

TOHONO O'ODHAM RULES OF COURT

Section 17: Judge-Conducted Mediation for Civil Cases

Rule 1. Purpose.

Judge-conducted mediation in civil cases is a voluntary service the Tohono O'odham Judicial Branch may provide to help resolve disputes. Mediation aligns well with traditional O'odham approaches to conflict resolution. Based on the custom and traditions of Tohono O'odham, judicial experience, and participant feedback, the Judiciary believes mediation is valuable.

(a) Definitions. In this rule:

- (1) “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in a perceivable form.
- (2) “sign” means to execute or adopt a tangible symbol with the present intent to authenticate a record or to attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate a record.

Rule 2. Matters Subject to Mediation.

These rules and procedures apply to adult civil cases that have been filed, such as domestic relations, probate, and personal injury matters, and to pending juvenile civil matters that do not involve the Nation's Child Welfare Services Division or other governmental agencies, such as termination of parental rights and non-Child in Need of Care guardianship cases.

Rule 3. Starting Mediation.

- (a) Any party may request mediation.
- (b) The presiding judge may ask if the parties are interested in mediation.
- (c) The presiding judge may decline to refer a matter to mediation if it appears, in the judge's discretion, that mediation is inappropriate. Reasons could include, without limitation, substance abuse, mental incapacity, domestic violence, because mediation will cause undue delay, or other good cause.

(d) If all parties express interest, and the presiding judge does not find it inappropriate, the judge will explain the mediation process:

- (1) Mediation depends on a judge's availability;
- (2) Mediation is voluntary;
- (3) Mediation is confidential;
- (4) Coming to an agreement is voluntary;
- (5) Although conducted by a judge, the judge is acting as a mediator, a neutral third party, to try to help resolve the dispute, and is not a decision-maker; and,
- (6) The presiding judge will issue an order that:
 - (A) Refers the matter to mediation, subject to availability,
 - (B) sets another regular hearing date in case mediation cannot be scheduled or is not successful, and
 - (C) gives instructions to the parties for submitting their scheduling availability.

(7) Submission of Availability.

- (A) Each party must submit at least five dates and times for mediation to:
 - (i) the Court's Adult Civil Clerk if it is an adult civil matter, or
 - (ii) to the Court's Juvenile Clerk if it is a juvenile civil matter.
- (B) If possible, the parties should coordinate in advance and submit agreed-upon times.

Time frames must be at least three hours and take place during the Court's normal hours of operation. See <https://tojc-nsn.gov>

- (C) Mediation will not be held on recognized tribal holidays.

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- (D) If the parties request a specific judge as mediator, the presiding judge may provide information about that judge's usual docket to help identify the best times for scheduling.

(8) Matching and Notification.

- (A) The Clerk will give the submitted dates and times to the Chief Judge.
- (B) The Chief Judge will check availability with the other judges (or the requested judge).
- (C) If no match is found:
 - (i) The Chief Judge will notify the Adult Civil Clerk or Juvenile Clerk;
 - (ii) The applicable clerk will notify the parties; and,
 - (iii) The parties may submit five more dates and times to check for mediation availability, and the process will return to Rule 3(d)(8)(A) immediately above.
- (D) If a match is found, after initial availability submission, or after re-submission:
 - (i) The mediator judge will issue an order setting the mediation.
 - (ii) The Clerk will send the order to the parties.
 - (iii) The Clerk will schedule the mediation on the Court's Docket.

Rule 4. Conducting the Mediation.

- (a) Before the mediation session, the Clerk will give the case file to the mediator judge, the same way files are given to the Judge before regular hearings.
- (b) Court Officers will secure one of the following for the mediation:
 - (1) The judges' library;
 - (2) The jury deliberation room;
 - (3) A courtroom; or,
 - (4) Any other suitable location designated by the Court within the Court's immediate vicinity, as availability permits.

- (c) A Court Officer will call the case as scheduled on the docket. The Court Officer will have no further role after calling the case.
- (d) If available, an adjacent or nearby room will be provided for caucuses. Alternatively, caucuses may be held in the mediation room while the other party(ies) wait in a lobby or other designated area.
- (e) The following will be present at a mediation session: the parties, their counsel, if any, and the mediator.
 - (1) Each party must have lawful authority to settle the lawsuit, or must have a representative available who has the lawful authority to settle the lawsuit.
 - (2) Subject to Rule 4(e)(1) immediately above, if any of the parties are represented by counsel, the parties, together with their counsel, may agree that counsel will not be present at the mediation.
 - (3) A party may bring a guest only if all other parties, and the mediator, consent.
 - (4) Additionally, another judge (other than the presiding judge for the case) may observe and/or, with the parties' consent, act as a co-mediator.
- (f) No Court Officer or Court Clerk will be present during a mediation session unless the mediator judge determines it is necessary, and one is available.
- (g) The mediator judge must decline to mediate, or must terminate mediation, if the mediator determines that domestic violence makes mediation inappropriate.
- (h) The mediation will be off the record (not recorded).
- (i) However, if the parties come to any agreements, they may ask to go on the record. If that happens, the mediator judge will then see if a clerk is available to accommodate the request.
- (j) In addition to the above, the parties and the mediator judge may agree to other arrangements. These may include, without limitation, holding the mediation at other locations, allowing one or more parties—or the mediator judge—to appear by telephone or video conference, or other accommodations that support the mediation process.

Rule 5. Mediation Follow-up Procedures.

- (a) After each mediation session, the mediator judge will issue an order.
- (1) The order will not contain any confidential information, other than what the parties have agreed may be disclosed.
 - (2) The order will say that a mediation session was held.
 - (3) The order may include an agreement by the parties completely resolving the case.
 - (4) The order may also address other matters—while keeping the mediation confidential and respecting the presiding judge’s control of the case—such as:
 - (A) Setting another mediation session,
 - (B) noting any issues that were settled, or
 - (C) scheduling a hearing with the presiding judge.

Rule 6. Confidentiality.

- (b) The mediation process is confidential. Communications made, materials created for or used, and acts occurring during a mediation are confidential and may not be discovered or admitted into evidence—in the underlying case or elsewhere—unless one of the following exceptions is met:
- (1) All the parties to the mediation agree to the disclosure;
 - (2) The disclosure is required by statute or court rule;
 - (3) The disclosure is necessary to enforce an agreement to mediate; or,
 - (4) The disclosure is made in a report to a law enforcement officer, the Nation’s Child Welfare Services Division, or Adult Protective Services by the mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, child abuse, neglect, exploitation, physical injury, or a reportable offense.
- (c) Notwithstanding Rule 6(b) of this Section, when necessary to enforce or obtain approval of an agreement that is reached by the parties in a mediation, the terms of an agreement that is evidenced by a record that is signed by the parties are not

confidential. The agreement may be introduced in any proceeding to obtain court approval of the agreement, where required by law, or to enforce the agreement. If a party requests that all or a portion of the agreement remain confidential, the agreement may be disclosed to the court under seal with a request to issue appropriate orders to protect the confidentiality of the agreement, as permitted by law.

- (d)** Notwithstanding Rule 6(b) of this Section, threatened or actual violence that occurs during a mediation is not a privileged communication. The mediator may inform the parties that threatened or actual violence is not privileged and may be disclosed.

Section History

Original rule was adopted by Administrative Order 2026-04, dated April 23, 2026.