THE JUDICIAL COURT OF THE TOHONO O'ODHAM NATION

In Re: **Publication of Chapter 11, Rules of Evidence**	**ADMINISTRATIVE ORDER** **No.: 2026-12**

The Tohono O'odham Constitution in Sections 1, 2, and 10(d) vest authority in the Judicial Branch to hear cases and to establish court procedures. The Court hereby publishes the Tohono O'odham Rules of Court, Chapter 11, Rules of Evidence as attached.

This Order hereby supersedes and rescinds any conflicting rules or procedures and is effective October 13, 2026.

Dated and entered: October 12, 2026.

Rene S. Alcoverde, Jr.
Chief Judge

TOHONO O'ODHAM RULES OF COURT

Section 11: Rules of Evidence

Rule 1. ***Scope; Definitions***

(a) Scope. These rules apply to proceedings in the Tohono O'odham Courts. The specific Courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 66.

(b) Definitions. In these rules:

(1) **adjudicative fact** means a controlling or operative fact concerning the parties;
(2) **authority on customs and traditions**: a person familiar with custom;
(3) **civil case** means a civil action or proceeding;
(4) **criminal case** includes a criminal proceeding;
(5) **custom and tradition**: custom and tradition is a recognized practice that is followed. Customs may be local, meaning they apply to a certain community or district, or general, meaning they may apply to the entire Nation;
(6) **duplicate** means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original;
(7) **expert witness**: someone who has knowledge, skills, experience, training, or education, and can give their opinion in court pursuant to Rule 44;
(8) **in-camera** means a trial judge's private consideration of evidence, usually done in the judge's chambers;
(9) **Legal practitioner-client privilege** means the protection that applicable law provides for confidential legal practitioner-client communications;
(10) **legislative fact** means a fact that explains a particular law's rationality and is not specific to the parties in a proceeding;
(11) **original** of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, **original** means any printout–or other output readable by sight–if it accurately reflects the information. An **original** of a photograph includes the negative or a print from it;
(12) **photograph** means a photographic image or its equivalent stored in any form;
(13) **probative** means tending to prove or disprove something;
(14) **public office** includes a public agency;
(15) **record** includes a memorandum, report, or data compilation;
(16) **recording** consists of letters, words, numbers, or their equivalent recorded in any manner;
(17) a **rule prescribed by the Tohono O'odham Nation Judiciary** means a rule adopted by the Tohono O'odham Nation's Court pursuant to constitutional and statutory authority;

(18) **victim** includes an actual or alleged victim;

(19) **work-product protection** means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial;

(20) **writing** consists of letters, words, numbers, or their equivalent set down in any form. A reference to any kind of **written material** or any other medium includes electronically stored information.

Rule 2. ***Purpose***

These rules should be interpreted in a way that ensures every proceeding is handled fairly, reduces unnecessary costs and delays, and supports the advancement of evidence law. The ultimate goal is to uncover the truth and achieve a just and equitable outcome.

Rule 3. ***Rulings on Evidence***

(a) **Preserving a Claim of Error.** A party can claim an error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the Court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) **Not Needing to Renew an Objection or Offer of Proof.** Once the Court makes a final ruling on the record, whether before or during the trial, a party does not need to restate an objection or submit additional proof to keep a claim of error alive for appeal.

(c) **Court's Statement About the Ruling; Directing an Offer of Proof.** The Court may comment on the nature of the evidence, any objections raised, and its ruling. The Court may require an offer of proof to be made in a question-and-answer format.

(d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the Court must conduct jury trials in a manner that prevents the jury from learning about any evidence they should not know about.

(e) **Taking Notice of Plain Error.** A Court may recognize a clear error that affects a substantial right, even if the error was not properly preserved.

Rule 4. ***Preliminary Questions***

(a) **In General.** The Court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In making this decision, the Court is not bound by evidence rules, except those concerning privilege.

(b) **Relevance That Depends on a Fact.** If the importance of evidence depends on the existence of a fact, there must be sufficient proof to show that the fact exists. The Court can admit the evidence, but it must be supported by proof later.

(c) **Conducting a Hearing So That the Jury Cannot Hear It.** The Court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;

(2) a defendant in a criminal case is a witness and requests it; or

(3) justice requires it.

(d) **Cross-Examining a Defendant in a Criminal Case.** By testifying on a preliminary question, a defendant in a criminal case is not subject to cross-examination on other issues in the case.

(e) **Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to show the jury evidence that helps prove the credibility or reliability of other evidence.

(f) **Tribal Custom and Tradition.** Custom and tradition may serve as evidence. If any rules conflict with these customs, the customs and traditions take priority. When procedural rules are superseded in accordance with this section, the custom and tradition, and reasons for its use, must be included in the Findings of Fact and Conclusions of Law prepared by the Court. *See* Rule 43.

Rule 5. ***Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes***

If evidence can be used against one party or for a specific purpose, but not against another party or for a different purpose, the Court must limit how the evidence is used. The Court must explain these limits to the jury at the appropriate time.

Rule 6. ***Remainder of or Related Statements***

If a party presents part of a statement, the opposing party may demand that other related parts be shown at the same time if they are necessary for fairness. The opposing party can do this even if someone objects that it's hearsay.

Rule 7. ***Illustrative Aids***

(a) **Permitted Uses.** A party may use visual aids to help explain evidence or arguments, as long as their benefits outweigh any risks of unfairness, confusion, misleading information, delays, or wasting time.

(b) **Use in Jury Deliberations.** An illustrative aid is not evidence and must not be provided to the jury during deliberations unless:

(1) all parties consent; or

(2) the Court, for good cause, orders otherwise.

(c) **Record.** When practicable, an illustrative aid used at trial must be entered into the record.

(d) **Summaries of Voluminous Materials Admitted as Evidence.** A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by Rule 63.

Rule 8. ***Judicial Notice of Adjudicative Facts***

(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) **Kinds of Facts That May Be Judicially Noticed.** The Court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial Court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice.** The Court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the Court is supplied with the necessary information.

(d) **Timing.** The Court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to Be Heard.** A party has the right to be heard regarding whether judicial notice is appropriate and what facts should be noticed. Even if the Court has already taken judicial notice without informing the party, the party can still ask to be heard on the matter.

(f) **Instructing the Jury.** In a criminal case, the Court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Rule 9. ***Presumptions in Civil Cases Generally***

When a presumption is made against someone in a civil case, that person must provide evidence to challenge it, unless the Nation's law or rules state otherwise. However, the responsibility to persuade others remains with whoever had that duty in the first place.

Rule 10. ***Applying Tribal Law to Presumptions in Civil Cases***

The Nation's law governs how presumptions affect claims or defenses in civil cases where the Nation's law applies.

Rule 11. ***Test for Relevant Evidence***

Evidence is relevant if:

(a) it helps prove or disprove a fact; and

(b) the fact matters in the determination of the case.

Rule 12. ***General Admissibility of Relevant Evidence***

(a) Relevant evidence is admissible unless any of the following provides otherwise:

- the Tohono O'odham Constitution;
- a Tohono O'odham Nation statute;
- these rules.

(b) Irrelevant evidence is not admissible.

Rule 13. ***Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons***

The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following:

(a) unfair prejudice,
(b) confusing the issues,
(c) misleading the jury,
(d) undue delay,
(e) wasting time, or
(f) needlessly presenting cumulative evidence.

Rule 14. ***Character Evidence; Other Crimes, Wrongs, or Acts***

(a) **Character Evidence.**

(1) **Prohibited Uses.** Evidence of a person's character or character trait cannot be used to prove that they acted in line with that trait on a specific occasion.

(2) **Exceptions for a Defendant or Victim in a Criminal Case.** The following exceptions apply in a criminal case:

(A) a defendant may offer evidence about their own relevant character traits. If they do, prosecutors can present evidence to challenge those claims;

(B) subject to the limitations in Rule 22, a defendant may offer evidence about an alleged victim's relevant character traits. If the evidence is admitted, the prosecutor may:

(i) present evidence to challenge it; and
(ii) present evidence that the defendant has the same character trait.

(3) **Exceptions for a Witness.** Evidence of a witness' character may be admitted under Rules 34, 35, and 36.

(b) **Other Crimes, Wrongs, or Acts.**

(1) **Prohibited Uses.** Evidence of past actions or crimes cannot be used to prove someone's character or to suggest they acted the same way in a specific situation.

(2) **Permitted Uses.** However, such evidence may be used for other reasons, including to show:

(A) why someone did something (motive)
(B) how they were able to do it (opportunity)
(C) what they meant to do (intent)
(D) how they got ready (preparation)
(E) what they planned (plan)
(F) what they knew (knowledge)
(G) who they are (identity)
(H) that they meant to do it (absence of mistake), or
(I) that it wasn't an accident.

(3) **Notice in a Criminal Case.** In a criminal case, the prosecutor, pursuant to Rule of Criminal Procedure 7.2, must:

(A) provide reasonable and timely notice of any evidence the prosecutor intends to offer at trial, so the defendant has a fair chance to respond;

(B) clearly state in the notice the allowed purpose for offering the evidence and the reasoning behind that purpose; and

(C) do so in writing before trial—or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

Rule 15. ***Methods of Proving Character***

When character evidence is allowed, it can be shown in two ways:

(a) **By Reputation or Opinion.** Through what others generally think about the person (reputation) or what a witness personally thinks about them (opinion). When questioning a character witness, the Court may allow inquiry into relevant, specific actions the person has done.

(b) **By Specific Instances of Conduct.** When a person's character or character trait is a key element of a charge, claim, or defense, specific examples of that person's conduct may be used as proof.

Rule 16. ***Habit; Routine Practice***

A person's habit or an organization's routine practice may be used as evidence to show the person or organization likely acted the same way in a specific situation. The Court may admit this evidence even without corroboration or an eyewitness.

Rule 17. ***Subsequent Remedial Measures***

If someone makes changes that could have prevented a previous injury or accident, or made it less likely to occur, these changes cannot be used as evidence to show:

- Negligence (careless behavior);
- culpable conduct (wrongful actions);
- a defect in a product or its design; or
- a need for a warning or instruction.

But the Court may admit evidence of these changes for other reasons, like challenging testimony through impeachment. Or, if disputed, proving who owned or controlled something, or showing that safety measures were feasible.

Rule 18. ***Compromise Offers and Negotiations***

(a) **Prohibited Uses.** No party can use the following types of evidence to prove or disprove a claim's validity or amount, or to challenge someone's credibility:

(1) furnishing, promising, or offering–or accepting, promising to accept, or offering to accept–anything of value to settle or try to settle a claim; and

(2) behavior or a statement made during settlement talks about the claim–except in a criminal case where the talks involved a government agency acting in its official capacity.

(b) **Exceptions.** The Court may admit this evidence for other reasons, such as showing a witness is biased or prejudiced, proving there was no unnecessary delay, or showing someone tried to obstruct a criminal investigation or prosecution.

Rule 19. ***Offers to Pay Medical and Similar Expenses***

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

Rule 20. ***Pleas, Plea Discussions, and Related Statements***

(a) **Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made a plea or participated in plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a no contest plea;

(3) a statement made during a proceeding on either of those pleas under the Tohono O'odham Rule of Criminal Procedure Rule; or

(4) a statement made during plea discussions with a prosecuting attorney if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) **Exceptions.** The Court may admit a statement described in Rule 20(a)(3) or (4) if:

(1) in any proceeding where another statement made during the same plea or plea discussions has been introduced, and requires considering the statements together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 21. ***Liability Insurance***

Evidence of whether or not a person was insured against liability cannot be used to establish if they were negligent or acted wrongfully. However, the Court may admit this evidence for other

reasons, like demonstrating a witness's bias or prejudice, or establishing agency, ownership, or control.

Rule 22. ***Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition***

(a) **Prohibited Uses.** The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) evidence offered to prove that a victim engaged in other sexual behavior; or

(2) evidence offered to prove a victim's sexual predisposition.

(b) **Exceptions.**

(1) **Criminal Cases.** The Court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim's sexual behavior concerning the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) **Civil Cases.** In a civil case, the Court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value greatly exceeds the risk of harm to any victim and unfair prejudice to any party. The Court may admit evidence of a victim's reputation only if the victim has made it a matter of controversy.

(c) **Procedure to Determine Admissibility.**

(1) **Motion.** If a party intends to offer evidence under Rule 22(b), the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) file the motion at least 14 days before trial unless the Court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) **Hearing.** Before admitting evidence under this rule, the Court must conduct a closed hearing, giving the victim and parties a right to attend and be heard. Unless the Court orders otherwise, the motion, related materials, and record of the hearing must be and remain sealed.

Rule 23. ***Similar Crimes in Sexual-Assault Cases***

(a) **Permitted Uses.** In a criminal case where a defendant is accused of a sexual assault, the Court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any relevant matter.

(b) **Disclosure to the Defendant.** If the prosecutor intends to offer this evidence, they must disclose it to the defendant, including witness statements or a summary of the expected testimony. The prosecutor must do so at least 14 days before trial or, if the Court allows for good cause, at a later time.

(c) **Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule.

(d) **Definition of Sexual Assault.** In this rule and Rule 25, sexual assault means a crime under the Tohono O'odham Nation's Code involving the conduct prohibited by 7 T.O.C. Ch. 9, § 9.1 when without consent, and by force or threat of death or bodily harm to the victim, or anyone else, he or she subjects the victim to sexual intercourse or oral sexual contact.

(e) **Definition of Sexual Abuse.** In this rule and Rule 25, sexual abuse means a crime under the Tohono O'odham Nation's Code involving the conduct prohibited by 7 T.O.C. Ch. 9, § 9.2 when without consent, a person makes sexual contact with any person not his or her spouse.

Rule 24. ***Similar Crimes in Child-Molestation Cases***

(a) **Permitted Uses.** In a criminal case in which a defendant is accused of child molestation, the Court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

(b) **Disclosure to the Defendant.** If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 14 days before trial or at a later time that the Court allows for good cause.

(c) **Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule.

(d) **Definition of Child and Child Molestation.** In this rule and Rule 25:

(1) **child** means a person below the age of 18; and

(2) **child molestation** means a crime under the Tohono O'odham Nation's code involving any conduct prohibited by 7 T.O.C. Ch. 9 and committed with a child under the age of 16 years by:

(A) fondling, playing with, or touching the private parts of the child; or

(B) causing the child to fondle, play, or touch the private parts of the person.

Rule 25. ***Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation***

(a) **Permitted Uses.** In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the Court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 23 and 24.

(b) **Disclosure to the Opponent.** If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witness statements or a summary of the expected testimony. The party must do so at least 14 days before trial or, if the Court allows for good cause, at a later time.

(c) **Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule.

Rule 26. ***Privilege in General***

The specific non-constitutional privileges which the Court must recognize are:

- required reports;
- legal practitioner-client;
- psychotherapist-patient;
- husband-wife;
- communications to clergy or makai;
- political vote;
- trade secrets;
- secrets of state and other official information; and
- identity of an informant.

The common law governs a claim of privilege unless any of the following provides otherwise:

- the Tohono O'odham Constitution;
- a Tohono O'odham Nation code; or
- rules prescribed by the Court.

Rule 27. ***Legal Practitioner-Client Privilege and Work Product; Limitations on Waiver***

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the legal practitioner-client privilege or work-product protection.

(a) **Disclosure Made in a Proceeding or to an Office or Agency of the Nation; Scope of a Waiver.** When the disclosure is made in a proceeding or to an office or agency of the Nation and waives the legal practitioner-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a proceeding only if:

(1) the waiver is intentional;

(2) the disclosed and undisclosed communications or information concern the same subject matter; and

(3) in fairness they ought to be considered together.

(b) **Inadvertent Disclosure.** When made in a proceeding or to an office or agency of the Nation, the disclosure does not operate as a waiver in a proceeding if:

(1) the disclosure was unintentional;

(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) that the party making the claim notified any receiving party of the claim and the basis for it. After being notified, a receiving party must:

(A) promptly return, sequester, or destroy the specified information and any copies it has;

(B) must not use or disclose the information until the claim is resolved;

(C) must take reasonable steps to retrieve the information if the receiving party disclosed it before being notified; and

(D) may promptly present the information to the Court under seal for a determination of the claim.

(E) The producing party must preserve the information until the claim is resolved.

(c) **Disclosure Made in a Federal or State Proceeding.** When the disclosure is made in a federal or state proceeding and is not the subject of a federal- or state-court order

concerning waiver, the disclosure does not operate as a waiver in a Tohono O'odham Nation proceeding if the disclosure:

(1) would not be a waiver under this rule if it had been made in a Tohono O'odham proceeding; or

(2) is not a waiver under the law of the jurisdiction where the disclosure occurred.

(d) **Controlling Effect of a Court Order.** The Court can decide that sharing information during the current case does not waive the right to keep it private, so sharing it will not mean it's no longer private in any other case.

(e) **Controlling Effect of a Party Agreement.** An agreement about sharing information in a case only applies to the people involved in that agreement, unless it is included in a court order.

(f) **Controlling Effect of This Rule.** Notwithstanding Rules 1 and 66, this rule applies to all proceedings in the Nation's Courts, including mediation or arbitration proceedings, in the circumstances set out in the rule.

Rule 28. ***Competency to Testify in General***

Every person is competent to be a witness unless the court finds otherwise.

Rule 29. ***Need for Personal Knowledge***

A witness can only testify if there is enough evidence to show they have personal knowledge of the matter. This evidence can come from the witness' own testimony. This rule does not apply to expert testimony under Rule 45.

Rule 30. ***Oath or Affirmation to Testify Truthfully***

Before testifying, a witness must swear an oath or affirm to tell the truth. This oath or affirmation is meant to remind the witness of their duty to be honest.

Rule 31. ***Interpreter***

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Rule 32. ***Judge's Competency as a Witness***

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

Rule 33. ***Juror's Competency as a Witness***

Limited on Constitutional Grounds by *Pena-Rodriguez v. Colorado*, 580 U.S. 206, Mar. 06, 2017.

(a) **At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the Court must give a party an opportunity to object outside the jury's presence.

(b) **During an Inquiry Into the Validity of a Verdict or Indictment.**

(1) **Prohibited Testimony or Other Evidence.** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations, the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The Court will not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) **Exceptions.** A juror may testify about whether:

(A) outside prejudicial information was wrongly shared with the jury;

(B) an outside influence wrongly affected any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

Rule 34. ***Who May Impeach a Witness***

Any party, including the party calling the witness, may attack the witness' credibility.

Rule 35. ***A Witness' Character for Truthfulness or Untruthfulness***

(a) **Reputation or Opinion Evidence.** Evidence of truthful character is admissible only after the witness' character for truthfulness has been attacked. A witness' credibility may be attacked or supported by testimony about the witness' reputation for being honest or dishonest, or by testimony from others in the form of an opinion about that character.

(b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 36, outside evidence is not admissible to show specific instances of a witness' conduct in order to attack or support the witness' honesty. But the Court may allow such questions during cross-examination if they relate to the honesty or dishonesty of:

(1) the witness; or

(2) another witness who the testifying witness has talked about.

By testifying on another matter, a witness does not give up their right against self-incrimination for testimony that only concerns that witness' honesty.

Rule 36. ***Impeachment by Evidence of a Criminal Conviction***

(a) **In General.** The following rules apply when questioning a witness' honesty based on a past criminal conviction.

(1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 13, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence is more helpful than harmful to that defendant; and

(2) For any crime, regardless of the punishment, the evidence must be admitted if the Court can readily determine that establishing the elements of the crime required proving–or the witness' admitting–a dishonest act or false statement.

(b) **Limit on Using the Evidence After 10 Years.** Subdivision (b) applies if more than 10 years have passed since the witness' conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its importance, supported by specific facts and circumstances, is much greater than the harm it could cause; and

(2) the party wishing to use it gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 37. ***Religious Beliefs or Opinions***

Evidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness' credibility.

Rule 38. ***Mode and Order of Examining Witnesses and Presenting Evidence***

(a) **Control by the Court; Purposes.** The Court should manage how witnesses are questioned and how evidence is shown to:

(1) help find the truth;

(2) save time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of Cross-Examination.** Cross-examination should focus on what was discussed in the direct examination and matters affecting the witness' credibility. The Court may allow inquiry into additional matters as if on direct examination.

(c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness' testimony. Ordinarily, the Court should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or someone connected to an opponent.

Rule 39. ***Writing Used to Refresh a Witness' Memory***

(a) **Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh their memory:

(1) while testifying; or

(2) before testifying, if the Court decides that justice requires the party to have those options.

(b) **Adverse Party's Options; Deleting Unrelated Matter.** Unless a specific law states otherwise in a criminal case, an adverse party has the right to have the writing at the hearing, to inspect it, to cross-examine the witness about it, and to introduce into evidence any part that relates to the witness's testimony. If the party producing the writing claims it contains unrelated matter, the Court must review the writing in camera, redact any unrelated parts, and order that the remaining portions be delivered to the adverse party. Any portion redacted over objection must be kept in the record.

(c) **Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the Court can take any necessary action. If the prosecution does not comply in a criminal case, the Court must strike the witness' testimony or–if justice requires–declare a mistrial.

Rule 40. ***Witness' Prior Statement***

(a) **Showing or Disclosing a Statement During a Witness Examination.** When asking a witness about that witness' prior statement, a party does not need to show or disclose its contents to the witness. However, if asked, the party must show or disclose its contents to an adverse party's legal practitioner.

(b) **Outside Evidence of a Prior Inconsistent Statement.** Unless the Court orders otherwise, outside evidence of a witness' prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement, and an adverse party is given an opportunity to examine the witness about it. This subdivision (b) does not apply to an opposing party's statement under Rule 49(d)(2).

Rule 41. ***Court's Calling or Examining a Witness***

(a) **Calling.** The Court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) **Examining.** The Court may examine a witness regardless of who calls the witness.

(c) **Objections.** A party may object to the Court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

Rule 42. ***Excluding Witnesses From the Courtroom; Preventing an Excluded Witness' Access to Trial Testimony***

(a) **Excluding Witnesses.** At a party's request, the Court must order witnesses excluded from the courtroom so that they cannot hear other witnesses' testimony. This rule does not authorize excluding:

(1) a party who is a natural person;

(2) one officer or employee of a party that is not a natural person, if that person is designated as the party's representative by its legal practitioner;

(3) any person whose presence is shown to be necessary for the party's claim or defense; or

(4) Anyone allowed by law to be present.

(b) **Additional Orders to Prevent Disclosing and Accessing Testimony.** An order under (a) operates only to exclude witnesses from the courtroom. But the Court may also, by order:

(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and

(2) prohibit excluded witnesses from accessing trial testimony.

Rule 43. ***Opinion Testimony by Lay Witnesses***

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness' perception;

(b) helpful to clearly understanding the witness' testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 44;

(d) Testimony by Custom and Tradition Witnesses.

A party who wants the Court to use Tohono O'odham customs and traditions in a case and who wants to call a witness to testify about customs and traditions, in addition to the requirements of Rule 43(a-c), must:

(1) bring an individual with knowledge of tribal customs and traditions to testify who is familiar with a certain community, district, or region within the Tohono O'odham Nation;

(2) keep the witness' opinion testimony focused on the facts in dispute; and

(3) explain to the Court the difference between a witness' personal opinion and their testimony regarding Tohono O'odham customs and traditions.

Rule 44. ***Testimony by Expert Witnesses***

An expert witness, who has knowledge, skills, experience, training, or education, can give their opinion in court if the party wishing to use it shows that:

(a) the expert's scientific, technical, or other specialized knowledge will help the judge or jury understand the evidence or to decide an important fact;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert's opinion reflects a correct use of those principles and methods to the facts of the case.

Rule 45. ***Bases of an Expert's Opinion Testimony***

An expert may base an opinion on facts or data in the case that the expert knows about or has personally observed. If experts in the particular field usually rely on those facts or data when forming an opinion on the subject, they can still share that opinion even if the facts or data are not normally allowed to be admitted. However, if the facts or data are usually inadmissible, the party wishing to use the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 46. ***Opinion on an Ultimate Issue***

(a) **In General–Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the judge or jury alone.

Rule 47. ***Disclosing the Facts or Data Underlying an Expert's Opinion***

Unless the Court orders otherwise, an expert may state an opinion–and give the reasons for it–without first testifying to the underlying facts or data. However, the expert may be required to disclose those facts or data on cross-examination.

Rule 48. ***Court-Appointed Expert Witnesses***

(a) **Appointment Process.** On its own or a party's motion, the Court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The Court may appoint any expert that the parties agree on and any of its own choosing. The Court may only appoint someone who consents to act.

(b) **Expert's Role.** The Court must inform the expert of the expert's duties. The Court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) must advise the parties of any findings the expert makes;

(2) may be deposed by any party;

(3) may be called to testify by the Court or any party; and

(4) may be cross-examined by any party, including the party calling the expert.

(c) **Compensation.** The expert is entitled to a reasonable compensation, as set by the Court. The compensation is payable as follows:

(1) in a criminal case or in a civil case involving just compensation, from any funds that are provided by law; and

(2) in any other civil case, by the parties in the proportion and at the time that the Court directs–and the compensation is then charged like other costs.

(d) **Disclosing the Appointment to the Jury.** The Court may authorize disclosure to the jury that the Court appointed the expert.

(e) **Parties' Choice of Their Own Experts.** This rule does not limit a party from calling its own experts.

Rule 49. ***Definitions That Apply to This Article; Exclusions from Hearsay***

(a) **Statement** means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) **Declarant** means the person who made the statement.

(c) **Hearsay** means a statement that:

(1) the declarant made outside of Court; and

(2) that is offered as evidence to prove the truth of the matter asserted in the statement.

(d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

(1) **A Declarant-Witness' Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant observed earlier.

(2) **An Opposing Party's Statement.** The statement is made against an opposing party and:

(A) was made by the party in an individual or representative capacity; or

(B) is one the party manifested that it adopted or believed to be true; or

(C) was made by a person the party authorized to make a statement on the subject; or

(D) was made by the party's agent or employee concerning a matter within their scope of employment and during that time; or,

(E) was made by the party's co-conspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

If a party's claim, defense, or potential liability comes directly from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

Rule 50. ***The Rule Against Hearsay***

Hearsay is not admissible unless any of the following provides otherwise:

• a Tohono O'odham Nation statute;

• these rules; or
• other rules prescribed by the Judicial Branch.

Rule 51. ***Exceptions to the Rule Against Hearsay–Regardless of Whether the Declarant Is Available as a Witness***

The following are allowed by the rule against hearsay, regardless of whether or not the declarant is available as a witness:

(a) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant observed it.

(b) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that the event or condition caused.

(c) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief, given to prove the fact remembered or believed unless it is about the validity or terms of the declarant's will.

(d) **Statement Made for Medical Diagnosis or Treatment.** A statement that:

(1) is made for and reasonably relevant to a medical diagnosis or treatment; and

(2) describes medical history, past or present symptoms or sensations, their origin, or their general cause.

(e) **Recorded Recollection.** A record that:

(1) is on a matter the witness once knew about, but now cannot recall well enough to testify about fully and accurately;

(2) was made or adopted by the witness when the matter was fresh in the witness' memory; and

(3) accurately reflects the witness' knowledge.

If admitted, the record may be read into evidence but may only be received as an exhibit if offered by an adverse party.

(f) **Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(1) the record was made at or near the time by–or from information transmitted by–someone with direct knowledge;

(2) the record was kept in the course of the regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(3) making the record was a regular practice of that activity;

(4) all of these conditions are presented in the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 57(k) or (l) or with a statute permitting certification; and

(5) the opponent does not show that the source of the information or other circumstances of preparation indicate a lack of trustworthiness.

(g) **Absence of a Record of a Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (f) if:

(1) the evidence is admitted to prove that the matter did not occur or exist;

(2) a record was regularly kept for a matter of that kind; and

(3) the opponent does not show that the source of the information or other circumstances indicate a lack of trustworthiness.

(h) **Public Records.** A record or statement of a public office if:

(1) it sets out:

(A) the office's activities;

(B) a matter observed while under a legal duty to report, but in a criminal case does not include a matter observed by law-enforcement personnel; or

(C) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(2) the opponent does not show that the source of the information or other circumstances indicate a lack of trustworthiness.

(i) **Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(j) **Absence of a Public Record.** Testimony–or a certification under Rule 57–that a diligent search failed to disclose a public record or statement if:

(1) the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(2) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice–unless the Court sets a different time for the notice or the objection.

(k) **Records of Religious Organizations Concerning Personal or Family History.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(l) **Certificates of Marriage, Baptism, and Similar Ceremonies.** A statement of fact contained in a certificate:

(1) made by a person who is authorized by a religious organization or by law to perform the act that the person certified;

(2) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(3) Declaring it to have been issued at the time of the act or within a reasonable time after it.

(m) **Family Records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(n) **Records of Documents That Affect an Interest in Property.** The record of a document that intends to establish or affect an interest in property if:

(1) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who claims to have signed it;

(2) the record is kept in a public office; and

(3) a statute authorizes recording documents of that kind in that office.

(o) **Statements in Documents That Affect an Interest in Property.** A statement contained in a document that is meant to establish or affect an interest in property if the matter stated was relevant to the document's purpose–unless later dealings with the property are at odds with the truth of the statement or the intention of the document.

(p) **Statements in Ancient Documents.** A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.

(q) **Market Reports and Similar Commercial Publications.** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by people in particular occupations.

(r) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(1) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(2) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(s) **Reputation Concerning Personal or Family History.** A reputation among a person's family by blood, adoption, or marriage–or among a person's associates or in the community–concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(t) **Reputation Concerning Boundaries or General History.** A reputation in a community–arising before the controversy–concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community.

(u) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

(v) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

(1) the judgment was entered after a trial or guilty plea, but not a no contest plea;

(2) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(3) the evidence is admitted to prove any fact essential to the judgment; and

(4) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(w) **Judgments Involving Personal, Family, or General History, or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(1) was essential to the judgment; and

(2) could be proved by evidence of reputation.

(x) **Oral History.** Testimony accepted by the Court pursuant to Rule 43(d), Testimony by Custom and Tradition Witnesses.

Rule 52. ***Exceptions to the Rule Against Hearsay–When the Declarant Is Unavailable as a Witness***

(a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the Court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a Court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the person who wants to use the statement has not been able, by process of service or other reasonable means, to secure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 52(b)(1) or (5); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 52(b)(2), (3), or (4).

This subdivision (a) does not apply if the person who wants to use the statement wrongfully caused–or participated in wrongfully causing–the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) **The Exceptions.** The following are allowed if the declarant is unavailable as a witness:

(1) **Former Testimony.** Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had–or, in a civil case, whose predecessor in interest had–an opportunity and similar motive to develop it by direct, cross, or redirect examination.

(2) **Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) **Statement Against Interest.** A statement that:

(A) a reasonable person in the declarant's position would only say if the person believed it to be true because, when made, it goes against their own financial or personal interests, or could invalidate the declarant's claim against someone else, or to put them at risk of being sued or charged with a crime; and

(B) if offered in a criminal case, is one that could make the person look guilty, is supported by clear evidence that shows it is trustworthy after considering the totality of circumstances under which it was made, and there is evidence that supports or undermines it.

(4) **Statement of Personal or Family History.** A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) **Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.** A statement offered against a party that wrongfully caused–or participated in wrongfully causing–the declarant's unavailability as a witness, and did so intending that result.

Rule 53. ***Hearsay Within Hearsay***

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Rule 54. ***Attacking and Supporting the Declarant's Credibility***

When a hearsay statement–or a statement described in Rule 49(d)(2)(C), (D), or (E)–has been admitted into evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes as if the declarant had testified as a witness. The Court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 55. ***Residual Exception***

(a) **In General.** Even if the statement is not admissible under a hearsay exception in Rule 51 or 52, a hearsay statement is not excluded by the rule against hearsay under the following conditions:

(1) the statement is supported by sufficient guarantees of trustworthiness–after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) it is more probative on the point for which it is offered than any other evidence that the party wishing to use it can obtain through reasonable efforts.

(b) **Notice.** The statement is admissible only if the party wishing to use it gives an adverse party reasonable notice of the intent to offer the statement–including its substance and the declarant's name–so that the party has a fair opportunity to meet it. The notice must be provided in writing at least 14 days before the trial or hearing–or in any form during the trial or hearing if the Court, for good cause, excuses a lack of earlier notice.

Rule 56. ***Authenticating or Identifying Evidence***

(a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the party wishing to use it must produce evidence sufficient to support a finding that the item is what the party claims it is.

(b) **Examples.** The following are examples only–not a complete list–of evidence that satisfies the requirement:

(1) **Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.

(2) **Non-expert Opinion About Handwriting.** A non-expert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) **Comparison by an Expert Witness, Witnesses on Customs and Traditions, or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness, witnesses on customs and traditions, or the trier of fact.

(4) **Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) **Opinion About a Voice.** An opinion identifying a person's voice–whether heard firsthand or through mechanical or electronic transmission or recording–based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) **Evidence About a Telephone Conversation.** For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) **Evidence About Public Records.** Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) **Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) **Evidence About a Process or System.** Evidence describing a process or system and showing that it produces an accurate result.

(10) **Methods Provided by a Statute or Rule.** Any method of authentication or identification allowed by a Tohono O'odham Nation statute or a rule prescribed by the Tohono O'odham Judiciary.

Rule 57. ***Evidence That Is Self-Authenticating***

The following items of evidence are self-authenticating and require no outside evidence of authenticity in order to be admitted:

(a) **Domestic Public Documents That Are Sealed and Signed.** A document that bears:

(1) a seal purporting to be that of the United States; any state, tribe, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(2) a signature purporting to be an execution or attestation.

(b) **Domestic Public Documents That Are Not Sealed but Are Signed and Certified.** A document that bears no seal if:

(1) it bears the signature of an officer or employee of an entity named in Rule 57(a)(1); and

(2) another public officer who has a seal and official duties within that same entity certifies under seal–or its equivalent–that the signer has the official capacity and that the signature is genuine.

(c) **Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester–or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the Court may, for good cause, either:

(1) order that it be treated as presumptively authentic without final certification; or

(2) allow it to be evidenced by an attested summary with or without final certification.

(d) **Certified Copies of Public Records.** A copy of an official record–or a copy of a document that was recorded or filed in a public office as authorized by law–if the copy is certified as correct by:

(1) the custodian or another person authorized to make the certification; or

(2) a certificate that complies with Rule 57(a), (b), or (c), a Tohono O'odham Nation statute, or a rule prescribed by the Tohono O'odham Judiciary.

(e) **Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

(f) **Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.

(g) **Trade Inscriptions and the Like.** An inscription, sign, tag, or label attached in the course of business indicating origin, ownership, or control.

(h) **Acknowledged Documents.** A document accompanied by a valid acknowledgment certificate, lawfully executed by a notary public or other authorized officer.

(i) **Commercial Paper and Related Documents.** Commercial paper, signatures on it, and related documents, as permitted by general commercial law.

(j) **Presumptions Under an Applicable Statute.** A signature, document, or other item that an applicable law presumes to be genuine or authentic.

(k) **Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 51(f)(1)-(3), as shown by a certification of the custodian or another qualified person, and complies with a Tohono O'odham Nation statute or a rule prescribed by the Tohono O'odham Judiciary. Before the trial or hearing, the party wishing to use it must give an adverse party reasonable written notice of the intent to offer the record–and must make the record and certification available for inspection–so that the party has a fair opportunity to challenge them.

(l) **Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 57(k), modified as follows: the certification, rather than complying with a Tohono O'odham Nation statute or a rule prescribed by the Tohono O'odham Judiciary, must be signed in a manner that, if falsely made, would subject the signer to a criminal penalty in the country where the certification is signed. The party intending to use it must also meet the notice requirements of Rule 57(k).

(m) **Certified Records Generated by an Electronic Process or System.** A record produced by an electronic process or system that produces an accurate result, as verified by a qualified person's certification that meets the requirements of Rule 57(k) or (l). The party intending to use it must also satisfy the notice requirements of Rule 57(k).

(n) **Certified Data Copied from an Electronic Device, Storage Medium, or File.** Data copied from an electronic device, storage medium, or file, if authenticated by a process of

digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 57(k) or (l). The party wishing to use it also must meet the notice requirements of Rule 57(k).

Rule 58. ***Subscribing Witness' Testimony***

A subscribing witness' testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

Rule 59. ***Requirement of the Original***

An original writing, recording, or photograph is required to prove its content unless these rules or a Tohono O'odham Nation statute specify otherwise.

Rule 60. ***Admissibility of Duplicates***

A duplicate is admissible just like the original unless a genuine issue is raised regarding the original's authenticity or the circumstances make admitting it unfair.

Rule 61. ***Admissibility of Other Evidence of Content***

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all the originals are lost or destroyed, and not because the party intending to use it acted in bad faith;

(b) an original cannot be obtained through any available judicial process;

(c) the party against whom the original would be offered had control of it, was put on notice, by pleading or otherwise, that the original would be a subject of proof at the trial or hearing; and that party fails to produce it at the trial or hearing; or

(d) the writing, recording, or photograph is not closely related to a controlling issue.

Rule 62. ***Copies of Public Records to Prove Content***

The party intending to use it may present a copy to verify the content of an official record–or of a document that was recorded or filed in a public office as authorized by law–if these conditions are met:

(a) the record or document is otherwise admissible; and

(b) the copy is certified as correct in accordance with Rule 57(d) or is testified to be correct by a witness who has compared it with the original.

(c) If no such copy can be obtained by reasonable diligence, then the party wishing to use it may use other evidence to prove the content.

Rule 63. ***Summaries to Prove Content***

(a) **Summaries of Voluminous Materials Admissible as Evidence.** The Court may admit as evidence a summary, chart, or calculation to prove the content of voluminous admissible writings, audio recordings, videos, or photographs that are difficult to examine in Court, whether or not they have been introduced into evidence.

(b) **Procedures.** The party wishing to use the materials must make the underlying original documents or duplicates available for legal practitioner review or copying, or both, by other parties at a reasonable time and place. The Court may order that party to produce them in Court.

(c) **Illustrative Aids Not Covered.** A summary, chart, or calculation that functions only as an illustrative aid is governed by Rule 7.

Rule 64. ***Testimony or Statement of a Party to Prove Content***

The party seeking to use it may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The party does not need to account for the original.

Rule 65. ***Functions of the Court and Jury***

Ordinarily, the Court decides whether the party wishing to use the evidence has met the factual requirements for admitting other evidence of the content of a writing, recording, or photograph under Rule 62 or 63. However in a jury trial, the jury determines–in accordance with Rule 4(b)–any issue about whether:

(a) an asserted writing, audio recording, video, or photograph ever existed;

(b) another one introduced at the trial or hearing is the original; or

(c) other evidence of content accurately represents the content.

Rule 66. ***Applicability of the Rules***

(a) **To Courts and Judges.** These rules apply to proceedings before:

- Tohono O’odham Nation Trial Courts;
- Tohono O’odham Nation Juvenile Court;
- Tohono O’odham Nation Appellate Court; and
- Any other Court established by the Tohono O'odham Nation Legislative Council.

(b) **To Cases and Proceedings.** These rules apply in:

- civil cases and proceedings;
- criminal cases and proceedings; and
- contempt proceedings, except those in which the Court may act summarily.

(c) **Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

(d) **Exceptions.** These rules–except for those on privilege–do not apply to the following:

(1) the Court's determination, under Rule 4(a), on a preliminary question of fact governing admissibility; and

(2) miscellaneous proceedings such as:

- extradition or rendition;
- issuing an arrest warrant, criminal summons, or search warrant;
- a preliminary examination in a criminal case;
- sentencing;
- granting or revoking probation or supervised release; and
- considering whether to release on bail or otherwise.

(e) **Other Statutes and Rules.** A statute prescribed by the Tohono O'odham Nation's Legislative Council may provide for admitting or excluding evidence independently from these rules.

Rule 67. ***Amendments***

These rules may be amended as provided in 6 T.O.C. Ch. 1, § 1106 and Article IV and Article VIII, §§ 1, 2, and 10(d) of the Tohono O'odham Constitution.

Section History

Adopted by Admin Order 2026-12 into the Tohono O'odham Rules of Court on October 13, 2026.