitioner in the Judicial Court of the Tohono O'odham Nation who is not a member of any state bar association.
 - (2) "Appellate Court" refers to the Tohono O'odham Court of Appeals.
 - (3) "Appellate panel" or "panel" refers to a group of judges designated to hear and decide an appeal. This group includes three judges.
 - (4) "Attorney" means a person who has graduated from an American Bar Association accredited law school, who is a member of any state bar association, and is admitted to practice in the Judicial Court of the Tohono O'odham Nation.
 - (5) "Counselor" see "advocate" and/or "attorney."
 - (6) "File" or "filing" means to formally deposit documents into the custody of a court.
 - (7) "Filing by mail" means formally depositing documents into the custody of a court using an independent service or carrier such as the U.S. Postal Service or a recognized private service.
 - (8) "Final judgment or decision" means a judgment or decision that affects a substantial right leaving nothing open to dispute and ends the action between the parties in the trial court.
 - (9) "Hearing *de novo*" means a new hearing where the Appellate Court determines the facts but will rule on the evidence and matters of law without accepting the trial court's findings.
 - (10) "Motion" means any request for an order other than the complaint, petition, or answer.

- (11) “Party” is any person or entity filing a legal action in a court, participating in the proceeding, or against whom a legal action is brought or added by the court.
- (12) “Pleading” means the formal written statements of a party to a lawsuit about the party’s claims or defenses, the purpose being to provide notice of what is expected at trial. Ordinarily, pleadings consist of a complaint or petition, answer, reply to the answer if it has new claims, third-party complaint, and answers to the third-party complaint. In the case of an appeal, pleadings ordinarily consist of the notice of appeal, a brief, and the response.
- (13) “Self-represented litigant” means a person or party to an appeal is without the assistance of an attorney, counselor, or advocate.
- (14) “Proof or certification of service” is verification that a document has been served or delivered to a party. It must have the date and time of service, name of the person served, and name of the person who made service.
- (15) “Trial court” refers to the Judicial Court of the Tohono O’odham Nation from which an appeal arises.

Rule 2. Jurisdiction; Composition of the Court; Chief Judge; Panels; Judge’s Duties.

- (a) The Tohono O’odham Court of Appeals is a court of limited jurisdiction, as established by Tohono O’odham Constitution Article VIII, Sections 2, 7, 8 and 10.
- (b) The Tohono O’odham Court of Appeals will consist of three Appellate Judges. Selection of the judges will first be from the list of pro tempore judges, if not enough pro tem judges are available, a full-time judge may be selected by the presiding Chief Judge, none of whom will have presided at the trial of the case being appealed. Within 5 business days of filing the notice of appeal, the Chief Judge will determine if enough judges are available to appoint a panel:
 - (1) If enough judges are available, the Chief Judge will appoint a panel, and send a copy of the appointment order to the parties; or
 - (2) If not enough judges are available, then the Chief Judge will:
 - (A) Notify the parties that a panel could not be selected due to an insufficient number of judges and that a panel will be appointed when enough judges become available;
 - (B) Forward a copy of the notice to the Tohono O’odham Judiciary Committee; and,
 - (C) Review the case every 30 days and continue to notify the parties and Tohono O’odham Judiciary Committee until an appellate panel is appointed.
- (c) The panel will select a presiding judge as soon as possible after appointment and will

decide each case by majority vote.

Rule 3. Authority of Appellate Court; Reviewable Matters; Advisory Opinions.

- (a) The Tohono O’odham Court of Appeals will hear cases based on the authority granted by Tohono O’odham Constitution or law.
- (b) Stipulations by parties may be allowed.
- (c) The Appellate Court may review any:
 - (1) Final civil judgment, order, or dismissal of litigation giving rise to good-faith claims of an error of law or procedure that affected the outcome of the case.
 - (2) Criminal matter after a judgment of guilt and sentencing, or a ruling giving rise to good-faith claims that an error of law or procedure occurred, which that could have affected the outcome of the case.
 - (3) Trial court action that is not final and for which a party has filed an interlocutory request for permission to appeal under Rule 14.
- (d) Judgments of acquittal made by a jury in criminal cases cannot be appealed.
- (e) Administrative Appeals of decisions by a branch, agency, district, or regulatory body must be filed in the Adult Civil Court. *See* Tohono O’odham Judicial Review of Administrative Decisions.

Rule 4. Deleted.

History: Rule about certification and determination of tribal law and questions of law other than tribal law was adopted by Administrative Order 04-03 on April 28, 2003. Reorganized and renumbered by Administrative Order 01-05 on January 4, 2005, and on June 3, 2005 by Administrative Order 03-05. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O’odham Rules of Court on November 1, 2011. Rule deleted on March 12, 2014.

Rule 5. Scope of, or Limitations on, Review.

The Appellate Court will limit its review to the record of the trial court proceeding, issues preserved in trial court and raised in written briefs, and, where required, oral arguments presented to the Appellate Court. If there is no record, the appeal will move forward under Rule 18. The Appellate Court may allow hearings *de novo*.

Rule 6. Deleted.

History: Rule 6(a)-(n), which provided definitions, was reorganized and renumbered to Rule 1(c)(1)-(15) in the 2024 Tohono O’odham Rules of Appellate Procedure.

Rule 7. Attorneys, Counselors, and Advocates; Admission to Practice in the Appellate Court; Ethics Code; Conflict of Interest; Suspension or Disbarment; Withdrawing from Representing a Client.

- (a) An attorney, counselor, or advocate must file a Notice of Appearance if his or her appearance is not in the notice of appeal.
- (b) An attorney, counselor, or advocate may practice before the Appellate Court if that person is permitted to practice in the Judicial Court of the Tohono O’odham Nation.
- (c) Attorneys, counselors, and advocates will be bound by the Tohono O’odham Code of Ethics for Attorneys and Advocates Practicing in the Courts of the Tohono O’odham Nation. People admitted to practice in other jurisdictions are also bound by the ethical codes of those jurisdictions while practicing in the Appellate Court.
- (d) A person who has served as an employee of the trial court must not appear as counsel or provide professional assistance in any appeal that arose during that person’s employment.
- (e) An attorney, counselor, or advocate disbarred or suspended from practice by a state or tribal bar association or tribal court will not be allowed to practice before the Appellate Court. The attorney, counselor, or advocate must provide proof of reinstatement before being allowed to practice before the Appellate Court.
- (f) If the Tohono O’odham Judicial Branch suspends or disbars an attorney, counselor, or advocate, that disciplinary action will be forwarded to the Nation’s Appellate Court and the relevant state bar.
- (g) An attorney, counselor, or advocate must not withdraw from representing a party after filing a notice of appeal, notice of appearance, or a pleading on behalf of the party unless:
 - (1) a written motion detailing the reasons for withdrawal with the party’s consent is filed; If the party objects to the withdrawal, a hearing will be set within 10 days; and,
 - (2) the appellate panel enters an order allowing the withdrawal.
- (h) The appellate panel will not allow a withdrawal after the briefing schedule has been issued or within 30 days of oral argument unless there is good cause.

Rule 8. Suspension or Extension of Required Time Schedules.

- (a) Upon written request by a party, and where it is in the public interest, the Appellate Court may choose to modify, suspend, or extend the schedule of appellate proceedings.
- (b) Rule 8(a) cannot be used to extend the time limits to file a notice of appeal under Rule 12 or other Tohono O’odham law.

Rule 9. Computation of Time.

- (a) The computation of any period of 11 days or less will be by working days. The computation of any period over 11 days will be by calendar days. If the last day of the computed period falls on a weekend, holiday, or other non-working day of the Judicial Court of the Tohono O’odham Nation, the period will be extended to the next working day.
- (b) If service is made by the United States Postal Service, 5 more days will be added to the computation of time.

Rule 10. Pleadings; Informality; Handwritten; Place of filing; Copies; Service of Process; Notice of Service; Filing; Appellate Court.

- (a) An appeal will not be dismissed for informality of form or title if it substantially complies with Rule 12(d).
- (b) Pleadings must be typed or legibly handwritten, in blue or black ink. Those who are incarcerated may use pencil. Pleadings must be filed with the trial court. The trial court will transmit the original pleadings and the required number of copies of the documents to the Appellate Court. The trial court will retain a copy of the pleadings.
- (c) Parties must file the original, plus three copies.
- (d) Unless otherwise ordered by the Appellate Court, a copy of each pleading filed must be served on every party in the trial court case. The appellant must file the certification of service with the Appellate Court.
- (e) Service will be governed by Rule 3 of the Tohono O’odham Rules of Civil Procedure.

Rule 11. Fees; Required Payment.

- (a) All filing fees must be paid in accordance with Judicial Court of the Tohono O’odham Nation requirements. If the person filing the appeal cannot pay the fee, he or she may file a motion to waive the fee with the trial court. Forms can be found at: <https://tojc-nsn.gov/forms/>.

(b) Bond for Costs on Appeal–Civil.

- (1) *Amount; Form; Notice of Filing; Service.* Unless exempt, the person filing the appeal must post a bond for costs in the trial court within 10 days from the entry of judgment or the denial of the request to waive of fees. As used in this rule, bond for costs on appeal includes cash or surety bond. The bond will be a sum or value approved by the trial court. A bond for costs on appeal will have enough surety and its conditions as issued must comply with the law. Notice of filing the bond must be served by the appellant on all other parties. The security required will not be greater in value than the amount of the judgment or fine imposed, plus associated costs.
- (2) *Objections.* Within 10 days after the service of the bond, any other party may file

objections to the bond, specifying the reasons for which the bond or surety is wrong, defective, or insufficient. All errors, defects, or insufficiencies in a bond for costs on appeal, not specified in the motion, are waived. The trial court will hold a hearing on the objections within 10 days. If the court sustains the objections in whole or in part, the appellant must file, within 10 days, a new bond that complies with the court's order.

- (3) *Affidavit in Lieu of Bond.* If a party cannot file a bond for costs on appeal, the party must file with the notice of appeal an affidavit stating the reasons why the party cannot post bond. Any other party may object to the affidavit within 10 days of the filing. The trial court will hold a hearing within 10 days. If the court sustains the objection, the appellant must file, within 10 days, a bond as ordered by the trial court.
- (4) *Exemptions.* No bond will be required for an appeal taken by the Tohono O'odham Nation, including its districts, enterprises, entities, commissions, boards, and officials, employees, or agents acting in an official capacity.
- (5) *Bond or Affidavit as Not Suspending Judgment.* A cost bond or affidavit provided for by this rule will not prevent the trial court from enforcing the judgment. A party must request the trial court to stay the judgment to prevent the trial court from enforcing the judgment under Rule 20.
- (6) *Waiver of Bond for Cost on Appeal.* The parties may, by stipulation filed with the Clerk of the appeals court, waive giving a bond for cost on appeal.
- (7) *Judgment Against Surety.* By entering into a bond, the surety submits to the trial court's jurisdiction and irrevocably appoints the trial court as the surety's agent for service. If necessary, the Appellate Court will determine the surety's liability. The Appellate Court will notify the trial court. The trial court will mail copies to the surety's last known address.

(c) Bond on Appeal—Criminal. At the time of sentencing, the trial court may set a bond amount if the defendant files an appeal. If no bond is specified, the appeal may be taken on the defendant's own recognizance. Execution of the sentence will be automatically stayed pending appeal when the defendant posts the bond or when no bond is set. If the defendant cannot post the bond, the defendant may request the trial court to lower the bond amount. If the defendant still cannot post bond, the Appellate Court may move forward with the appeal, but the trial court will not stay the execution of the sentence until the defendant posts the bond. Any defendant in custody during the appeal will receive the same benefits and credits in the computation of the sentence as if no appeal had been filed.

Rule 12. Notice of Appeal; Where to File; Timeliness; Consolidated Appeals; Contents; Parties; Service; Notice to Appellate Court; Death of Party; Counsel Appointment; Jurisdictional Challenges; Parties Joining.

- (a) An appeal will be taken by filing a notice of appeal with the trial court within 30 days of entry of judgment by that same court.

- (b)** If the notice of appeal is filed by mistake with the Appellate Court, the appellate Clerk will transmit the notice to the trial court. The notice of appeal will be considered filed on the date and time when received by the appellate Clerk.
- (c)** Failure to file a timely notice of appeal is jurisdictional, and the Appellate Court will dismiss the appeal. If two or more people have the right to appeal a judgment, they may file a joint appeal or have their appeals consolidated, as long as both appeals were timely filed. Appeals may be consolidated by order of the Appellate Court upon its own motion, motion of any party, or stipulation of the parties to several appeals.
- (d)** The notice of appeal must, at a minimum, include:

 - (1) The names, addresses, telephone numbers, and email addresses of the parties making the appeal and their counsel (unless the trial court determines that including the address, telephone number, or email address would place a person in physical jeopardy);
 - (2) A concise statement of the adverse ruling, alleged errors, or reasons for reversal made by the trial court; and;
 - (3) The type of relief being sought.
- (e)** All parties to the proceeding in the trial court from which the appeal is taken will be considered parties in the appeal.
- (f)** The appellant must serve a copy of the notice of appeal under the service provisions of the Tohono O’odham Rules of Civil Procedure, except that a summons is not required. The appellant, on the last page of the notice of appeal, must include a certification of service.
- (g)** The trial court Clerk will transmit the notice of appeal and any docket entries, including the date and names of people receiving notice of the appeal, to the appellate Clerk within 48 hours. The trial court Clerk must note on each copy the date and time the notice of appeal was filed, unless the trial court orders a time extension. If an appeal is from a criminal conviction and the defendant dies, the Appellate Court will dismiss the appeal. Otherwise, the death of a party or counsel does not affect the appeal.
- (h)** The Appellate Court is not required to appoint or provide counsel for criminal defendants/ appellants.
- (i)** Any appellee may file a written statement challenging the jurisdiction of the Appellate Court with the Clerk of the trial court within 15 days after receiving notice of appeal.
- (j)** In multiple party litigation, if an appellee supports the position of the appellant, that appellee may join the appellant’s position by filing a proper document within 15 days of receipt of the notice of appeal.

Rule 13. Acceptance or Denial of Appeal due to Jurisdiction.

- (a) After a preliminary finding of jurisdiction and within 30 days of the filing of any statement as provided by Rule 12(i), the Appellate Court will issue a written order accepting the appeal.
- (b) If the Appellate Court finds it does not have jurisdiction, the Appellate Court will issue a written order denying the appeal within 30 days.

Rule 14. Interlocutory Appeal; Request for Permission to File; Timeliness.

- (a) A request for permission to appeal an order that is not a final judgment must be filed with the trial court within 15 days of the order. A copy of the request will be served on all adverse parties within 48 hours, allowing 5 more days if service is provided by the United States Postal Service pursuant to Rule 9(b).
- (b) The requirements in Rule 12 will apply to the filing of a permissive appeal.
- (c) Within 15 days of serving the request for permission to file an interlocutory appeal, any party may file with the trial court Clerk a response either agreeing with or opposing the interlocutory appeal.
- (d) The trial court will issue its order granting or denying the request no more than 20 days after service of the request is filed.

Rule 15. Acceptance of Interlocutory Appeal; Procedure; Timeliness.

- (a) The Appellate Court will review the trial court order granting permission to file an interlocutory appeal and the case record to determine that it follows the law and these Rules. The appeal will be granted only if:
 - (1) the trial court has committed an obvious error;
 - (2) the error would render further trial court proceedings useless or substantially limit the freedom of a party to act; and
 - (3) the error presents a substantial question of law which would determine the outcome of the appeal.
- (b) An interlocutory appeal will be heard by the Appellate Court as required by these Rules.
- (c) Rule 8 on suspension of time schedules may apply.

Rule 16. Certification of the Record; Duty of Trial Court; Duty of Appellate Chief Judge; Parties to Receive Copy of Certification.

- (a) The accuracy of the record on appeal will be certified by the trial court judge who presided over the case being appealed.

- (b) The trial court Clerk will hand-deliver the complete record and all duly numbered copies of original documents to the Appellate Court Clerk within 30 days of filing the notice of appeal. If the trial court cannot follow the time limit, it will request an extension of time from the Appellate Court stating the reasons for the request.
- (c) The Chief Judge of the appellate panel will certify that the record of each case referred for appeal or advisory opinion includes:
 - (1) Documentation that the appeal was filed on a date and time according to applicable rules.
 - (2) Documentation that other parties were given notice of the appeal. If written notice has not been given within 15 days after the notice of appeal is received by the Appellate Court, the appellate Clerk will send notice to the other parties.
- (d) The trial court Clerk will mail a copy of the certification of the record to the parties.
- (e) If the trial court judge who presided over the case is no longer available, the Chief Judge may certify the record if the record and the statement of evidence and proceedings are correct.

Rule 17. Record for Appeal; Contents; Transcription of Audio Recordings.

- (a) The record for appeal will include the original pleadings, motions, orders, judgments, exhibits, transcripts or audio recordings, and docket entries. Absent an audio recording, a certified statement of the evidence and proceedings may be filed as provided by Rule 18.
- (b) Within 15 days of filing the notice of appeal, the appellant must file a written transcript or certified audio recording of the proceedings. The appellant must pay the estimated cost of preparing the record with the Clerk of the trial court unless the cost is waived by the trial court.
- (c) A party other than the appellant may request a written transcript or certified audio recording if the appellant does not and must do so within 30 days after the notice of appeal was filed. The party making the request will pay the cost of preparing the transcript or recording unless waived by the trial court after a showing of good cause.

Rule 18. Appeal with No Record; Duty of Parties and Trial Court to Develop Record.

- (a) If no audio recording or transcript of the proceedings is available, the appellant must prepare a statement of the evidence and proceedings within 30 days of filing the notice of appeal. The appellant must serve the statement upon the appellee and file the statement and certification of service with the trial court. The appellee has 15 days from receipt of the statement to file objections and amendments. The appellant will have 10 days from receipt of the objections and amendments to file a reply. The trial court judge who presided over the case will review the statement, objections, amendments, and reply. If necessary, the trial court judge will order corrections. The trial court judge will certify the corrected statement to the Appellate Court within 15 days of receipt of the appellant's reply or

appellee's response if no reply.

- (b) If the issues on appeal are mutually agreed upon, the parties may file a statement of the evidence and proceedings with the trial court Clerk. The trial court judge who presided over the case on appeal will review the statement for accuracy, order corrections, and certify to the Appellate Court the corrected statement within 15 days of receipt.
- (c) If the trial court judge who presided over the case is no longer available, the Chief Judge may certify the record if all parties agree that the record and the statement of evidence and proceedings are correct. If the parties cannot agree, the case will be remanded for a hearing *de novo*.

Rule 19. Inadequate Record.

If an appellate panel determines that the record on appeal is inadequate, the panel may remand a case for a hearing *de novo* or any other procedure under these Rules.

Rule 20. Stay of Judgment or Injunction Pending Appeal; Motion; Appellate Court Motion.

- (a) A motion for a stay of judgment or injunction pending appeal may be filed with the Clerk of the trial court, and must include:
 - (1) name, address, email address, and telephone number of the party making the motion;
 - (2) the reasons for the motion;
 - (3) affidavits or sworn statements supporting the motion;
 - (4) relevant parts of the record; and
 - (5) certification of service of the motion on all parties.
- (b) The trial court judge will issue an order granting or denying the motion within 15 days. If the trial court grants the stay, the trial court may set a bond.
- (c) A copy of the motion and of the order will be transmitted to the Appellate Court within 24 hours after being filed.
- (d) The appellate panel may move the trial court for a stay of judgment if the trial court has not issued a stay and the panel determines it would be justified under the facts.

Rule 21. Release Pending Appeal of a Conviction; Procedure; Appellate Court Motion.

- (a) Application for release after a judgment of conviction and with a pending appeal will be made to the trial court. The application for release will be heard after reasonable notice to the appellee. Notice will include copies of the motion, affidavits, documents, and relevant parts of the record unless appellee was previously provided those documents. A petition for habeas corpus may be filed under Rule 24.

(b) The trial court may consider the following when reviewing the application for release:

- (1) whether the defendant poses a flight risk;
- (2) whether the defendant will follow the trial court's release conditions;
- (3) whether the defendant poses a threat to the community or an individual; and
- (4) whether a bond will continue or be imposed if an appeal is taken before sentencing.

(c) The appellate panel may order release of the petitioner if the panel determines it would be justified.

Rule 22. Reconsideration of Decision to Dismiss Appeal; Procedure; Finality.

Any party may file a motion to reconsider dismissing the appeal within 15 days of the order dismissing the appeal. The appellate panel's decision is final. This rule does not apply when the appellant requested the dismissal.

Rule 23. Deleted.

History: Rule about writs of mandamus and prohibition was adopted by Administrative Order 04-03 on April 28, 2003. Reorganized and renumbered by Administrative Order 01-05 on January 4, 2005, and on June 3, 2005, by Administrative Order 03-05. Amended, reorganized, and renumbered as Rule 23 to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Rule amended and moved to the Tohono O'odham Rules of Procedure for Extraordinary Writs on March 12, 2014, to follow *Frank v. Tohono O'odham Nation*, 3 TOR3d 55 (Ct.App., Nov. 8, 2013) and *Wichapa v. Tohono O'odham Nation*, 3 TOR3d 56 (Ct.App., Nov. 14, 2013).

Rule 24. Deleted.

History: Rule about writs of habeas corpus was adopted by Administrative Order 04-03 on April 28, 2003. Reorganized and renumbered by Administrative Order 01-05 on January 4, 2005, and on June 3, 2005, by Administrative Order 03-05. Amended, reorganized, and renumbered as Rule 23 to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Rule amended and moved to the Tohono O'odham Rules of Procedure for Extraordinary Writs on March 12, 2014, to follow *Frank v. Tohono O'odham Nation*, 3 TOR3d 55 (Ct.App., Nov. 8, 2013) and *Wichapa v. Tohono O'odham Nation*, 3 TOR3d 56 (Ct.App., Nov. 14, 2013).

Rule 25. Motions; Where Filed; Contents; Certification of Service; Responses; Emergencies.

(a) A party may file a motion not otherwise specified in these Rules with the appellate Clerk. All motions must include:

- (1) a statement of the relief sought; a statement of the grounds for the relief sought; and,
- (2) arguments and affidavits or other documents supporting the motion.

(b) The party requesting relief must file certification of service of the motion on all parties to

the appeal. The appellate Clerk will forward copies as required by Rule 10.

- (c) Within 15 days after being served, any party may file with the appellate Clerk a response to the motion. The party must file certification of service of the response on all parties to the appeal. The appellate Clerk will forward copies as required by Rule 10.
- (d) The Chief Judge of the appellate panel may determine that a motion requires emergency action and issue a temporary order. The temporary order will last until the response is received, and the panel can make a final decision.

Rule 26. Filing and Serving Briefs; Schedule; Failure to File.

- (a) Unless the appellate panel orders otherwise, within 30 days after the Appellate Court has accepted the appeal, the appellant must file a written brief with the Clerk of the Appellate Court.
- (b) Unless the appellate panel orders otherwise, the appellee must file an answering brief within 30 days of service of appellant's brief and include written certification of this service. No additional fee for filing appellee's brief will be charged.
- (c) Unless the appellate panel orders otherwise, the appellant may file a reply brief within 15 days after being served a copy of the answer brief and include written certification of service on the other parties. No other briefs are allowed to be filed.
- (d) The party submitting a brief must file certification of service of the brief upon counsel or, absent counsel, upon the parties to the appeal. Service may be made personally or by certified mail or its equivalent.
- (e) The original and 3 copies of the brief must be filed with the appellate Clerk.
- (f) If the appellant fails to timely file a brief, the appellee may file a motion to dismiss. If an appellee fails to file a brief, the appellee may not be heard at oral argument except by permission of the court.

Rule 27. Form and Content of Briefs; Self-Represented Litigants.

- (a) Pleadings or briefs by self-represented litigants may be hand written if they are printed clearly in blue or black ink. Those who are incarcerated may use pencil. A party may request relief from following Subsections (b) (2), (9), and (10) of this rule. The request for relief may be included in the party's brief or statement.
- (b) Briefs must include:
 - (1) a cover page stating the name of the court, the case numbers assigned by trial and Appellate Courts, the name, address, and email address of the party filing the brief, and the names, addresses, and email addresses of all other parties and counsel where appropriate;

- (2) table of contents with page references, a table of cases alphabetically arranged, authorities relied on including titles and page numbers, and the location in the brief by page and paragraph number where they are referenced;
- (3) a brief statement, not to exceed one page, which indicates the nature of the case, proceedings, and disposition in the trial court;
- (4) a statement of the facts relevant to the issues presented for review with references to the record;
- (5) an argument supporting the issues presented for review, with citations to cases, authorities, and the record, addressing all issues raised in appellant's notice of appeal; those issues not covered will be considered abandoned;
- (6) a short conclusion precisely stating the relief sought, not to exceed one page;
- (7) pages measuring 8 1/2" x 11", double spaced, and consecutively numbered;
- (8) parties referred to as appellant and appellee;
- (9) for any obscure or difficult to locate documents such as pertinent laws, rules, or regulations referenced in the filing, copies must be attached as addenda; and
- (10) except by permission of the Appellate Court, briefs are not to exceed 20 pages and reply briefs are not to exceed 12 pages, exclusive of the table of contents, the table of citations, and attachments.

Rule 28. Prehearing Conference and Order.

- (a) The appellate panel may direct the parties to participate in a prehearing conference to consider settlement, simplify issues, or consider any other matters that may expedite the proceedings.
- (b) The appellate panel will issue an order reciting the action taken at the conference and any agreements. The order will control all subsequent proceedings unless modified by the Appellate Court.

Rule 29. Request for Oral Argument; When Allowed; Withdrawal of Request; Order.

- (a) Oral argument is not allowed except as set out in this rule. Any party may request oral argument in writing within 30 days after appellant's brief is filed.
- (b) Oral argument will not be allowed unless the appellate panel finds that it will help the panel.
- (c) The requesting party may withdraw the request for oral argument and will do so in writing within 5 days before the date of the scheduled hearing.

(d) The appellate panel will issue an order either granting or denying oral argument.

Rule 30. Oral Argument Hearing; Notice; Request for Postponement or Additional Time; Telephone Conference; Procedure; Failure to Appear.

(a) The Appellate Court Clerk will ensure copies of an order denying or allowing oral argument are served on all parties.

(b) A request for postponement of the oral argument or for more time must be made by motion filed with the appellate Clerk at least 15 days before the date set for hearing. Such requests will not be granted unless the reasons supporting the request are persuasive.

(c) Oral argument may be ordered by teleconference if the panel determines it is appropriate.

(d) The Chief Judge of the appellate panel will determine the time allowed for oral argument.

(e) At the hearing, the parties to the appeal may present any arguments raised in the briefs.

(f) The appellant will begin the argument and may request a part of the allocated time be reserved for rebuttal.

(g) If the appellant fails to appear or if neither party appears, the appeal may be dismissed.

Rule 31. Decision; Content and Form of Judgment.

(a) The appellate panel may dismiss the appeal, affirm or modify the decision, reverse the decision in whole or in part, order a new trial, or take any other action that the merits of the case and the interests of justice require.

(b) The decision of the appellate panel must be in writing. The appellate Clerk will send the original of the opinion and judgment to the trial court by hand delivery or certified mail. The appellate Clerk will serve all parties with a copy of the opinion and judgment and file an affidavit of service.

(c) The appellate panel will issue its opinion within 4 months of the oral argument.

Rule 32. Entry of Judgment.

The appellate Clerk will prepare and file the judgment right after receiving the Appellate Court's opinion. Filing the judgment with the Appellate Court is entry of the judgment.

Rule 33. Interest on Money Judgments.

(a) If a money judgment is affirmed, interest allowed by applicable law will be computed from the date the judgment was entered by the trial court.

(b) If a money judgment is modified or reversed with directions that a money judgment be entered, the appellate panel may award interest under applicable law at its discretion.

Rule 34. Costs of Appeal; Request for Costs.

- (a) The costs for appeal include preparing the transcript, copying the record, serving notice, the premium paid for an appeal bond, and the fee paid for filing the appeal.
- (b) Within 15 days after the appeal judgment is filed, the prevailing party may file with the appellate Clerk a request for costs, which must be served upon all parties.
- (c) The Appellate Court may determine and award any costs at its discretion.

Rule 35. Petition for Rehearing; Contents of Petition; Procedure.

- (a) Within 15 days of the entry of the appellate judgment, a petition for rehearing, except as provided by these Rules, may be filed with the Appellate Court Clerk. The petition for rehearing must state:
 - (1) the points of law or fact the petitioner believes the Appellate Court overlooked or misunderstood; and
 - (2) arguments supporting each point.
- (b) No oral argument on the petition for rehearing will be allowed unless the Chief Judge of the appellate panel determines that oral argument could help the appellate panel.
- (c) If a petition for rehearing is granted, the appellate panel will make a final disposition of the case, as it considers appropriate.

Rule 36. Voluntary Dismissal; Stipulation; Motion.

- (a) The Appellate Court may dismiss an appeal on the motion of the appellant and upon such terms as agreed by the parties or ordered by the Appellate Court.
- (b) The Appellate Court may dismiss an appeal after the filing of a stipulation for dismissal. The stipulation must specify the payment of costs, and it must be signed by all of the parties.

Rule 37. Substitution of Personal Representative for a Party.

The personal representative of a party who dies during the proceedings may be substituted for the party upon motion.

Rule 38. Severability.

If any part of these Rules or their application to any person or circumstance is held invalid, the rest of the Rules or their application to other people or circumstances will not be affected.

Rule 39. Facsimile; Transmission of Documents; Responsibility of Transmitting Party; Hard Copy Required.

- (a) The trial court may send documents by facsimile to the Appellate Court, if the documents

have been filed first with the trial court. It is the duty of the sending party to confirm that the documents were properly sent and received.

- (b) The Appellate Court may send documents by facsimile and such documents will be treated as original documents on the date of transmission.
- (c) Hard copies of documents will be sent to the proper court following transmission by facsimile.

Section History

Adopted by Administrative Order 04-03 on April 28, 2003. Reorganized and renumbered by Administrative Order 01-05 on January 4, 2005, and on June 3, 2005, by Administrative Order 03-05. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2023 Tohono O'odham Rules of Court. Amended by the 2024 Tohono O'odham Rules of Court.