# TOHONO O'ODHAM RULES OF COURT

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# In the Judicial Court of the Tohono O'odham Nation
# In the State of Arizona

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| IN RE: Issuing the 2023 Tohono O'odham Rules of Court and Rescinding Former Administrative Orders | ADMINISTRATIVE ORDER<br>No.: 2023-01 |

The Court issues and publishes the 2023 Tohono O'odham Rules of Court, which are available on the Court's website. As a result, the following Administrative Orders are obsolete:

- Memo dated March 31, 1981
- Administrative Order 01-99
- Administrative Order 04-99
- Administrative Order 01-03
- Administrative Order 03-03
- Administrative Order 01-04
- Administrative Order 02-04
- Administrative Order 02-07
- Administrative Order 03-07
- Administrative Order 02-08
- Administrative Order 01-03
- Administrative Order 01-04
- Administrative Order 02-03
- Administrative Order 02-04
- Administrative Order III, including all addendums
- Administrative Order 2013-04
- Administrative Order 2020-02
- Administrative Order 2022-03

This Order hereby supersedes and rescinds any and all procedures or Rules of Court promulgated before May 8, 2023. The 2023 Tohono O'odham Rules of Court are effective on May 8, 2023.

Dated and entered May 1, 2023.

Kyle Fields
Chief Judge

In the Judicial Court of the Tohono O'odham Nation

| IN RE: Amendments to the Family Law Procedures; Recognition and Enforcement of Foreign Judgments Rules; Rules of Children's Court Civil; and Rules of Civil Procedure. | ADMINISTRATIVE ORDER<br><br>No.: 2017-04 |
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Title 4, Chapter 3 of the Tohono O'odham Code provides for wage garnishments, which is effective October 1, 2017. Under Article VIII, Section 10(d), "The Tohono O'odham Judiciary shall have the power to: Establish court procedures[.]" The Family Law Procedures, Recognition and Enforcement of Foreign Judgments Rules, Rules of Children's Court Civil; and Rules of Civil Procedure are amended to comply with the new law. This Administrative Order is effective October 2, 2017, and it supersedes any conflicting rule now in effect.

Dated and entered September 28, 2017.

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Donald Harvey, Chief Judge

# In the Judicial Court of the Tohono O'odham Nation

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| IN RE: Tohono O'odham Rules of Court | ) ADMINISTRATIVE ORDER<br>)<br>) No.: 2014-01<br>) |

The Tohono O'odham Rules of Court (2014), includes rules and associated material governing practice before the Tohono O'odham Courts. The 2014 edition replaces the edition adopted November 1, 2011, and Administrative Orders 2013-03 and 2013-04. It is current and effective as of March 12, 2014.

Dated and entered this 12th day of March, 2014.

Violet Lui-Frank
Chief Judge

# In the Judicial Court of the Tohono O'odham Nation

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| IN RE: Tohono O'odham Rules of Court | ) | ADMINISTRATIVE ORDER |
| | ) | |
| | ) | No.: 2011-05 |
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Tohono O'odham Judiciary Administrative Orders have been used both for internal, administrative judicial matters as well as establishing rules of practice in the Tohono O'odham Courts. This Administrative Order adopts the publication of the Tohono O'odham Rules of Court on November 1, 2011. The publication of the Tohono O'odham Rules of Court supersedes and rescinds all administrative orders related to courtroom procedure issued prior to November 1, 2011 in order to consolidate the years of administrative orders and unwritten practices into one document in a rule-based format to ease confusion as to what rules are currently applicable in the Tohono O'odham Courts. These Rules are not comprehensive and will operate as local rules until such time as comprehensive procedural rules are implemented. New updates and modifications to the Rules of Court will be issued by the Chief Judge from time to time.

Internal administrative orders are moved to the Judicial Branch's internal policies and procedures, specifically:

- Administrative Order dated May 8, 1989
- Administrative Order dated July 31, 1990
- Administrative Order 01-96
- Administrative Order 03-96
- Administrative Order 04-96
- Administrative Order 05-96
- Administrative Order 2-97
- Administrative Order 3-97
- Administrative Order 02-99
- Administrative Order 02-05
- Administrative Order 01-06
- Administrative Order 02-06
- Administrative Order 01-07
- Administrative Order 01-10

Unless specifically authorized by the chief judge, internal policies shall not be made available for general distribution.

The Tohono O'odham Rules of Court supersede and rescind the following Administrative Orders:

- Administrative Order dated Oct. 30, 1987 (Administrative Order I)
- Administrative Order II
- Administrative Order III
- Administrative Order 02-89
- Administrative Order M01
- Administrative Order 01-94
- Administrative Order 02-96
- Administrative Order 03-96
- Administrative Order 03-99
- Administrative Order 01-00
- Administrative Order 02-00
- Amendment to Administrative Order 03-96
- Administrative Order 01-02
- Administrative Order 02-02
- Administrative Order 04-03
- Administrative Order 01-05
- Administrative Order 03-05
- Administrative Order 04-07
- Administrative Order 05-07
- Administrative Order 06-07
- Administrative Order 01-08
- Administrative Order 01-09
- Administrative Order 02-09
- Administrative Order 03-09
- Administrative Order 04-09
- Administrative Order 01-11 (Amended)
- Administrative Order 02-11
- Administrative Order 03-11
- Administrative Order 04-11 (Amended)

This Administrative Order and the Tohono O'odham Rules of Court are effective immediately. This Order hereby supersedes and rescinds any other conflicting procedure.

Dated and entered this 1st day of November, 2011.

Teresa Donahue
Chief Judge

# Tohono O'odham Rules of Court

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# TOHONO O'ODHAM RULES OF COURT

## General Rules of Practice

**Rule 1. Rules of Court.**

The Rules of this Section apply to all Sections of the Tohono O'odham Rules of Court, provided a specific Section does not set its own rule or procedure. The Courts of the Tohono O'odham Nation will apply these rules in the following sequence:

**(a)** Rules enacted within the laws of the Tohono O'odham Nation;

**(b)** Rules of the Tohono O'odham Judicial Branch;

**(c)** The Arizona Rules of Court, specifically the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Juvenile Court, and Rules of Evidence. Where applicable to the facts and circumstances of a case, the Arizona rules will be followed to the extent that they do not conflict with a written Tohono O'odham law or rule, directly or indirectly.

**(d)** The rules should always be construed, administered, and employed by the Court and parties to secure the just, speedy, and inexpensive determination of every action and proceeding, given Tohono O'odham laws, traditions, customs, and culture.

**Rule 2. Holiday Schedule.**

**(a) Purpose.** The Tohono O'odham Nation observes the holidays of New Year's Day, Good Friday, Feast of Saint Francis, Thanksgiving, and Christmas. The Court recognizes All Souls' Day as an important date, though it is not an official holiday for government employees. Due to a greater number of people being unavailable to appear in court during the preparations for the holidays of Easter, Feast of St. Francis, All Souls' Day, Thanksgiving, and Christmas, the restricted schedule in Subsection (b) below provides for the efficient operation of the Court.

**(b) Restricted Schedule.** Only arraignments, emergency hearings (i.e., protective orders, expedited hearings, etc.), and court proceedings required by law to be held within a set time (i.e., initial appearances, shelter care hearings, etc.) will be set during the weeks containing: January 1 (New Year's), Good Friday, October 4 (Feast of St. Francis), November 2 (All Souls' Day), Thanksgiving, and December 25 (Christmas). No other hearings, including jury trials, will be set during these periods.

**(c) Designation of Timeframe.** If the holiday falls on a Saturday, no hearings will be scheduled the week preceding the holiday. If the holiday falls on a Sunday, then no hearings will be scheduled the week following that holiday.

**Rule 3. Attorneys and Advocates.**

Only attorneys and advocates certified as legal practitioners before the Tohono O'odham Courts may file or appear on behalf of clients in any litigation or matter before the court.

**Rule 4. Computation; Additional Time After Service by Mail.**

**(a) Computation.** In computing any period of time specified by these rules, by court order, or by any applicable statute, the day from which the designated period of time begins to run will not be included. When the period of time specified or allowed is less than 11 days, exclusive of any additional time allowed under subsection (b), intermediate Saturdays, Sundays, and legal holidays will not be included in the computation. When the period of time is 11 days or more, intermediate Saturdays, Sundays, and legal holidays will be included in the computation. The last day of the period will be included, unless it is a Saturday, Sunday, or legal holiday, in which the period runs until the end of the next business day that is not a Saturday, Sunday, or legal holiday.

**(b) Additional Time After Service by Mail.** Whenever a party is required to act within a prescribed period after having been served a notice and the notice is served by mail, 5 calendar days will be added to the prescribed period.

**(c) Tolled Time.** The 77 days between the starting date of March 19, 2020 and the ending date of June 4, 2020 are tolled. These days are excluded when calculating any hearing or trial deadline. The Court may issue other Administrative Orders, which toll any deadline.

**Rule 5. Filings; Motion Practice.**

**(a) Filings.** All documents required to be filed must be signed in blue or black ink and filed at least 3 days before any hearing to guarantee the filing is addressed at the scheduled hearing. A judge may accept and address a filing at the hearing but is not obligated to do so. The Court may, for good cause shown, grant a short recess to allow for a party or the party's counsel to file a document.

**(b) Responses and Replies to Motions.** Unless a different time is set by court order or any court rule, responses to motions must be filed within 10 days of service of the motion. Replies must be filed within 5 days of service of the response.

**(c) Failure to Respond.** If a party fails to respond to a motion within 10 days, absent showing good cause, the motion will be considered submitted on the record before the Court.

**Rule 6. Notary Requirement.**

Any matter required to be supported, shown, established, or proved by a sworn written declaration, verification, certificate, oath, or affidavit must be notarized by a qualified notary public.

## Rule 7. Change of Judge.

### Rule 7.1. Change of Judge as of Right.

**(a) Purpose.** In any civil or criminal action each party is entitled to one change of judge as a right:

(1) Within 10 days after the arraignment in a criminal case;
(2) Within 10 days after the first hearing in a civil case;
(3) Within 10 days after notice that a case or particular docket has been reassigned to a new judge; or
(4) Within 10 days after the Defendant's Counsel files a Notice of Appearance when the Defendant is entitled to counsel as a matter of law.

**(b) Form of Notice.** A party wishing to exercise the right to a change of judge must file a written "Notice of Change of Judge" containing the following information:
(1) The name of the judge to be changed;
(2) That the filing is timely under Rule 7.3 of these Rules, and
(3) That the party has not previously been granted a change of judge as a matter of right in the case.

**(c) Assignment.** The notice for a change of judge will be assigned to the Chief Judge or the Chief Judge's designee for review. Unless a change of judge is precluded, the Chief Judge or designee must approve a change of judge and quickly reassign the case.

**(d) Further Actions.** After a notice for change of judge is filed and until the change of judge is decided, the named judge should take no action except to make temporary orders that are absolutely necessary to prevent immediate and irreparable harm. If the Chief Judge or the Chief Judge's designee determines that the party is not entitled to a change of judge, then the judge named in the notice will proceed with the case. If the notice is granted, the Chief Judge or designee will assign another judge to proceed with the case.

### Rule 7.2. Change of Judge for Cause.

**(a) Purpose.** As well as Rule 7.1, a party may request, for cause, the change of a judge assigned to their case. This Motion may be filed at any time during the case but before a trial or sentencing.

**(b) Form of Motion.** A party wishing to change a judge for cause must file a verified motion entitled "Motion for Change of Judge for Cause" containing the following information:

(1) The name of the judge to be changed;
(2) That the filing is timely under Rule 7.3; and
(3) Specific facts to prove cause, including bias, hostility, ill-will, prejudice, or interest that would prevent a fair and impartial trial or hearing.

**(c) Assignment.** The motion for a change of judge will be assigned to the Chief Judge or the

Chief Judge's designee.

**(d) Hearing.** A hearing to decide the matter may be held within 5 days of the filing unless otherwise scheduled on the Court's own motion.

**(e) Further Actions.** After a notice for change of judge is filed and until the change of judge is decided, the named judge should take no action except to make temporary orders that are absolutely necessary to prevent immediate and irreparable harm. If the Chief Judge or the designee determines that the party is not entitled to a change of judge, then the judge named in the motion will proceed with the case. If the motion is granted, the Chief Judge or designee will assign another judge to proceed with the case.

**Rule 7.3. Timeliness, Filing, and Service.**

**(a) Time.** Failure to file a timely notice or motion precludes a change of judge under Rules 7.1 and 7.2.

**(b) Time Exception.** A motion under Rule 7.2 may also be filed within 5 days of the discovery of cause if such cause is found after the time periods of Rule 7.3(a) have ended.

**(c) Filing and Service.** The movant must file the notice or motion with the Court and deliver copies to the opposing parties, the Chief Judge, and the noticed judge.

**Rule 7.4. Punishment for Contempt Prohibited for Filing a Change of Judge.**

No judge or court will punish for contempt anyone making, filing, or presenting the notice or motion for change of judge under these rules, or any motion founded on it.

**Rule 8. Publication of Tohono O'odham Court Orders.**

**Rule 8.1. Publication of Tohono O'odham Appellate Decisions.**

**(a) Final Opinions; Summary; Other Appellate Decisions.** All final opinions of the Tohono O'odham Court of Appeals will be published either in full text or as a summary. A final opinion will be published in full unless it lacks precedential value. A final opinion that lacks precedential value will be published as a brief summary, such as when the appeal is withdrawn by the appellant, dismissed due to misfiling, or remanded for rehearing due to an inadequate record. A decision by the Court of Appeals that is not a final opinion will be published if the decision:

(1) Establishes, alters, changes, or clarifies a rule of law;
(2) Addresses a rule of law or question of law which has not been addressed or resolved in an earlier decision;
(3) Addresses constitutionality or criticizes existing law or sections of it;
(4) Involves a legal or factual issue of unique interest or substantial public importance, or if the disposition of the matter has a separate concurring or dissenting decision.

**(b) Timing of Publication.** Under Subsection (a) of this Rule, the Chief Judge will publish the decisions of the Court of Appeals as soon as practicable following the final disposition.

## Rule 8.2. Publication of Tohono O'odham Trial Court Decisions.

**(a) Publication Criteria.** A trial court decision will be published if upheld by the Tohono O'odham Court of Appeals. A trial court decision may be published if the decision has precedential value, the order:

(1) Establishes, alters, changes, or clarifies a rule of law;
(2) Addresses a rule of law or question of law which has not been addressed or resolved in an earlier decision;
(3) Addresses constitutionality or criticizes an existing law or sections of it;
(4) Overrules, upholds, or criticizes the holding of another case; or
(5) Involves a legal or factual issue of unique interest or substantial public importance.

**(b) Request for Publication of Trial Court Decision.** After the conclusion of a case and the end of any applicable time for appeal, any person may file a written request to the Chief Judge requesting to publish trial court decision. The request must specify the name of the case, the case number, and provide a detailed reason using the criteria provided in Subsection (a), explaining why the decision merits publication. The Chief Judge's decision about publication is final.

**(c) Timing of Publication of Trial Court Decisions.** If a trial court decision is publishable under Subsections (a) or (b), the Chief Judge will publish the decision as soon as is practicable. Trial court decisions are only publishable after the case is concluded and the end of any applicable time for appeal.

**(d) Weight of Trial Court Decisions.** Published trial court decisions used for precedential value are persuasive, but not conclusive.

## Rule 8.3. Correction of Errors; Removal of Identifying Information; Depublication.

**(a) Corrections.** All published decisions and decisions arising from the Children's Court under Subsection (b) below, will be published without changing the substance of the body of the decision. Alterations may be made, however, that do not change the substance of the body of the decision. For instance, correction of captioning errors (i.e., correction of wrong case numbers and misspelled party names), obvious spelling and punctuation errors (i.e., correction of the spelling of "O'odham" and double periods), and editor's notes to indicate that substantial errors in the opinion appear in the original and not as a result of the publication process (i.e., missing footnotes).

**(b) Children's Court Decisions.** To preserve the confidentiality of Children's Court cases under Tohono O'odham Children's Code (3 T.O.C. Ch. 1 Art. 12; 3 T.O.C. Ch. 2 § 21701), all appellate decisions arising from Children's Court cases will be adjusted to change information identifying the child(ren) and/or family by referring to the child(ren) by initials only and referring to the parties by their relationship to the children and/or party status.

**(c) Depublication.** Despite Rule 8.2, the Chief Judge may withdraw a trial court order from publication if the holding is superseded by law or overruled by an opinion of the Court of Appeals.

### Rule 8.4. Format; Availability; Fee Waiver.

**(a) Print Publication.** The decisions will be published in suitable volumes and will be organized by calendar year with appellate decisions, if any, appearing first and the trial court decisions, if any, appearing second. Each volume will contain a table of contents listing the cases and indicating the last date in which each year's cases was updated, or, if appropriate, that no cases were published for a given year. The volumes will be made available for public use at the Tohono O'odham Justice Center and may be purchased for a fee approved by the Tohono O'odham Legislative Council. *See* 6 T.O.C. Ch. 1.

**(b) Electronic Publication.** The Chief Judge may also publish the decisions electronically. The Chief Judge may charge a fee for an electronic copy in an amount approved by the Tohono O'odham Legislative Council. *See* 6 T.O.C. Ch. 1.

**(c) Fee Waiver.** The Chief Judge may waive the fees for purchasing court decisions. *See* 6 T.O.C. Ch. 1.

### Rule 9. Publication of Tohono O'odham Rules of Court Procedure.

### Rule 9.1. Publication of Tohono O'odham Rules of Court Procedure; Availability.

The Tohono O'odham Rules of Court Procedure will be published and updated from time to time as necessary.

### Rule 9.2. Format; Availability; Fee Waiver.

**(a) Format; Availability.** The Rules of Court Procedure will be made available for public use at the Tohono O'odham Justice Center and may be purchased for a fee approved by the Tohono O'odham Legislative Council. The Chief Judge may also publish the Rules of Court Procedure electronically. The Chief Judge may charge a fee for an electronic copy in an amount approved by the Tohono O'odham Legislative Council. *See* 6 T.O.C. Ch. 1.

**(b) Fee Waiver.** The Chief Judge may waive the fee for purchasing the Rules of Court Procedure. *See* 6 T.O.C. Ch. 1.

### Rule 10. Court Fees.

**(a) Court Fees.**

(1) *When Due.* All court fees are due at the time of filing.

(2) *Exemption.* The fees apply to all parties, individuals, and entities, unless exempted by Tohono O'odham law. No court fees apply to a party sued in both an official capacity and in a personal capacity in the same litigation.

(3) *Deferral, Waiver, Reduction.* Court fees may be waived, reduced, or deferred by a court order under this Rule based on financial need.

**(b) Financial Affidavit and Request for Deferral, Reduction, or Waiver of Court Fees.**

(1) *Filing.* A party or individual subject to a court fee may file with the Court a sworn financial affidavit requesting a deferral, reduction, or a waiver of the court fee. If an applicant is legally married, the spouse's income and expenses must be included in the application. If an applicant is single, even when living with others, only that person's income and expenses should be included. An applicant must also include any income other than employment income in their application. Despite Rule 6 of these Rules, the financial affidavit does not need to be notarized. The financial affidavit and request must be submitted with the other filing(s), and substantially comply with the form of these Rules.

(2) *By Whom Determined.* In all matters in which a court fee may be assessed, the financial affidavit and request will be reviewed and decided by a judge when the request is filed.

**(c) Deferral of Fees.**

(1) *Contents of Financial Affidavit.* A request for a deferral must indicate a certain date by which the applicant will have paid the fee in full.

(2) *No Hearing Required.* If only a deferral is requested, the Court may order the deferral without a hearing.

(3) *Effect of Failure to Pay.* Failure to pay the fee by the date specified may result in the pleading being stricken from the record. If the filing is a petition or complaint, the case may be dismissed without prejudice.

**(d) Waiver or Reduction of Fees.**

(1) *Contents of Financial Affidavit.* Applicants seeking a waiver or reduction of court fees must indicate the applicant's income and debts to certify he or she cannot pay the court fees. If an applicant is legally married, the spouse's income and expenses must be included in the application. If an applicant is single, even when living with others, only that person's income and expenses should be included. An applicant seeking a reduction of fees with a deferral of payment must also indicate a certain date by which the applicant will pay the fee in full.

(2) *Waiver or Reduction Without a Hearing.* The Court may, without a hearing and based upon the information provided in the Financial Affidavit, find good cause to grant a waiver, reduction, or deferral by the date requested by the applicant.

(3) *Hearing; When Hearing Required.* The Court may set the request for an immediate hearing to obtain more information to determine whether a waiver or reduction should be granted. The Court will set an immediate hearing if the Court is considering denying the request for waiver or reduction of the fees. If the applicant is not available for an immediate hearing, the Court will set a hearing within five business days, permit filing, and defer payment pending the hearing. Any hearing under this Section will be ex parte.

(4) *Reduction of the Fees; Deferral of Fees.* After the hearing, the Court may grant the waiver, deny the waiver, or reduce the fee to one-half of the regular fee. If the Court determines that it is appropriate to defer payment of either the full fee or a reduced fee, the Court will order the applicant to pay the fee by a particular date.

(5) *Effect of Failure to Pay.* If the Court deferred payment of the fee, failure to pay the fee by the date specified may result in the pleading being stricken from the record. If the filing is a petition or complaint, the case may be dismissed without prejudice.

**(e) Final Judgment Must Not be Withheld.** The Court must not withhold entry of final judgment for nonpayment of deferred court fees.

**(f) Waiver of Fees for Case on Appeal.** A waiver or reduction of court fees at the trial court does not automatically transfer if a party files an appeal. A new financial affidavit and request for deferral or waiver must be submitted with the other filing(s) under Subsection (b) of this Rule.

Section History

Original rule adopting the Arizona Rules of Procedure was adopted by Administrative Order III on March 28, 1988. It was amended by the July 15, 1990 Addendum to Administrative Order III, which made Rule 13.5(b) of the Arizona Rules of Criminal Procedure, Altering the Charges; Amendment to Conform to the Evidence, inapplicable on the Tohono O'odham Nation. The 1990 Addendum was rescinded on April 28, 2003 by Administrative Order 01-03. Administrative Order III was repealed and replaced by Administrative Order 01-04 on June 15, 2004. Administrative Order 03-09, adopted April 15, 2009 rescinded and superseded both Administrative Orders III and 01-04. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended on March 12, 2014 to clarify the effect of the General Rules of Practice. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O’ODHAM RULES OF COURT

## Rules of Civil Procedure

## I. SCOPE AND PURPOSE

**Rule 1. Scope and Purpose.**

**Rule 1.1. Scope.**

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

**Rule 1.2. Purpose.**

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

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

**Rule 2. Commencement of Action.**

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

**Rule 3. Summonses and Process.**

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

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

(2) *Issuance and Initial Hearing Date*. On filing a pleading that requires service of a summons, the filing party must present the summons for signature and seal. If the summons is properly completed, the clerk must:

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

(B) sign, seal, and issue the summons to the filing party for service; and

(C) issue a summons for each party to be served.

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

**(b) Contents; Replacement Summons; Amendments.**

(1) *Contents*. A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;
(C) state the name and address of the counsel of the party serving the summons or–if unrepresented–the party's name and address;
(D) state the time within which the defendant must appear and defend;
(E) notify the party to be served that a failure to appear and defend will cause a default judgment against that party for the relief demanded in the pleading;
(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the Court by parties at least three working days in advance of a scheduled court proceeding";
(G) be signed by the clerk; and
(H) bear the Court's seal.

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

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

**(d) Types of Service.** Service of Process as required by Rule 3.1 or 3.2 may be made by:

(1) *Personal Service*. Service may be made on a party by delivering the documents to the party or party's counsel or authorized agent by:
(A) Any person who is not less than 18 years of age,
(B) Tohono O'odham law enforcement or public safety staff as authorized by the Chairman of the Tohono O'odham Nation, or
(C) Tohono O'odham court officers for the Court's own documents as authorized by the Tohono O'odham Judicial Branch.
(2) *Service by Mail*. Service may be made by United States Postal Service certified first class mail, return receipt, to the party or counsel's correct address, or through an alternative mail delivery service that provides proof of delivery. Delivery is presumed five business days after the postage.
(3) *Service by Publication*. Parties may ask permission to serve process by publication under Rule 3.1(f) if the whereabouts of the party to be served are unknown, the party was unavailable for personal service, or unavailable at the mailing address.

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

**(f) Return; Proof of Service.**

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

(2) *Proof of Service*.

(A) *Personal Service.* The serving party must record:

(i) the name of the party upon whom service was made or attempted;

(ii) the date and time service was made or attempted–on each occasion, if more than once;

(iii) the location service was made or attempted for each occasion, and whether the location was the opposing party's home, workplace, or other residence known to be frequented by the opposing party;

(iv) the name of the individual accepting service and, if not the opposing party, a statement affirming that the individual was of suitable discretion over the age of 16; and

(v) the name of the individual who made or attempted service.

(B) *Service by Mail*. If mailed by first class mail, the party must attach the return receipt. If sent by an alternate mailing service, documentation of delivery must be attached.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(f) Service by Publication.**

(1) *When Service by Publication is Available*. Service of process may only be made by publication when a party files a motion with the Court alleging service by publication is the best way practicable under the circumstances. The motion should provide reasons that service by publication is needed, such as that the person to be served:
(A) is one whose current residence and/or address is unknown to the party seeking service,
(B) was not available to be personally served on two occasions of attempted service,
(C) was not available at the mailing address and the posted documents were returned to the sender by the United States Postal Service, or alternate mail delivery service; or
(D) has avoided service of process.

(2) *Motion; Contents*. A party asking for service of process by publication must provide the reasons that service by publication is needed and document what attempts to serve process were attempted. If service was not attempted because the whereabouts of the

party to be served are unknown, the party will document what good faith efforts were made to determine the whereabouts of the party to be served by publication.

(3) *What Must be Published*. Service of process by publication will be made by publishing the summons and a statement of how a copy of the pleading being served may be obtained.

(4) *Frequency and Location of Publication in a Newspaper*.
  (A) The summons and statement will be published at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to be served.
  (B) When the mailing address of the person to be served is known, the party making service will also, by the date of the first publication, mail the summons and pleading, postage pre-paid, to the person's mailing address.
  (C) The service will be complete 30 days after the first publication.

(5) *Frequency and Location of Publication by Community Posting*.
  (A) The summons and statement will be posted for 30 days on the bulletin board at the district office or community meeting place in the district that the person to be served is most recently known to have last lived.
  (B) When the mailing address of the person to be served is known, the party making service will also, by the date of the first posting, mail the summons and pleading, postage pre-paid, to the person's mailing address.
  (C) The service will be complete 30 days after the first posting.

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

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

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

## Rule 4. Responsibility to Serve Documents.

### (a) Service Generally.

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

(2) *When Required*. Unless these Rules provide otherwise, a conformed copy of these documents must be served on every party by a method stated in Rule 4(c):
  (A) an order stating that service is required;
  (B) a pleading filed after the original complaint;
  (C) a discovery or disclosure document required to be served on a party, unless the Court orders otherwise;
  (D) a written motion, except motions that may be heard without notice to the other side; and

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

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

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

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

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

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

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's home or usual dwelling with someone of suitable age and discretion age 16 or older who lives there;

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

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

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

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

[Name of opposing party or counsel]

[Address of opposing party or counsel]

If the precise manner of service is not noted, it will be presumed that the paper was served by mail. This presumption will only apply if service in some form has actually been made.

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

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

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

regulation, resolution, or ordinance must promptly:

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

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

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

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

## Rule 4.1. Filing Pleadings and Other Documents.

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

**(b) Effective Date of Filing.**

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

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

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

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

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

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

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

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

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

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

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

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

(E) Authorities Cited in Memoranda. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal.

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

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

**(d) Proposed Orders; Proposed Judgments.**

(1) *Required Format*. A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as a part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared under this rule, and must follow Rule 4.2, except the practitioner/attorney's identification block, as discussed in 4.2(a)(1), should not be placed at the top of a proposed order. On the signature page, there must be at least two lines of text above the signature.

(2) *Basic Content*. A proposed order or proposed judgment must include a finding of facts section and the proposed order.

(3) *Service and Filing*. Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the Court, required by rule, or done to preserve the record on appeal.

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

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

(B) If a motion has a proposed order, the Court does not need to issue a minute entry

if the judge signs and enters the order.

## Rule 4.2. Form of Documents.

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

(1) To the left of the center of the page starting at line 1:
(A) the filing counsel's (or self-represented litigant's) name, office name if applicable, address, telephone number, and email address; and
(B) identification of the party being represented by the counsel (*e.g.,* plaintiff, defendant, third-party plaintiff);
(2) centered on or below line 6 of the page, the title of the court;
(3) below the title of the court and to the left of the center of the page, the title of the proceeding;
(4) opposite the title, in the space to the right of the center of the page, the case number of the proceeding;
(5) immediately below the case number, a brief description of the document; and
(6) below the document description, the judge to whom the case is assigned (if known).

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

(1) *Text and Background*. The text of every document must be black on a plain white background. All documents filed must be single-sided and should have line numbers at double-spaced intervals along the left side of the page.
(2) *Type Size and Font*. Every typed document must use at least a 12-point type size. The Court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least 12-point type size and must not appear in the space required for the bottom margin.
(3) *Page Size*. Each page of a document must be 8 1/2 by 11 inches.
(A) Despite this general requirement, exhibits, attachments to documents, or documents from other jurisdictions larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.
(B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.
(C) An exhibit, attachment to a document, or document from a different jurisdiction that does not follow these provisions may be filed only if compliance is not reasonably practicable.
(D) Margins and Page Numbers. Margins must be set: at the top of the first page of not less than 2 inches; at the top of each subsequent page of not less than 1 1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.
(E) Handwritten Documents. Handwritten documents are discouraged, but if a

document is handwritten, the text must be legibly printed and not include cursive writing or script.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The clerk will deliver written confirmation of the date and time the email was received to the filing party, and record the filing date as the date stamped by the Clerk of Court. If necessary, the clerk will deliver written confirmation that the Court is still waiting for payment of the filing fee.

(3) Electronic filings may be submitted at any time; however, they will be recorded as

received only during the hours of 8 a.m. to 3:30 p.m., Monday through Friday, except Court holidays. Electronic filings received after 3:30 p.m. will be considered received as of the next business day.

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

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

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

## Rule 5. Computing and Extending Time.

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

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

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

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

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

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

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

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

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

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

## Rule 6. Duties of Counsel.

**(a) Counsel of Record**. Counsel may not appear in any action or file anything in any action without first appearing as counsel of record by filing a Notice of Appearance. In any matter, even if it has gone to judgment, there must be a formal substitution or association of counsel before any counsel who is not counsel of record may appear. Counsel of record will be considered responsible as counsel of record in all matters before and after judgment until the time for appeal from a judgment has ended, a judgment has become final after appeal, or until there has been a formal withdrawal or substitution.

**(b) Withdrawal and Substitution.** No counsel may withdraw, or be substituted, as counsel of record in any pending action except by formal written order, supported by a written motion setting forth the reasons, with client's name, mailing address, and telephone number, and:

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

(2) Where the motion does not bear the written approval of the client, it must be served upon the client and all other parties or their counsel. The motion must have a certificate of the counsel making the motion that:
- (A) the client has been notified in writing of the case's status, including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanction, or
- (B) the client cannot be found or cannot be notified about the pending motion and the case's status.

(3) No counsel may withdraw as counsel of record after an action has been set for trial, unless:
- (A) either the substitute counsel signs the motion and states that counsel will be prepared for trial or the client signs the motion and states that the client will be prepared for trial, or
- (B) the Court is satisfied for good cause shown that counsel should be allowed to withdraw.

**(c) Responsibility to Court.**

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

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

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

# III. PLEADINGS AND MOTIONS

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

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

## Rule 7.1. Motions.

**(a) Requirements.**

(1) *Generally*. An application to the Court for an order must be by motion which, unless made during a hearing or trial, must be in writing, state the specific grounds for granting the motion, and set forth the relief or order sought.
(2) *Supporting Memorandum*. All motions must have a memorandum setting forth the reasons for granting the motion, with citations to the specific parts or pages of supporting authorities and evidence.
(3) *Responsive and Reply Memoranda*. Unless stated otherwise, an opposing party must file a responsive memorandum within 10 days after the motion and supporting memorandum are served. The moving party must file a reply memorandum within 5 days after a responsive memorandum is served. The reply memorandum must address only matters raised in the responsive memorandum.
(4) *Affidavits and Other Evidence*. Affidavits and other evidence submitted to support any motion or memorandum must be filed with the motion or memorandum unless the Court orders otherwise.
(5) *Motions in Open Court*. The Court may waive these requirements for motions made in open court.

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

(1) the motion, supporting memorandum, or responsive memorandum does not follow Rule 7.1(a);
(2) the opposing party does not file a responsive memorandum; or
(3) counsel for any moving or opposing party fails to appear at the time and place designated for oral argument.

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

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

**(e) Motions for Reconsideration.**

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

reconsideration.

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

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

**(f) Limits on Motions to Strike.**

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

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

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

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

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

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

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

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

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

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

## Rule 8. General Rules of Pleading.

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

(1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court

already has jurisdiction and the claim needs no new jurisdictional support;

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

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

**(b) Defenses; Admissions and Denials.**

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

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

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

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

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

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

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

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

**(c) Affirmative Defenses.**

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

(A) accord and satisfaction;

(B) arbitration and award;

(C) assumption of risk;

(D) contributory negligence;

(E) duress;

(F) estoppel (a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true);

(G) failure of consideration;

(H) fraud;

(I) illegality;

(J) laches (unreasonable delay in pursuing a right or claim in a way that prejudices the party against whom relief is sought);

(K) license;

(L) payment;

(M) release;

(N) res judicata (an issue that has been settled by judicial decision);

(O) statute of frauds;
(P) statute of limitations; and
(Q) waiver.

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

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

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

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

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

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

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

**(g) Civil Cover Sheets.**

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

(2) The Civil Cover Sheet must have:
(A) the plaintiff's correct name and mailing address;
(B) the plaintiff's birthdate;
(C) the plaintiff's counsel's name;
(D) the defendant's name(s);
(E) the nature of the civil proceeding;
(F) the main case categories and subcategories designated by the Court Administrator; and
(G) such other information as the Judicial Branch may require.

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

## Rule 9. Form of Pleadings.

**(a) Caption; Names of Parties.** Every pleading must have a caption in the form required by Rule 4.2(a), with the pleading's designation under Rule 7. The title of the complaint must

name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation "*et al*."

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

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

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

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

**(a) Signature.**

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

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

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

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

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

(1) it is not being presented for any improper purpose, such as to harass, cause

unnecessary delay, or needlessly increase the cost of litigation;

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

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

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

**(c) Sanctions.**

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

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

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

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

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

(A) be made separately from any other motion;

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

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

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

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

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

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

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

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

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

(3) *Effect of a Motion*. Unless the Court sets a different time, serving a motion under this rule alters these periods:
  (A) if the Court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the Court's action; or
  (B) if the Court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

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

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

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

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

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

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

may strike the pleading or issue any other order.

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

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

**(g) Joining Motions.**

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.
(2) *Limitation on Further Motions*. A party who makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party, but omitted from its earlier motion.

**(h) Waiving and Preserving Certain Defenses.**

(1) *When Some are Waived*. A party waives any defense in Rule 11(b)(2) through (5) by:
  (A) omitting it from a motion in the circumstances described in Rule 11(g)(2); or
  (B) failing to either:
    (i) make it by motion under this rule; or
    (ii) include it in a responsive pleading or in an amendment allowed by Rule 13(a)(1).
(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a required person, or to state a legal defense to a claim may be raised:
  (A) in any pleading allowed or ordered under Rule 7;
  (B) by a motion under Rule 11(c); or
  (C) at trial.
(3) *Lack of Subject-Matter Jurisdiction*. If the Court determines at any time that it lacks subject-matter jurisdiction, the Court must dismiss the action.

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

## Rule 12. Counterclaim and Crossclaim.

**(a) Compulsory Counterclaim.**

(1) *Generally*. A pleading must state as a counterclaim any claim that–at the time of its service–the pleader has against an opposing party if the claim:
  (A) arises out of the transaction or occurrence that is the subject of the opposing party's claim; and
  (B) does not require adding another party over whom the Court cannot acquire jurisdiction.
(2) *Exceptions*. The pleader need not state the claim if:

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

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

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

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

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

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

**(f) Crossclaim Against a Coparty.**

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

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

## Rule 13. Amended and Supplemental Pleadings.

**(a) Amendments Before Trial.**

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

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

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

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

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

relieve a party opposing the motion from filing a timely response.

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

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

**(b) Amendments During and After Trial.**

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

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

**(c) Relation Back of Amendments.**

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

(2) *Amendment Changing Party*. An amendment changing the party against whom a claim is asserted relates back if:
   (A) Rule 13(c)(1) is satisfied; and
   (B) within the applicable limitations period–plus the period provided in Rule 3(e) for the service of the summons and complaint–the party to be brought in by amendment:
      (i) has received such notice of the action;
      (ii) will not be prejudiced in maintaining a defense on the merits; and
      (iii) knew or should have known that, but for a mistake about the identity of the proper party, the action would have been brought against the party.

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

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

**Rule 14. Scheduling and Management of Actions.**

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

**(a)** expediting a just disposition;

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

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

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

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

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

**(g)** conserving parties' resources;

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

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

**Rule 14.1. Initial Hearing.**

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

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

(1) the status of the parties and pleadings;
(2) whether a joint report and proposed scheduling order is appropriate;
(3) whether a joint pretrial statement is desirable;
(4) determining whether severance, consolidation, or coordination with other actions is desirable;
(5) scheduling motions to dismiss or other preliminary motions;
(6) scheduling discovery proceedings, and setting discovery limits;
(7) issuing protective orders;

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

**Rule 14.2. Pretrial Hearings.**

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

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

(1) the status of discovery and any dispositive motions that have been or will be filed;
(2) imposing time limits on trial proceedings; and
(3) other matters that the Court considers appropriate.

**Rule 14.3. Orders.**

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

**Rule 14.4. Sanctions.**

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

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

(2) fails to appear at the Initial Hearing, Pretrial Hearing, or any other hearing set by the Court;
(3) is substantially unprepared to participate or fails to participate in good faith in the hearings; or
(4) fails to participate in good faith to prepare any joint reports or statements ordered by the Court.

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

## Rule 15. Subpoenas.

### (a) General Requirements; Subpoenas to the Nation.

(1) *General Requirements*. Every subpoena must:
  (A) state the name of the Tohono O'odham Court from which it issued;
  (B) state the title of the action and its civil action number;
  (C) command each person to whom it is directed to do the following at a specified time and place:
    (i) attend and testify at a deposition, hearing, or trial;
    (ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or
    (iii) permit inspection of the premises.
  (D) be substantially in the form in these rules.
(2) *Issuance by Clerk*. That party must complete the subpoena before bringing it to the court. The clerk will only issue a subpoena that is properly filled out.

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

(1) *Combining or Separating a Command to Produce or to Permit Inspection*. A command to produce documents, electronically stored information, or tangible things, or to permit inspection of the premises, may be included in a subpoena commanding attendance at a deposition, hearing, or trial. A party may list the command in a separate subpoena.
(2) *Command to Attend a Deposition–Notice of Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.
(3) *Objections; Appearance Required*. Objections to a subpoena commanding attendance at a deposition, hearing or trial may be made by timely motion under Rule 15(e)(2). Unless excused from doing so by the party or counsel serving a subpoena, by a court order, or by this Rule, a person who is properly served with a subpoena must testify at the date, time, and place specified in the subpoena.

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

(1) *Electronically Stored Information*.

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

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

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

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

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

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

(4) *Objections*.

(A) Form and Time for Objection.

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

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

(iii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial may object to any part of the subpoena. A person objecting

to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time and place specified in the subpoena, unless excused as proved in Rule 15(b)(3).

(B) Procedure After Objecting.

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

(ii) The party serving the subpoena may move to compel compliance with the subpoena. The motion must be served on the subpoenaed persons and all other parties under Rule 4(c).

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

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

**(d) Service.**

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

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

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

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

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

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

(2) *Quashing or Modifying a Subpoena*.

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

(i) fails to allow a reasonable time to comply;

(ii) requires disclosure of privileged or other protected matter, if no exception or waiver applies;

(iii) subjects a person to undue burden; or

(iv) the person or entity to whom the subpoena is directed is immune from

service or enforcement of the subpoena.

(B) When Permitted. On the timely filing of a motion to quash or modify a subpoena, the Court may quash or modify the subpoena if:
   (i) it requires disclosing a trade secret or other confidential research, development, or commercial information;
   (ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute or results from the expert's study that were not requested by a party;
   (iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or
   (iv) justice so requires.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 15(e)(2)(B), the Court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions:
   (i) if the party or counsel serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and
   (ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or counsel serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

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

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

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

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

**(a) Findings and Conclusions.**

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

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

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

(4) *Questioning the Evidentiary Support*. A party may later question the sufficiency of

the evidence supporting the findings, whether the party requested findings, objected to them, moved to amend them, or moved for partial findings.

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

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

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

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

## IV. JUDGMENT

### Rule 17. Judgment; Form of Proposed Judgments.

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

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

**(c) Judgment on All Claims and Parties.** A judgment on all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 17(c).

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

that relief in its pleadings.

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

## Rule 18. Entering Judgment.

**(a) Form of Judgment; Objections to Form.**

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

(2) *Objections to Form*.

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

(i) the opposing party endorses on the judgment its approval of the judgment's form;

(ii) the Court waives or shortens the 5-day notice requirement for good cause; or

(iii) the judgment is against a party in default.

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

(i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and

(ii) after that time ends, the Court may decide the matter with or without a hearing.

**(b) Entering Judgment.**

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

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

**(c) Notice of Entry of Judgment.**

(1) *Manner of Notice*.

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

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

(ii) make a record of the distribution.

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

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

(A) a written notice of the entry of judgment;

(B) a minute entry; or

(C) a conformed copy of the file-stamped judgment.

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

## Rule 19. Relief from Judgment or Order.

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

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

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

**(c) Timing and Effect of the Motion.**

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

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

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

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

**Rule 20. Judge's Inability to Proceed.**

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

## V. FINAL REMEDIES; SPECIAL PROCEEDINGS

**Rule 21. Seizing a Person or Property.**

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

**Rule 21.1. Garnishment.**

**(a) Definitions.** In this rule:

(1) "creditor" means a person or party to whom a money judgment has been awarded, other than a judgment for child support;
(2) "debtor" means the person or party against whom a money judgment has been awarded; and
(3) "employer" means the garnishee of the debtor.

**(b) Application for Garnishment.**

(1) *Generally*. A creditor seeking garnishment of a judgment must file an application signed under oath and provide a statement that "All statements contained herein are true and correct to the best of my knowledge and belief."
(2) *Contents*. The application must have:
(A) the name and last known mailing address of the parties;
(B) whether the creditor was a party to a lawsuit to whom a judgment was awarded;
(C) the date the order was entered;
(D) whether the judgment is final with no pending appeal, or is not final;
(E) whether any subsequent orders vacating, modifying, or reversing the judgment have been entered;
(F) the outstanding balance;
(G) the name and address of the employer or the employer's authorized agent; and
(H) why the creditor believes the debtor to be employed by the employer.
(3) *Certified Copy of Judgment*. A copy of the judgment to be enforced must be attached to the application. The copy will, at minimum, be certified by the clerk or registrar of the court issuing the judgment as a true and correct copy. A record is certified if it has language substantially stating that the copy is true and correct, is signed and dated by the clerk or registrar of the court issuing the judgment, and bears the seal of the issuing court. Judgments containing language that the copy is true and correct that have been exemplified (signatures by the clerk of court and deputy clerk and two seals) or authenticated (signatures by the clerk of court, deputy clerk of court, and a

judge, and three seals) may also be submitted.

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

(1) *Contents*. The order must have:
(A) the name and address of the employer;
(B) the name and address of the creditor and any counsel;
(C) the name and mailing address of the debtor; and
(D) an order for the employer to:
(i) stop payment to the debtor or for the debtor's benefit any nonexempt earnings until further order of the Court; and
(ii) file an answer within 10 business days of service of the order.

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

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

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

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

telephone number;
(I) the name, address, and telephone number of the creditor; and
(J) the date and manner of service the employer will use to serve a copy of the certification on the debtor and creditor.

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

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

**(f) Garnishment Hearing.**

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

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

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

**(g) Garnishment Order.**

(1) *Absence of Objection*. If no timely objection is filed, and the Court finds the employer owed nonexempt earning to the debtor when the garnishment order was served or that nonexempt earnings would be owed within 60 days, the Court will order that:
(A) the employer pay the creditor the withheld nonexempt earnings;
(B) the garnishment is an order against the debtor's future nonexempt earnings until the judgment is paid in full;
(C) on the tenth day of each month following the first payment from the employer, the creditor is to file and serve a written report on the employer and debtor under 4 T.O.C. Ch. 3 § 3413;
(D) the employer file a notice of remittance with the Court after each remittance; and
(E) the creditor must file for satisfaction of the judgment and request for release of

the garnishment order right after the judgment is satisfied, and serve a copy on the employer and debtor under Rule 4(c).

(2) *Determination Upon Objection*.

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

(i) the employer pay the debtor the withheld nonexempt earnings;

(ii) the garnishment is an order against the debtor's future nonexempt earnings until the judgment is paid in full;

(iii) on the tenth day of each month following the first payment from the employer, the creditor is to file and serve a written report on the employer and debtor under 4 T.O.C. Ch. 3 § 3413;

(iv) the employer file a notice of remittance with the Court after each remittance; and

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

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

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

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

(1) compensation for actual losses caused by failing to comply;

(2) reasonable legal practitioner's fees, if the affected party was represented at a hearing;

(3) court costs; or

(4) an additional amount not less than $100 nor more than $1000.

## Rule 22. Injunctions and Restraining Orders.

**(a) Preliminary Injunction or Temporary Restraining Order.**

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

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

(A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the Court may advance the trial on the merits and consolidate it with the hearing on the motion.

(B) If consolidation is ordered after the preliminary injunction hearing begins, the Court may continue the matter if necessary to allow adequate time for the parties

to complete discovery, and may make other orders.

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

**(b) Temporary Restraining Order Without Notice.**

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

(2) *Contents*. Every temporary restraining order issued without notice must:
(A) state the date and hour it was issued;
(B) describe the injury and state why it is irreparable;
(C) state why the order was issued without notice; and
(D) be promptly filed in the clerk's office and entered in the record.

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

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

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

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

(1) *Contents*. Every order granting an injunction and every restraining order must:
(A) state the reasons it was issued;
(B) state its terms specifically; and
(C) describe in reasonable detail, without referring to the complaint or other documents, the act or acts restrained or required.

(2) *Persons Bound*. An order binds only the following parties who receive actual notice of it by personal service or otherwise:
(A) the parties;
(B) the parties' officers, agents, servants, employees, and counsels; and

(C) other persons who are in active concert or participation with anyone described in Rule 22(c)(2)(A) or (B).

Section History

Adopted by the Tohono O'odham Rules of Court on November 1, 2011. Renumbered by the 2017 Tohono O'odham Rules of Court. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Rules of Criminal Procedure

**Rule 1. Complaints.**

**(a) Long Form Complaint.**

(1) The long form complaint is required in all criminal cases filed under the Tohono O'odham Criminal Code where incarceration over 60 days is a possible punishment.
(2) The long form complaint must conform with 2 T.O. R. Civ. Pro. §§ 4.1-4.2, and be signed, in blue or black ink, by a prosecutor of the Tohono O'odham Nation.
(3) The long form complaint does not need to be sworn before a judge.
(4) The long form complaint must be filed with the signed, original probable cause statement.

**(b) Short Form Complaint.** The short form complaint may be used for cases filed under the Tohono O'odham Traffic Code. The short form complaint may be used for cases filed under the Tohono O'odham Criminal Code where the maximum possible punishment is 60 days of incarceration.

**Rule 2. Service of Process in Criminal and Traffic Matters.**

**Rule 2.1. Issuance of Summons and Warrant.**

**(a) Filing.** If the Nation files charges, the Nation must also file a prepared summons for the defendant if the defendant is not in custody. The Nation may also file a motion requesting a warrant.

**(b) Preference for Summons; Contents of Motion.** Unless good cause exists for issuing a warrant, a summons must be issued if the defendant is not in custody. If a warrant is requested by the Nation, the Nation must state in the motion the reasons why a warrant should be issued.

**(c) Arrest Warrant.** Before issuing an arrest warrant, the judge must determine that probable cause exists that the defendant committed the offense or that such a determination has previously been made. An arrest warrant must be issued to secure the defendant's appearance if:

(1) a defendant who has been summoned fails to appear;
(2) there is good cause to believe that the defendant will fail to appear; or
(3) the summons cannot readily be served or delivered.

**(d) In Custody.** If the defendant is in custody, the Nation may file a complaint and include a motion requesting that the Court set an initial appearance. If necessary, the Nation may request that the Court hold the defendant until the scheduled initial appearance.

## Rule 2.2. Content of Warrant or Summons.

**(a) Warrant.** The warrant must be signed by the issuing judge and must have the name and any additional identifying information of the defendant. If the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The warrant must state the offense with which the defendant is charged. And it must command that the defendant be arrested and brought before the criminal or traffic court.

**(b) Summons.**

(1) *Contents.* The summons must have the name and address of the defendant and must command the defendant to appear at an arraignment at the Tohono O'odham Justice Center. If no warrant is requested, a court clerk must fill in the time and date of the arraignment at the time of filing and must sign and date the summons.

(2) *Additional Requests.* At the request of the prosecutor, the summons may also command the defendant to report to a designated place to be photographed and fingerprinted before the defendant's court appearance in response to the summons. Failure to report will result in the defendant's arrest. If good cause for the failure is shown, the judge will then direct the defendant to report immediately for such photographing and fingerprinting.

## Rule 2.3. Execution and Return of Warrant.

**(a) By Whom.** The warrant must be directed to, and may be executed by, all Tohono O'odham police officers or other officials as may be recognized by law.

**(b) Manner of Execution.** A warrant must be executed by arrest of the defendant. The arresting officer need not have the warrant in possession at the time of the arrest, but the officer must show the warrant to the defendant as soon as possible upon request.

**(c) Return.** Return of the warrant must be made to the judge before whom the defendant will make his or her initial appearance.

## Rule 2.4. Service of Summons.

The summons may be served like the summons in a civil action, except that service may not be by publication. Proof of service must be the same as in a civil action.

## Rule 2.5. Defective Warrant.

The Court will not invalidate an arrest warrant or release a person in custody because of a defect in the warrant's form. The Court may amend the warrant to remedy such defect.

## Rule 3. Appointment of Attorney; Notice of Appearance; Withdrawal and Substitution; Duty of Continuing Representation; Duty Upon; Withdrawal.

### (a) Appointment of Attorney.

(1) *Procedure.*

(A) Financial Affidavit and Request for Attorney; Notary Not Required. Upon notification that the Nation will seek more than one year of imprisonment in a criminal proceeding, a defendant may file a sworn financial affidavit. The affidavit must indicate the defendant's income and debts to certify he or she is financially unable to retain private counsel and a request to appoint a state-licensed attorney to represent him or her. The Financial Affidavit and Request for Attorney must substantially comply with the form in these Rules. Despite Rule 6 of the Tohono O'odham General Rules of Procedure, the financial affidavit does not need to be notarized.

(B) Hearing. The Court may set the request for a hearing to obtain more information, or find cause based upon the affidavit to appoint a state-licensed attorney.

(C) Notice of Conflict. A program or attorney appointed under this Rule may, within five business days of receiving notice of the appointment, file a notice of conflict. The Notice must set forth the program or attorney's justification. The Court may set the matter for a hearing.

(D) Appointment. If a defendant is entitled to a state-licensed attorney, the Court must appoint attorneys in the following order: the Advocate Program or another Nation's program designated to provide criminal defense services; conflict attorneys contracted by the Nation to provide criminal defense service; then, on a rotating basis, any attorney admitted to practice law in the Tohono O'odham Judicial Court who is not employed by the Nation, and who can be paid by the Nation.

(2) *Waiver by Defendant.* An indigent defendant who is subject to a potential term of imprisonment of more than one year may waive his or her right to counsel. The waiver must be writing, and the Court must find that the waiver is made knowingly, intelligently, and voluntarily.

### (b) Notice of Appearance.

(1) Counsel for the defendant, whether privately retained or Court-appointed, must file a Notice of Appearance. The notice must have the name of counsel's office with the Court before filing any documents or appearing in any matter before the Court.

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

(B) Where the Nation seeks more than one year of incarceration, and an attorney is appointed, only a licensed attorney may participate on counsel of record's behalf.

(2) Counsel of record is responsible as counsel of record in all matters before and after judgment until there has been a formal withdrawal or substitution of counsel.

**(c) Withdrawal and Substitution.** No counsel may withdraw, or be substituted, as counsel of record in any pending action except by a written order. A motion to

withdrawal must be written and give the reasons withdrawal or substitution should be granted, with the name, mailing address, and telephone number of the defendant, and:

(1) Where the motion bears the written approval of the defendant, a proposed written order must be included and may be presented to the court without notice to the other involved parties. The withdrawing counsel must give prompt notice of the entry of such order to all other parties or their counsel.
(2) Where the motion does not bear the written approval of the defendant, it must be served upon the defendant and all other parties or their counsel. The motion must have a certificate of the counsel making the motion that:
 (A) the defendant has been notified in writing of the status of the case, including the dates and times of any court hearings, pending compliance with any existing court orders, and the possibility of sanction; or
 (B) the defendant cannot be found or cannot be notified about the pending motion and the status of the case.
(3) No counsel may withdraw as counsel of record after an action has been set for trial, unless:
 (A) either substitute counsel signs the motion and states that counsel is advised of the trial date and will be prepared for trial or the defendant signs the motion stating the defendant is advised of the trial date and has arranged to be prepared for trial; or
 (B) the Court is satisfied for good cause shown that counsel should be allowed to withdraw.

**(d) Duty of Continuing Representation.** Counsel representing a defendant must continue to represent the defendant in all proceedings in the trial court, including filing of a notice of appeal, unless the Court permits such counsel to withdraw, or a limitation of representation was stated in the notice of appearance.

**(e) Presumption.** Until such time as a Notice of Appearance has been filed on a defendant's behalf, the defendant is considered to be a self-represented litigant.

## Rule 4. Initial Appearance; Arraignment; Victims' Rights; Pleas.

### Rule 4.1. Procedure Upon Arrest.

**(a) Timeliness of Appearance.** An arrested person must be brought before a judge without unnecessary delay. A detained person's initial appearance must be held within 36 hours of arrest unless the Court issues an order extending temporary detention. The extension must not exceed 72 hours from the time of arrest. If the initial appearance is not held within 36 hours of the arrest, or 72 hours if the detention time is extended, then the defendant must be immediately released.

**(b) Setting of a Time for Initial Appearance.** The Chief Judge will ensure that a judge is available every day of the week to hold initial appearances required by Section (a). The Chief Judge will also set the schedule for conducting initial appearances and notify the Tohono O'odham Police Department and Prosecutors' Office of the schedule and any changes.

**Rule 4.2. Initial Appearance; Waiver of Separate Arraignment Date; Obligation of Nation to Inform the Court of Sentencing Intentions.**

**(a) In General.** At the defendant's initial appearance, the judge must:

(1) determine the defendant's true name, mailing address, and physical address, and, must, upon motion, amend the formal charges to reflect any corrections;
(2) Instruct the defendant to notify the Court promptly in writing of any change in address;
(3) determine that the defendant has a copy of the complaint and has the opportunity to review the complaint;
(4) inform the defendant of the right to counsel and the right to remain silent;
(5) set the conditions of release, if any, including any bond; and
(6) set a date and time for the defendant to appear for his or her arraignment on the charges; and
(7) set dates and times any additional hearings requested by the parties or in the interests of justice.

**(b) Waiver of Separate Arraignment Date.** Upon a defendant's request to waive a separate arraignment date, the Court may arraign the defendant at the initial appearance in accordance with Rule 4.3.

**(c) Obligation of Nation to Inform the Court of Sentencing Intentions.** The prosecutor must inform the Court whether the Nation seeks to impose a total term of imprisonment of more than one year. If the Nation seeks to impose a total term of imprisonment of more than one year after the initial appearance, the Nation must notify the Court no later than 30 days before trial.

**Rule 4.3. Arraignment.**

**(a) In General.** At the defendant's arraignment, the judge must advise the defendant of his or her rights, determine the defendant's plea to each charge, decide release conditions, and set subsequent court dates.

**(b) Amending a Complaint.** The Court may grant a motion to amend a complaint so that its factual allegations conform to the evidence. The Court must not hold the defendant to answer for crimes different than those charged in the original complaint.

**(c) Altering Charges; Amending to Conform to the Evidence.** An arraignment limits a trial to the specific charge or charges stated in the initial complaint. Unless the defendant consents, a charge may be amended only to correct mistakes of fact or remedy formal or technical defects. The charging document is considered amended to conform to the evidence admitted during any court proceeding. The parties may agree to amend or add a charge as part of a plea agreement.

**(d) Rights of the Accused.** Before a defendant can plead to any charge, the judge must advise the defendant of the defendant's rights.

**(e) Pleas.**

(1) *Reading of the Complaint; Waiver*. Before hearing the defendant's plea, the judge must read to the defendant the complaint and the section(s) of the Tohono O'odham Code which the defendant is charged with violating. The judge must read the maximum penalty for each charge. The judge must determine that the defendant understands the charge(s) and penalty(ies). The defendant may request to waive reading the charge(s).
(2) *Pleas*. The defendant may enter a plea of not guilty, guilty, or no contest (if permitted by law and in the best interests of justice) to each charge. If the defendant fails to enter a plea, the judge must enter a plea of not guilty on the defendant's behalf.

**Rule 4.4. Victims' Rights.**

At the commencement of any proceeding the judge must:

**(a)** Ask the prosecutor or otherwise determine if the victim has requested notice and/or has been notified of the proceeding.

**(b)** Determine if the victim is present and wishes to address the Court.

**(c)** Determine if the victim has been advised of his or her rights as a victim and received a written copy of the victim's rights. If needed, the Court may recess the hearing to permit the Nation to notify the victim of his or her rights and provide a written copy.

**(d)** Determine if the victim has been notified about the hearing. If the victim has not been notified and a party requests a continuance, the judge may reschedule the hearing so long as it does not violate the law or public policy.

**Rule 4.5. Plea of Guilty or No Contest.**

**(a)** A defendant may make a plea of guilty or no contest only in open court. The Court must reject a no contest plea when such a plea is not allowed by a law of the Nation.

**(b)** Before accepting a plea of guilty or no contest the judge must determine that:

(1) there is a factual basis for the plea;
(2) the defendant has been advised of his or her rights and wishes to waive those rights;
(3) the plea is voluntary and not the result of force, threats, or promises (other than a plea agreement); and
(4) if there is a victim, that the Nation has conferred with the victim or that the victim has waived his or her rights.

**(c)** A plea of no contest may be accepted only after the Court considers the parties' views, public interests. The Tohono O'odham Code may prevent pleas of no contest with certain types of charges.

**(d)** A defendant placed on probation will constructively begin that term of probation when

the Court accepts and enters the defendant's plea. The defendant is considered to have received constructive notice of the imposition of probation at that hearing. The defendant must then report to the Probation Department to sign probation documents as ordered by the Court.

**(e)** The Court may schedule a sentencing hearing to occur no more than 30 days following the defendant's guilty or no contest plea when made without a plea agreement. The Court may request a presentence report from the probation department.

**Rule 5. Speedy Trial; Excluded Periods; Continuances.**

**(a) Speedy Trial.** Every person against whom a complaint is filed must be tried within 120 days from the person's arraignment, except for those excluded periods in Subsection (b) of this Rule.

**(b) Excluded Periods.** These periods will be excluded from the computations of the time limit in Subsection (a).

(1) Delays occasioned by or on behalf of the defendant, including delays caused by an examination and hearing to determine competency or mental retardation, the defendant's absence or incompetence, or his or her inability to be arrested or taken into custody within the Tohono O'odham Nation.
(2) Delays resulting from requesting a new probable cause determination.
(3) Delays resulting from extension of the time for disclosure.
(4) Delays required by congestion of the trial calendar, but only when the congestion is attributable to extraordinary circumstances, in which the Chief Judge suspends any of the Rules of Criminal Procedure. This includes:
(A) The 30 days period between the start date of June 16, 2016 and the end date of July 15, 2016 is excluded time; and
(B) The 77 days between the starting date of March 19, 2020 and the ending date of June 4, 2020 is excluded time.
(5) Delays resulting from continuances.
(6) Delays resulting from joinder for trial with another defendant for whom the time limits have not expired when there is good cause for denying severance. In all other cases, severance should be granted to preserve the applicable time limits.

**(c) Continuances of Trial Dates.**

(1) *Form of Motion.* A continuance of a trial may be granted on the motion of a party. Any such motion must be in writing and specify the reason(s) justifying the continuance.
(2) *Grounds for Motion.* A continuance of any trial date will be granted it is shown that extraordinary circumstances exist and that the delay is indispensable to the interests of justice. In ruling on a motion for continuance, the Court must consider the rights of the defendant and any victim to a speedy disposition. If the continuance is granted, the Court must state the specific reasons for the continuance on the record.

**Rule 6. Setting of Hearings.**

**(a) Arraignment Date.** The arraignment in criminal and traffic cases will be set as closely as possible to the time frames stated below:

(1) *Defendant Out of Custody.* The arraignment for defendants out of custody will be set within 45 days after the complaint was filed.
(2) *Defendant In Custody.* The arraignment for defendants held in custody must be set for the next regularly scheduled arraignment date. If at the Initial Appearance the defendant is released from custody or permitted release by third-party signature or bond, the arraignment date will be set for two weeks after the initial appearance.

**(b) Hearings Set At Arraignment.** At criminal and traffic arraignments these dates will be set as closely as possible to the time frames stated below upon a plea of not guilty:

(1) *Pretrial Conference*. The pretrial conference date will be set two weeks after the arraignment on a date proposed by the Nation.
(2) *Pretrial Hearing*. The pretrial hearing date will be set two weeks after the pretrial conference.

**(c) Trial Date.**

(1) The trial date will be set at the pretrial hearing, or at any subsequent hearing where it is determined that the matter will go to trial.
(2) The defendant must request either a jury trial or a bench trial at the pretrial hearing and such request is considered final.
(3) The Court must inform a defendant who requests a trial by jury that the defendant will waive the right to a jury trial if the defendant fails to appear at the trial.
(4) Trial dates may only be continued upon showing extraordinary circumstances under Rule 5(c).

**Rule 7. Pretrial Conference; Disclosure by the Nation; Pretrial Conference Case Status Report.**

**Rule 7.1. Pretrial Conference.**

Although the pretrial conference is set in court, the parties may agree to reschedule the date without the Court's approval.

**Rule 7.2. Disclosure by the Nation.**

**(a) Disclosure; Scope.** Unless otherwise ordered by the Court, or restricted by law or rule (i.e., the Victims' Rights Law, 7 T.O.C. Ch. 4), the prosecutor must provide to the defendant the following within the prosecutor's possession or control:

(1) the names and addresses of all persons whom the prosecutor intends to call as witnesses in the case-in-chief together with their relevant written or recorded

statements;

(2) all statements of the defendant and of any person who will be tried with the defendant;

(3) all existing original and supplemental reports prepared by any law enforcement agency concerning the offense with which the defendant is charged;

(4) the names and addresses of any experts who have personally examined a defendant or any evidence, with the results of any physical examinations, scientific tests, experiments, or comparisons that have been completed;

(5) a list of all papers, documents, photographs or other tangible objects that the prosecutor intends to use at trial or which were purportedly obtained from or belong to the defendant;

(6) a list of all prior convictions of the defendant which the prosecutor intends to use at trial;

(7) a list of all prior acts of the defendant which the prosecutor intends to use to prove motive, intent, knowledge, or otherwise use at trial;

(8) all existing material or information which mitigates or negates the defendant's guilt as to the offense charged, or which could reduce the defendant's punishment;

(9) whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;

(10) whether a search warrant has been executed;

(11) whether the case has involved an informant, and if so, the informant's identity, unless the informant will not be called to testify or where disclosure would result in substantial risk to the information or to the informant's operational effectiveness, provided failing to disclose will not infringe upon the rights of the accused; and

(12) a list of the prior convictions of witnesses whom the prosecutor intends to call at trial.

**(b) Time for Disclosure.** Unless otherwise ordered by the Court, the prosecutor must disclose the materials and information in Subsection (a) by the initial date set for the pretrial conference. *See* Rule 7.3(c). If the Defendant is awaiting appointment of counsel, the prosecutor must disclose the materials and information to the defendant until a Notice of Appearance is filed.

**(c) Prior Convictions.** The prosecutor must provide to the defendant a list of the prior convictions that the prosecutor intends to use to impeach a disclosed defense witness at trial, at least 10 days before the trial.

**(d) Additional Disclosure upon Request and Specification.**

(1) *Additional Disclosure.* Unless otherwise ordered by the Court, the prosecutor must, within 30 days of a written request, provide to the defendant for examination, testing, and reproduction:

(A) Any specified items contained in the list submitted under Subsection (a) of this Rule.

(B) Any 911 call records existing at the time of the request that can reasonably be determined by the custodian of the record to be related to the case.

(C) Any completed written reports, statements and examination notes made by

experts listed in Subsection (a)(1) and (a)(4).

(2) *Reasonable Conditions.* The prosecutor may impose reasonable conditions, including an appropriate stipulation about the chain of custody to protect physical evidence produced under this section or to give time to complete any examination of such items.

**(e) Disclosure by Prosecutor.** The prosecutor's duty under this Rule extends to material and information in the possession or control of the following:

(1) the prosecutor, or members of the prosecutor's staff;
(2) any law enforcement agency which has participated in the investigation and that is under the prosecutor's direction or control; or
(3) any other person who has participated in the investigation or evaluation and who is under the prosecutor's direction or control.

**(f) Disclosure by Order of the Court.** Upon a showing that the defendant has substantial need for material or information not otherwise covered by Rule 7.2 and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the Court may order additional disclosure. The Court may, upon the request of any person affected by the order, vacate or modify the order if the Court finds that compliance would be unreasonable or oppressive.

**(g) Disclosure of Rebuttal Evidence.** Upon receipt of the notice of defenses required from the defendant, the Nation must disclose the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses. The notice must include rebuttal witnesses relevant written or recorded statements.

**Rule 7.3. Case Status Report.**

The Nation must file a case status report with the Court after any scheduled, or rescheduled, pretrial conference at least three days before the pretrial hearing.

**(a) Case Status Report.** The case status report must state:

(1) Whether the pretrial conference took place.
(2) If the pretrial conference took place, the case status report must identify the reports, other documents, and any other evidence, including any witnesses, disclosed to the defendant.
(3) If the scheduled pretrial conference did not take place, the case status report must state the reason why the pretrial conference did not occur. The case status report must state any rescheduled date, and whether information under Rule 7.2 was delivered or sent to the defendant or the defendant's counsel on the original scheduled date.

**(b) Failure to Disclose a Police Report.** Upon motion of a party, the Court may dismiss the case without prejudice if the primary police report, the investigative report, or a comparable report was not provided to the defendant at the pretrial conference.

## Rule 8. Disclosure by Defendant.

### Rule 8.1. Physical Evidence.

**(a)** After the filing of the complaint, or upon the written request of the prosecutor, a defendant charged with a crime must:

(1) appear in a line-up;
(2) speak for identification by witnesses;
(3) be fingerprinted, palm-printed, foot-printed, or voice printed;
(4) pose for photographs not involving re-enactment of an event;
(5) try on clothing;
(6) permit taking samples of his or her hair, blood, saliva, urine, or other specified materials that involves no unreasonable intrusions of his or her body; and
(7) submit to a reasonable physical or medical inspection of his or her body, provided such inspection does not include psychiatric or psychological examination.

**(b)** The defendant is entitled to the presence of counsel while taking such evidence. This Rule may supplement, but not limit, any other procedures established by law.

### Rule 8.2. Notice of Defenses.

Within the time specified in Rule 8.4, the defendant must provide written notice to the prosecutor specifying all defenses to which the defendant intends to introduce evidence at trial, including, by not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice must specify for each listed defense the persons, including the defendant, whom the defendant intends to call as a witness at trial. Either the defendant or defendant's counsel may sign the notice, and it must be filed.

### Rule 8.3. Disclosure by Defendant; Scope.

Simultaneously with the notice of defenses submitted under Rule 8.2, the defendant must provide to the prosecutor the following material and information to be in the possession or control of the defendant:

**(a)** The names and addresses of all persons, other than that of the defendant, whom the defendant intends to call as a witness at trial, with their relevant written or recorded statements;

**(b)** The names and addresses of any experts whom the defendant intends to call at trial, together with the results of the defendant's physical examinations and of scientific tests, experiments, or comparisons that have been completed; and

**(c)** A list of all papers, documents, photographs, and other tangible objects that the defendant intends to use at trial.

### Rule 8.4. Time for Disclosure.

Unless otherwise ordered by the Court, the defendant must disclose the materials and

information in Rules 8.2 and 8.3 no later than 15 days after the prosecutor's disclosure under Rule 7.2(b).

**Rule 8.5. Additional Disclosure upon Request and Specification.**

**(a)** Unless otherwise ordered by the Court, the defendant, within 30 days of a written request, must provide to the prosecutor for examination, testing, and reproduction:

(1) Any specified items in the list submitted under Rule 8.3(c).
(2) Any completed written reports, statements, and examination notes made by experts in Rule 8.3(a) and (b).

**(b)** The defendant may impose reasonable conditions, including a stipulation about the chain of custody, to protect the physical evidence produced, or to allow time to complete any examination or testing of such items.

**Rule 8.6. Scope of Disclosure.**

The defendant's duty under these Rules extends to material and information within the possession or control of the defendant, the defendant's attorneys, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation and who are under the defendant's direction or control.

**Rule 8.7. Disclosure by Order of the Court.**

The prosecutor may file a motion asking for additional disclosure not otherwise covered by Rule 8.

**(a) Motion Contents.** The prosecutor must show:

(1) the prosecutor has substantial need for the material or information;
(2) the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means; and
(3) that disclosure of it will not violate the defendant's constitutional rights.

**(b) Challenges to the Order.** The Court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

**Rule 9. General Standards of Disclosure; Continuing Duty to Disclose; Final Deadline; Sanctions.**

**Rule 9.1. General Standards of Disclosure.**

In all disclosure under this Rule, the following will apply:

**(a) Statements.**

(1) *Definition.* The term "statement" when it appears in a criminal rule about disclosure will mean:

(A) a writing signed or otherwise adopted or approved by a person;
(B) a mechanical, electronic, or other recording of a person's oral communications or a transcript of it, and
(C) a writing containing a verbatim record or a summary of a person's oral communications.

(2) *Superseded Notes.* Handwritten notes that have been substantially incorporated into a document or report within 20 working days of the notes being created, or that have been otherwise preserved electronically, mechanically, or by verbatim dictation, will no longer themselves be considered a statement.

**(b) Work Product.** Disclosure will not be required of legal research or of records, correspondence, reports, or memoranda if they have the opinions, theories, or conclusions of the prosecutor, members of the prosecutor's legal or investigative staff, or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff.

**(c) Excision and Protective Orders.**

(1) *Discretion of the Court to Deny, Defer, or Regulate Disclosure.* Upon motion of any party, the Court may order that disclosure of the identity of any witness be deferred for any reasonable period not to extend beyond five days before the date set for trial, or that any other disclosures required be denied, deferred, or regulated when the Court finds:
(A) that the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and
(B) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) *Discretion of the Court to Authorize Excision.* Whenever the Court finds, on motion of any party, that only a part of a document, material, or other information is subject to disclosure under these Rules, it may allow the party disclosing it to excise the part of the material that is not subject to disclosure and to disclose the remainder.

(3) *Protective and Excision Order Proceedings.* On motion of the party seeking a protective or excision order, or submitting to the Court for a determination as to whether any document, material, or other information is subject to disclosure, the Court may permit the party to present the material or information for the inspection of the judge alone. Counsel for all other parties may be present when such presentation is made.

(4) *Preservation of Record.* If the Court enters an order that any material, or portion of it, is not subject to disclosure under this Rule, the entire text of the material must be sealed and preserved in the record to be provided to the appellate court.

**(d) Failure to Call a Witness or Raise a Defense.** The fact that a witness' name is on a disclosure list, or that a matter in the notice of defenses is not raised, must not be commented upon at the trial, unless the Court on motion of a party, allows such comment after finding that inclusion of the witness' name or defense was an abuse of the applicable disclosure rule.

**(e) Use of Materials.** Any materials given to counsel under a disclosure rule must not be

disclosed to the public, but Counsel may disclose the materials to others to the extent necessary for the proper conduct of the case.

**(f) Requests for Disclosure.** All requests for disclosure under Rules 7.2 and 8 must be made to the opposing party.

## Rule 9.2. Continuing Duty to Disclose; Final Deadline.

**(a) Continuing Duties.** The duties prescribed in the disclosure rules are continuing duties and each party must make more disclosure, reasonably, whenever new or different information subject to disclosure is discovered. This duty continues even if another party fails to make required disclosure under these Rules.

**(b) Additional Disclosure.** Any party that determines more disclosure may be forthcoming within 30 days of trial must immediately notify both the Court and the other parties of the circumstances and when the disclosure will be available.

**(c) Final Deadline for Disclosure.** Unless otherwise permitted, all required disclosure must be completed at least seven days before trial.

**(d) Disclosure After the Final Deadline.** A party seeking to use material or information not disclosed at least seven days before trial must file a motion with the Court asking to extend the time for disclosure and to use the material or information. If the Court finds that the material or information could not have been discovered or disclosed earlier with due diligence and the material or information was disclosed right after its discovery, the Court must grant a reasonable extension to complete the disclosure and grant leave to use the material or information. Absent such a finding, the Court may either deny leave or grant a reasonable extension to complete the disclosure and to use the material or information. If granted, the Court may impose any sanction other than preclusion or dismissal in Rule 9.3.

**(e) Extension of Time for Scientific Evidence.** Upon a motion filed before the final deadline for disclosure under Subsection (c) of this Rule, supported by affidavit from a crime laboratory representative or other scientific expert that more time is needed to complete scientific or other testing, or reports based thereon, and specifying the additional time needed, the Court must, unless it finds that the request for extension resulted from dilatory conduct, neglect, or other improper reason by the moving party or person in Rule 7.2(e) or 8.6, grant a reasonable extension in which to complete disclosure. The period of the extension is excluded from all periods otherwise prescribed in the disclosure rules.

## Rule 9.3. Sanctions.

**(a) Failure to Make Disclosure.** If a party fails to make a required disclosure, any other party may move to compel disclosure and for appropriate sanctions. The Court must order disclosure and may impose any sanction it finds appropriate, unless the Court finds that failing to comply was harmless or that the information could not have been disclosed earlier even with due diligence, and the information was disclosed right after

its discovery. All orders imposing sanctions must consider the significance of the information not timely disclosed, the impact of the sanction on the party and the victim, and the stage of the proceedings at which the disclosure is ultimately made. Available sanctions include, but are not limited to:

(1) precluding or limiting the calling of a witness, use of evidence or argument in support of or in opposition to a charge or defense;
(2) dismissing the case with or without prejudice;
(3) granting a continuance or declaring a mistrial when necessary in the interests of justice;
(4) holding a witness, party, person acting under the direction or control of a party, or counsel in contempt;
(5) imposing costs of continuing the proceedings; or
(6) any other appropriate sanction.

**(b) Statement of Good Faith Efforts.** No motion brought under Subsection (a) above will be considered or scheduled unless a separate statement of moving counsel is attached certifying that, after personal consultation and good faith efforts to do so, counsel cannot satisfactorily resolve the matter.

**Rule 10. Pretrial Hearings; Purpose; Attendance.**

**(a) Purpose.** The purpose of the pretrial hearing includes, but is not limited to, allowing the defendant to confirm or waive his or her request for a jury trial; to provide a forum for changes of plea; to provide a forum for the parties to inform the Court of disclosure and discovery problems; to verify readiness to go to trial; and setting a trial date.

**(b) Attendance.** The attendance of the defendant, defense counsel (if any), and the prosecutor are mandatory.

**Rule 11. Subpoenas.**

Subpoenas in criminal cases must substantially comply with the form in these Rules and are subject to the rules governing subpoenas in a civil action.

**Rule 12. Extradition.**

**Rule 12.1. Applicability.**

These Rules apply to adults, and persons under the age of eighteen who are under the jurisdiction of the Adult Criminal Division of the Tohono O'odham Courts at the time of filing any petition or warrant allowed under these Rules. No person under the age of eighteen will be subject to extradition based upon any proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or proceeding that is not criminal. *See* 7 T.O.C. Ch. 2.

**Rule 12.2. Requirement of Certified Documents.**

When, under these Rules, a certified document from a foreign jurisdiction is required, the document must bear an original seal or electronic stamp from the foreign jurisdiction.

## Rule 12.3. Domestication of Foreign Warrant.

**(a) Motion.** The Nation may file a motion for domestication of an arrest warrant issued by a foreign jurisdiction, as defined by Rule 2.1 of the Tohono O'odham Recognition and Enforcement of Foreign Judgments, by attaching a copy of the demanding jurisdiction's arrest warrant. The motion must state:

(1) if probable cause exists to believe that the person is within the exterior boundaries of the Tohono O'odham Nation or is subject to the Nation's jurisdiction; and
(2) if the person is charged with a crime in the demanding jurisdiction; or
(3) if the person was convicted of a crime in the demenanding jurisdiction and has either escaped from custody or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction.

**(b) Order.** The Court must recognize the arrest warrant of the foreign jurisdiction if it determines that the Nation has established probable cause on the allegations in its motion, and will issue an arrest warrant to obtain the appearance of the person.

## Rule 12.4. Petition for Extradition and Warrant.

**(a) Petition.** The Nation may file a petition for the extradition of a person if probable cause exists to believe that the person is within the exterior boundaries of the Tohono O'odham Nation or is subject to the Nation's jurisdiction, and is charged with a crime in the demanding jurisdiction, or has been convicted of a crime in the demanding jurisdiction and has:

(1) escaped from confinement; or
(2) violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction.

**(b) Contents.** The petition must allege the requirements of Subsection (a) of this Rule, the name of the demanding jurisdiction, the crime charged or other basis for the demand, a copy of any applicable waiver of an extradition hearing signed by the defendant, and a certified copy of an arrest warrant, and provide one of these supporting documents:

(1) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provision of law defining the crime;
(2) a certified copy of the charging instrument upon which the arrest warrant is based;
(3) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding; or
(4) a certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

**(c) Additional Requests.** If a demanded person is being prosecuted, is in custody, is on

parole or probation, or is subject to an order arising out of a criminal proceeding on the Tohono O'odham Nation, the Nation may request:

(1) extradition upon conditions, including a provision that the demanded person must be returned to the Tohono O'odham Nation immediately after completion of the demanding jurisdiction's prosecution;
(2) delay of the pending action on the Tohono O'odham Nation; or
(3) the extradition, but waive the demanded person's immediate return to the Nation. The waiver must be filed with the Court before an order to transfer custody is issued.

**(d) Warrant.** The Nation's warrant must have the name of the demanding jurisdiction and the crime charged or other basis for the demand. The warrant will only become valid upon the signature of a judge of the Tohono O'odham Court.

**Rule 12.5. Initial Appearance.**

**(a) Initial Appearance.** A person arrested under these Rules must be brought before a judge of the Tohono O'odham Courts within 36 hours for an initial appearance.

**(b) Rights.** The defendant must be informed of:

(1) the name of the jurisdiction demanding extradition;
(2) the crime charged or other basis for the demand;
(3) the right to the assistance of counsel at the person's expense; and
(4) the right to an extradition hearing before a transfer of custody to the demanding jurisdiction, which may be waived if the defendant consents to the extradition or if the defendant signed a waiver in the demanding jurisdiction.

**(c) Setting Extradition Hearing.** If the defendant does not waive the extradition hearing, the hearing must be set within 10 days after the initial appearance and the defendant, counsel, if any, and the Nation must be given notice in open court of the time and place of the hearing.

**(d) Release Pending Hearing.** The defendant will be held in custody pending the extradition hearing unless the arrest was made under Rule 12.3 and the Nation does not attach a supporting document as required under Rule 12.3(b). If arrested under Rule 12.3 and a Rule 12.4(b) supporting document is missing, the Court may set release conditions that will reasonably assure availability of the defendant for the extradition hearing. If ordered, any conditions of release must also include posting a bond not less than any bond set in the demanding jurisdiction. An order setting release conditions under this subsection must not affect any custody or conditions of release ordered in a criminal action brought by the Nation.

**Rule 12.6. Waiver.**

**(a) Prior Waiver.** If the defendant has previously executed a waiver of extradition hearing as a condition of probation, parole, or otherwise, the Court will issue an order to transfer custody under Rule 12.8, or with the consent of the executive authority of the

demanding jurisdiction, allow the voluntary return of the defendant. No previously executed waiver of extradition will be recognized unless the copy of the waiver filed with the Court has the defendant's signature.

**(b) Waiver at Initial Appearance.** If, after being informed of the right to an extradition hearing, the defendant waives the right to a hearing, the defendant must sign a written waiver in the presence of the judge. Upon signing the waiver the Court must issue an order to transfer custody under Rule 12.8, or with the consent of the executive authority of the demanding jurisdiction, allow the voluntary return of the defendant.

**Rule 12.7. Extradition Hearing.**

**(a) Transfer Order; Defense.** Upon a finding that a petition and warrant are supported by the documentation required by Rule 12.4, the Court must issue an order to transfer custody under Rule 12.8 unless the defendant establishes by clear and convincing evidence that defendant is not the demanded person.

**(b) No Inquiry Into Guilt.** The Court must not ask about the guilt or innocence of the accused except as may be necessary in identifying the defendant as the person demanded.

**(c) Voluntary Return.** The Court may allow the voluntary return of the defendant if the Nation consents.

**(d) No Appeal.** Neither an order to transfer custody nor an order to deny transfer is open to appeal.

**Rule 12.8. Transfer of Custody.**

**(a) Order to Transfer.** The Court's order to transfer custody must direct a law enforcement officer to take or keep the defendant in custody until an agent of the demanding jurisdiction is available to take custody. *See* 7 T.O.C. Ch. 2 § 4.1(A).

**(b) Time Limits.** If the demanding jurisdiction has not taken custody of the defendant within five business days, the Nation may file a written motion requesting an extension of time for the transfer. The motion must be filed before the close of business on the fifth business day following the Court's original transfer order. The Court may extend the original order for an additional 10 days upon showing good cause by the Nation for the failure of the demanding jurisdiction to take custody.

**(c) Release.** If the defendant has not been taken into custody by the demanding jurisdiction within the time specified in the order, the defendant must be released. No order to transfer custody may be entered unless a new arrest warrant to obtain the appearance of the defendant is issued as a result of a new demand for extradition.

**(d) Effect on Tribal Proceedings.** An order releasing the defendant from custody under these Rules will not affect any custody or conditions of release ordered in a separate criminal action brought by the Nation. Any criminal proceeding pending in the Court

will be stayed pending a hearing in the Court after the defendant's return to the Tohono O'odham Nation.

**(e) Financial Liability.** A defendant who is returned to the Nation may file a written petition, with notice to the Nation, requesting that the Nation pay for the cost of the defendant's subsistence and transportation to the place of the defendant's initial arrest or the person's residence if the defendant is acquitted of the charge that constituted the basis of the defendant's return. The Nation will have 10 days to respond, and the Court must schedule a hearing on the merits of the petition.

## Rule 13. Federal Habeas Corpus.

### Rule 13.1. Applicability.

These Rules apply to adults, and persons under the age of eighteen who are under the jurisdiction of the Adult Criminal Division of the Tohono O'odham Courts at the time of filing a motion to grant comity. No person under the age of eighteen will be subject to transfer based upon any proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or proceeding that is not criminal. *See* 7 T.O.C. Ch. 2.

### Rule 13.2. Requirement of Certified Documents.

When, under these Rules, a certified document from a foreign jurisdiction is required, the document must bear an original seal or electronic stamp from the demanding jurisdiction.

### Rule 13.3. Motion to Grant Comity.

The Nation's motion to grant comity must include the federal writ of habeas corpus and a certified arrest warrant.

### Rule 13.4. Transfer Order.

**(a) No Pending Tohono O'odham Criminal Matters.** If a defendant does not have pending Tohono O'odham criminal matters, the Court will grant comity and issue a transfer order, directing that the defendant be held in custody until transferred to an agent of the United States within five days.

**(b) Pending Tohono O'odham Criminal Matters.** If a defendant has pending Tohono O'odham criminal matters the Court will only grant comity and issue a transfer order directing that the defendant be held in custody until transferred to an agent of the United States within five days upon finding that:

(1) the federal writ requires the defendant to be returned to the custody of the Tohono O'odham Nation right after completion of the federal prosecution, or
(2) the Nation files a written waiver of the defendant's immediate return with the Court.

### Rule 13.5. Time Limits.

If an agent of the United States has not taken custody within five days of issuing the transfer

order, the Nation may file a written motion requesting an extension of time for the transfer. The party must file the motion before the close of business on the fifth business day following the Court's original transfer order. The Court may extend the original order for an additional 10 days upon showing good cause by the Nation for the failure of the United States to take custody.

**Rule 13.6. Release.**

If the defendant has not been taken into custody by the United States within the time specified in the order, the defendant must be released. No order to transfer custody may be entered unless a new arrest warrant is issued as a result of a new writ of habeas corpus.

**Rule 13.7. Effect on Tribal Proceedings.**

If the Court grants comity to the federal writ, the Court will stay the Nation's proceedings pending a hearing in the Court after the defendant's return to the Tohono O'odham Nation.

**Rule 14. Imposition of Incarceration.**

**(a) Presumption of Consecutive Sentences.** Any time the Court imposes a sentence for two or more offenses, the sentence is presumed that the defendant will serve the sentences consecutively. The Court may order concurrent sentences at the discretion of a judge.

**(b) Credit for Time Served.** Any time the Court orders credit for time served, the credit for time served is presumed that it follows the consecutive or concurrent designation of the underlying sentence and that the credit will be calculated consecutively or concurrently based on the designation of the underlying sentence. If the Court does not specifically order credit for time served, it is presumed that the sentence does not include credit for time served.

**Rule 15. Restitution.**

**Rule 15.1. Information Provided to Defendants and Victims.**

**(a) Defendants.** The Nation must provide a copy of the Defendant Restitution Information and Instructions sheet in substantial compliance with the form in these Rules to defendants at their pretrial conference as part of disclosure when restitution is a potential penalty.

**(b) Victims.** Before any request for restitution as part of sentencing or a plea agreement, the Nation must provide a copy of the Victim Restitution Information and Instructions sheet in substantial compliance with the form in these Rules to the victim.

**Rule 15.2. Restitution Form; Redaction; Payment Plan.**

**(a)** Whenever possible, the Prosecutors' Office should file a completed Restitution Form with any plea agreement that includes a request for restitution or before any sentencing or disposition hearing in which restitution will be requested.

**(b)** A victim may file a completed Restitution Form with the Court, independent of the Prosecutors' Office, if the Court has ordered restitution.

**(c)** The Prosecutors' Office must provide a conformed copy to the defendant with all attachments.

**(d)** If the victim has opted to keep his or her contact information confidential, the Prosecutors' Office must redact all contact information from the form, except for the victim's name, on the copy delivered to the defendant and must file both the redacted copy and a full copy with the Court.

**(e)** If the defendant cannot immediately pay restitution in full, the Court will set a payment plan at the restitution hearing. The parties may submit a proposed payment plan with the plea agreement or at the restitution hearing.

**(f)** A victim must complete a new Restitution Form when the victim's contact information changes.

**Rule 15.3. Restitution Orders.**

**(a)** When ordering restitution, the Court must specify in the order the amount of restitution due to each victim for each case or charge, set a due date for payment or order a payment schedule.

**(b)** If a restitution amount is not submitted before the sentencing/plea hearing, the Court may waive restitution or, upon showing good cause, order restitution with an upper cap and set a restitution hearing within 30 days of the sentencing/plea hearing to set an exact amount and payment plan.

**(c)** If a restitution amount is not provided at the restitution hearing, the Court may waive the payment of restitution in the criminal proceeding, or, upon showing good cause, reschedule the restitution hearing.

**Rule 15.4. Restitution Payment Form.**

A defendant making a restitution payment must submit a Restitution Payment Form in compliance with the form in these Rules for each restitution payment made.

**Rule 16. Work Credit.**

**Rule 16.1. Purpose; Conversion; Restrictions.**

The intention of the work credit conversion is to shorten an imposed sentence of incarceration. The conversion of supervised, certified hours worked to benefit the corrections facility or community, and not otherwise credited as payment for any fines or restitution, or as community service hours required as part of any sentence. If granted, the defendant will receive two hours of detention time credit for every one hour worked. The Court may deny a defendant's request for work credit if he or she:

**(a)** is convicted of any offense with a penalty that requires mandatory detention or prevents

work credit, parole, probation, or early release;

**(b)** is completing a sentence on a violation of probation;

**(c)** is completing a sentence on a violation of parole;

**(d)** is convicted of any offense requiring registration as a sex offender or any offense against elders or children, including Contributing to the Delinquency of a Minor;

**(e)** is ineligible for credit because the sentencing order specifically states that the defendant may not accumulate work credit or credit for community service;

**(f)** has disciplinary incidents or write-ups while in custody; or

**(g)** does not meet the Corrections classification level allowing eligibility to participate in community service.

**Rule 16.2. Petition.**

Defendant must file a signed petition that substantially complies these Rules for work credit and attach:

**(a)** A written record of all hours completed, providing:

(1) the job or activity performed by the defendant on each date. The description must have enough information to readily identify what work was completed. If the nature of the work cannot be identified, then that time will not be used in the calculation. If multiple jobs or activities are performed on a specific date, then each job or activity must be listed and endorsed separately;
(2) the hours completed for each job or activity; and
(3) endorsement by a Corrections Officer, who must include his or her badge number, for each recorded entry.

**(b)** A list of all programs, counseling, education, treatment, or other services defendant has participated in while in custody; and

**(c)** A Corrections Certification of Defendant's Petition to Convert Work Hours to Credit for Detention Days Served in substantial compliance with the form in these Rules signed by a Corrections Officer certifying that the Corrections Officer has reviewed the petition and that the defendant:

(1) is eligible for work credit;
(2) has performed the jobs or activities listed;
(3) has participated in the services listed; and
(4) has had no disciplinary action or write-ups taken against him/her while in custody.

**Rule 17. Conversion of Fines to Community Service.**

The Court will convert all community service imposed in lieu of a fine based on the applicable

federal minimum wage at the time the community service is ordered.

**Rule 18. Habeas Corpus.**

A petition for habeas corpus to inquire into the cause of a defendant's detention or imprisonment may be filed under the Rules of Procedure for Extraordinary Writs.

Section History

Adopted by Administrative Order 01-96 on March 1, 1996. Adopted February 17, 2000 by Administrative Order 02-00. Adopted by Administrative Order 03-03 on April 28, 2003. Amended October 12, 2007 by Administrative Order 04-07. Amended, reorganized and renumbered to combine all prior Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended on October 25, 2013 by Administrative Order 2013-04 to ensure compliance with the amendments of Section 1108 of Title 6, Chapter 1 of the Tohono O'odham Code. Amended by 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Rules of Procedure for Civil Offenses

### Rule 1. Applicability.

These Rules apply only in cases where a person is charged with a civil offense punishable by a fine. They do not apply to cases with criminal charges.

### Rule 2. Commencement; Form of Citations.

**(a) Commencement.** A civil offense is commenced by a citation issued by a Tohono O'odham law enforcement officer.

**(b) Form of Citations, Service, Filing.**

(1) *Civil Traffic Violations.*

(A) Contents of Citation. A civil traffic citation must have the following information: name, date of birth, and address of the respondent; the driver's license information; the time, date, and place of the alleged violation; reference to the civil traffic offense(s) violated; and the time, date, and place for the respondent to appear. The charging officer must sign the citation. The citation must also have the respondent's signature acknowledging receipt of the citation, or a notation by the officer that the respondent refused to sign.

(B) Service of Citation. The citation must be served on the respondent with a form specifying the total fine for each offense and the process for paying the fine or contesting the citation.

(C) Filing of Citation. The citation must be filed within 10 business days of the date the citation was issued. The court clerk will not accept a citation after 10 business days of the date it was issued.

(2) *Civil Offense Violations*.

(A) Contents and of Citation. A civil offense citation must have the following information: name, date of birth, and address of the respondent; the time, date, and place of the alleged violation; reference to the civil offense(s) violated; and the time, date, and place for the respondent to appear. The charging officer must sign the citation. The citation must also have the respondent's signature acknowledging receipt of the citation, or a notation by the officer that the respondent refused to sign.

(B) Service of Citation. The citation must be served on the respondent with a form specifying the process for contesting the citation.

(C) Filing of Citation. The citation must be filed under an arraignment schedule adopted by the Chief Judge.

**(c) Hearing Date.** The hearing date listed on the citation will be set under an arraignment schedule adopted by the Chief Judge.

## Rule 3. Amendment of the Civil Citation.

**(a)** A citation may be amended at any time if no additional or greater violation is charged and the substantial rights of the respondent are not violated.

**(b)** The Court will amend the citation to conform to the evidence offered at the hearing if no additional or greater violation is charged and if the amendment does not violate the substantial rights of the respondent.

**(c)** All amendments to a civil citation will relate back to the date of violation.

## Rule 4. Counsel.

**(a) Notice of Appearance.** Counsel for a respondent must file a Notice of Appearance before appearing in the action or filing any other document.

**(b) Motion to Withdraw.** Withdrawal from respondent's representation will be granted only upon a written or oral motion stating:

(1) the reason for the withdrawal;
(2) the consent of the respondent or why such consent is unobtainable; and
(3) the last known address of the respondent.

## Rule 5. Admission of Responsibility and Payment of Fine Without a Hearing.

**(a) Applicable Offenses.** This Rule only applies to civil traffic offenses and other civil offenses with a set fine. This Rule does not apply to civil offenses where the court may set the fine, such as violating a public health measure.

**(b) Purpose.** A respondent cited for a civil offense may plead responsible and submit a fine payment to the Court before the time set for arraignment. A respondent does not have to appear for the arraignment if the fine is paid in full and the respondent has a receipt showing that payment has been made.

**(c) Admission.** The respondent must complete and sign an Admission of Responsibility form, stating that the respondent is pleading responsible to the civil allegations. The Admission of Responsibility form must accompany the payment.

**(d) Payment.**

(1) *Method of Payment.* Payment may be made in person at the Tohono O'odham Justice Center, or by mail.
(2) *Form of Payment.* Payment must be by cash, cashier's check, or money order. Cash will only be accepted if paid in person at the Justice Center. Cashier's checks and money orders must be made out to the Tohono O'odham Nation.
(3) *Time of Payment.* No payment will be accepted if the payment is received earlier than five business days following the issuance of the civil traffic citation.
(4) *Partial Payment.* A payment less than the total due will be credited toward the fine(s) owed. Respondent is responsible for paying the balance due before the hearing.

**(e) Receipt.** A receipt will be made for a fine payment and provided to the respondent.

**(f) Responsibility to Appear at Hearing.** A respondent who does not pay the total fine or who does not have a copy of the receipt(s) showing payment in full must appear at the scheduled arraignment.

**Rule 5.1. Untimely Payment by Mail; Responsibility to Appear at Arraignment.**

**(a) Untimely Payment by Mail.** If the Court receives a fine payment by mail after the time for arraignment has passed, and the respondent fails to appear for the arraignment, the Court will return the payment and set a new arraignment date.

**(b) Responsibility to Appear.** The respondent must appear at the scheduled arraignment. If the respondent fails to appear, the Court may issue an Order to Show Cause against the respondent for why the respondent should not be held in contempt.

**(c) No Payment Accepted Pending Rescheduled Arraignment Date.** If an arraignment has been rescheduled, the Court will not accept payment towards the fine unless the respondent can show good cause for his or her tardiness. The Court may choose to allow the payment at its sole discretion.

**Rule 5.2. Procedure for Payment Errors.**

**(a) Early Payment.** Payments may not be accepted if made within 10 business days of the date of the citation. The respondent may resubmit the payment before the time set for arraignment, or appear at the arraignment.

**(b) Payment Greater Than Total Fine.** A respondent may file a written motion for refund within 90 days of the payment if the respondent believes the payment exceeded the total fine. The respondent must set forth the amount that should be refunded, and why the respondent believes the amount paid was in error.

**Rule 6. Appearance; Entry of Plea.**

**(a) Appearance.**

(1) *Appearance.* The respondent may admit or deny the allegations of the citation by appearing in person at the arraignment.
(2) *Nonappearance.* If the respondent fails to appear at the arraignment without good cause, the Court may issue an Order to Show Cause against the respondent for why the respondent should not be held in contempt for failing to appear.

**(b) Pleas.**

(1) *Plea of Responsible.* Upon an admission of responsibility to the allegation(s), the Court will order the fine for the matter admitted to be paid or converted into community service as stated in these Rules.
(2) *Plea of Not Responsible.* Upon a denial of one or all of the allegation(s), the Court will set a civil offense hearing for the denied allegation(s). The civil offense hearing will be set as closely as possible to 30 days following the arraignment. The hearing

will be heard without a jury.

**Rule 7. Discovery.**

**(a)** No prehearing discovery is required.

**(b)** Immediately before the civil offense hearing, both parties must produce for inspection any exhibits and written or recorded statements of any witness which may have been prepared and may be offered at the hearing. If the parties do not follow the rule, the Court may choose to grant a recess or reschedule the hearing. The Court may also choose to exclude the evidence that could not be timely produced.

**(c)** Either party may subpoena witnesses.

**Rule 8. Continuances and Rescheduling.**

The Court may, upon motion of any party or on its own motion, and for good cause, reschedule the civil offense hearing for a period not exceeding 60 days.

**Rule 9. Civil Offense Hearing.**

**(a) Oath.** All testimony must be given under oath or affirmation.

**(b) Rules of Evidence.** The Arizona Rules of Evidence, as permitted by Rule 1(c) of the Tohono O'odham General Rules of Practice, will not apply in civil offense proceedings. Subject to a determination by a judge, evidence that is relevant, material, and tends to prove a fact at issue is admissible. Nothing in this Rule is to be construed as overriding any Tohono O'odham Code provision relating to privileged communications.

**(c) Questioning of Witnesses.** The Court may, on its own motion, call and examine witnesses present at the hearing, including the respondent. No person may be examined or cross-examined at a hearing except by the Court, Counsel for a party, the Nation, or the respondent.

**(d) Order of Proceedings.** The order of proceedings is:

(1) Testimony of the Nation's witnesses.
(2) Testimony of defense witnesses.
(3) Testimony of the Nation's rebuttal witnesses, if any.
(4) Testimony of defense surrebuttal witnesses, if any.
(5) Argument of the parties or their counsel if permitted by the Court.
(6) Ruling by the Court.

**(e) Failure of the Nation to Appear.** If no witnesses for the Tohono O'odham Nation appear at the time set for hearing, the Court will dismiss the matter unless the Court, for good cause shown, continues the hearing to another date.

**Rule 10. Findings and Judgment.**

**(a) Finding of Responsibility.** If the Court finds for the Tohono O'odham Nation, the Court

will find the respondent responsible, enter judgment for the Nation, and impose a fine.

**(b) Finding of Not Responsible.** If the Court finds for the respondent, the Court will enter a finding of not responsible and dismiss the case.

## Rule 11. Appeal.

Any party may appeal from a final order or judgment under the Tohono O'odham Rules of Appellate Procedure. A respondent who admits responsibility waives the right to an appeal.

## Rule 12. Community Service.

**(a) Procedure.** A civil offense fine may be converted into community service provided:

(1) The respondent appears at the arraignment and, if applicable, the civil offense hearing.
(2) The respondent pleads responsible to the civil offense(s) charged or is found responsible at civil offense hearing.
(3) The respondent requests that the Court convert the fine into community service.

**(b) Applicable Minimum Wage.** All community service imposed in lieu of a fine will be calculated using the applicable federal minimum wage in effect when the community service is ordered.

Section History

This Court adopted the Tohono O'odham Rules of Civil Traffic Procedure by Administrative Order 2016-04 on November 2, 2016. Administrative Order 2020-02, adopted December 15, 2020, renamed the Section to Rules of Procedure for Civil Offenses, and amended the Section to include other civil offenses punishable by a set fine.

# TOHONO O'ODHAM RULES OF COURT

## Family Law and Will Procedures

**Rule 1. General Procedures.**

Unless otherwise provided by these Rules, the Tohono O'odham Rules of Civil Procedure will apply.

**Rule 2. Child Support Guidelines.**

**Rule 2.1. Purpose.**

**(a)** To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay;

**(b)** To make child support awards consistent for persons in similar circumstances;

**(c)** To give parents, guardians, legal custodians, and the Court guidance in establishing child support orders and to promote settlements; and

**(d)** To comply with federal law (42 U.S.C. § 651 et seq., 45 C.F.R. § 302.56).

**Rule 2.2. Premises.**

**(a)** These guidelines apply to all child support calculations in adult civil and children's civil courts.

**(b)** The child support award should permit the children a standard of living which approximates as closely as possible the one they would have had if the family remained together, recognizing the cost of maintaining two households.

**(c)** The child support obligation has priority over all other financial obligations.

**(d)** The fact that a custodial parent receives child support does not mean the parent is ineligible for spousal maintenance.

**(e)** The obligation to support other children will be considered by the court, but may not always entitle the paying parent to a reduction of support, proportionate or otherwise.

**Rule 2.3. Presumption.**

In any action to establish or modify child support, whether temporary or permanent, these guidelines should be used to establish or modify child support. The Court may deviate from the guidelines where their application would be inequitable. In such cases, the Court must specify the reasons these guidelines were not applied. A child support guidelines worksheet in substantial compliance with the forms in these Rules should be used in the child support calculations.

## Rule 2.4. Child Support Calculations.

### (a) Determination of Gross Income.

(1) Gross income includes income from any source, including but not limited to: income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workman's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal maintenance received.

(2) Gross income does not include benefits received from public assistance programs including, aid to families with dependent children, educational stipends, supplemental security income, food stamps, general assistance, or sums received as child support.

(3) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income. "Ordinary and necessary expenses" does not include amounts determined by the Court to be inappropriate for determining gross income for child support.

(4) Expense reimbursements or benefits received by a parent in employment or self-employment or operation of a business will be counted as income if they are significant and reduce personal living expenses.

(5) If a parent is unemployed or working below full earning capacity, the Court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, such as caring for children, the Court may attribute income to the parent up to his or her earning capacity. The attributed income may include but is not limited to: the noncustodial parent's assets, residence, employment and earnings history, job skills, education levels, literacy, age, health, criminal record, other employment barriers, and record of seeking work. In attributing income, the Court may also consider: the local job market, the availability of employers, prevailing earnings level in the local community, and other relevant background factors.

(6) The Court may consider the benefits a parent derives from remarriage, residence with a third party, expense-sharing, or other sources.

### (b) Adjustment of Gross Income.

(1) Spousal maintenance and court-ordered child support of other children, actually paid, will be deducted from the gross income of the payer. "Other children" means children who are not the subject of this child support determination, but support of children for whom the payer has a duty to support will be considered.

(2) The cost of medical insurance coverage for the children will be deducted from the gross income of a parent. If the medical insurance premium covers multiple people, the party requesting this adjustment must provide an itemization showing how much of the premium is attributable to each person.

(3) Supplemental considerations–other factors which may warrant adjustments to the gross income of the payer. These include:

(A) the overall financial circumstances and need of both parents;

(B) the proportionate share of community debts and expenses paid;

(C) tax considerations; and
(D) any other relevant factors.

(4) The Court must determine any particular supplemental consideration on an individual basis and in its own discretion.

**(c) Determination of Parental Adjusted Gross Income.** Adjusted Gross Income is gross income minus adjustments. The Adjusted Gross Income for each parent will be established, and then added together. The product is the Combined Adjusted Gross Income.

**(d) Determination of Basic Child Support.** The parties will match the Combined Adjusted Gross Income figure on the Schedule of Basic Child Support Obligation to the column for the number of children involved. The product is the Basic Child Support Obligation.

**(e) Determination of Total Child Support.**

(1) The Court may add the following to the Basic Obligation:
(A) Child Care Costs. Actual child care expenses appropriate to the parents' financial abilities and to the life-style of the children had the family remained intact.
(B) Education Expenses. Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child, when such expenses are incurred by agreement of both parents, or ordered by the Court.
(C) Older Child Adjustment. The average expenditures for children over age 12 exceed the average expenditures for all children by approximately 10 percent. The Court, therefore, may increase child support for an older child by an amount up to 10 percent of the support shown on the schedule.

(2) The net figure derived from adding any of these allowable sums to the Basic Child Support Obligation is the total Child Support Obligation.

**(f) Determination of Parental Proportionate Shares of Total Child Support.** The Total Child Support Obligation will be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying each parent's share of their Combined Adjusted Gross Income by the Total Child Support Obligation. The custodial parent is presumed to spend his or her share on the children.

**Rule 2.5. Child Support Award.**

The Court will order the noncustodial parent to pay child support in an amount equal to his or her proportionate share of the Total Child Support Obligation.

Example: For one child, age 15, a Combined Adjusted Gross Income of $1,000, and the noncustodial father's adjusted gross income is $600.

The father's adjusted gross income is divided by the Combined Adjusted Income. The product is the father's share of the Combined Adjusted Gross Income. Therefore: $600 divided by $1000 = 60% for the father's share. On the Schedule, the basic child support obligation for Combined Adjusted Gross Income of $1,000 for One Child is $189. To this the Court adds $11 because the child is over the age of 12, approximately 6% in this example. The Total Child Support Obligation is $200.

The father's share is 60% of $200, or $120. The mother's share is 40% of $200, or $80. Since the mother is presumed to spend her contribution directly to the child as she is the custodial parent, the child support award is that the father pays the mother $120 per month.

**Rule 2.6. Shared Custody Situations.**

These guidelines intend to remove financial incentives associated with custody and visitation arrangements. If the parents have shared custody, the Court may deviate from the child support guidelines based on the specific expenses related to shared custody.

**Rule 2.7. Visitation or Parenting Time.**

The Court may consider the costs of visitation or parenting time and may allocate such costs between the parents in proportion to their ability to pay.

**Rule 2.8. Abatement.**

When the noncustodial parent is directly providing for the children's needs for an extended period, such as on a long visit, the Court may order a reduction of child support paid to the custodial parent for that period.

**Rule 2.9. Gifts in Lieu of Money.**

The child support award is to be paid in money. Gifts of clothing, etc. in lieu of money are not to be offset against the support except by court order.

**Rule 2.10. Medical Insurance.**

An order for child support will assign responsibility for providing medical insurance for the children who are the subject of the support award. The Court will specify the percentage of uninsured medical expenses for the children, which each parent must pay. The apportionment will reflect the parents' respective ability to pay.

**Rule 2.11. Exchange of Financial Information.**

The Court will order that every 12 months the parties exchange financial information such as tax returns, spousal affidavits, and earning statements.

**Rule 2.12. Judge's Findings.**

The Court must make findings in the record as to Gross Income, Adjusted Gross Income, Basic Child Support Obligation, Total Child Support Obligation, each parent's proportionate share of the Total Child Support Obligation, and the child support award. If applicable, the Court must make findings in the record as to each parent's earning capacity. These findings may be made by incorporating a worksheet containing this information into the file.

**Rule 2.13. Adoption, Modification of Child Support Guidelines.**

The adoption or subsequent modification of these guidelines is not, by itself, a substantial and

continuing change of circumstances sufficient to support modifying an existing child support award.

## Rule 2.14. Child Support Payments.

**(a) Child Support Ledger.** The Court will maintain a child support ledger to keep track of child support payments and any arrearages.

**(b) Non-Payroll Deduction Payments.** A parent may be ordered to pay child support that does not involve wage assignments or garnishment. A parent ordered to pay child support who is not required to make the payments through an automatic payroll deduction must deliver the payment to the Court for the child support to be documented. The parties must notify the Court in writing of any change of address or employment within five business days of the change.

**(c) Wage Assignment; Proof of Payment.**

(1) *Wage Assignment.* The Court may encourage a parent to arrange with his or her employer to have the child support or a specific amount deducted per paycheck to meet the parent's child support obligation.
(2) *Proof of Payment.* If the payroll deduction for child support is not forwarded to the Court, the parent ordered to pay child support must, every six months, provide to the judicial accounting department and the other party proof of the parent's payments.
(3) *Address Update.* Both parties must notify the Court of any change of address.

**(d) Garnishment.** The Court will provide in the order that garnishment of a parent's wages may be a means for child support payment, and may order garnishment as the means for the parent to pay the child support. If wages are garnished in the order, the Court will serve the garnishment order on the garnished parent's employer under the Tohono O'odham Civil Rules of Procedure. The parties must notify the Court in writing of any change of address or employment within five business days of the change.

## Rule 2.15. Child Support Schedule.

Parties will reference the Schedule of Basic Child-Support Obligations in determining any child support award.

## Rule 3. Termination of Support.

Unless the Court has set a date certain for termination of child support, a party must petition the Court to stop the child support upon full satisfaction of a child support order and include evidence that all past due support has been paid in full.

## Rule 4. Post-Decree/Postjudgment Proceedings.

## Rule 4.1. Modification or Enforcement of Prior Orders; General Provisions.

**(a)** A party seeking to modify or enforce a prior child support or custody order issued by the Court must file a verified petition with the Clerk of the Court and pay the required filing fee, if any. All petitions to enforce or modify must be sworn under oath. The petition must

indicate, at minimum, the nature of the proceeding and the specific relief sought and the reasons why the Court should grant the relief.

**(b)** A party may petition to modify or enforce a prior child support or custody order in the same pleading.

**Rule 4.2. Garnishment.**

**(a) Petition for Garnishment; Contents and Service.** A petition for garnishment, whether filed as its own action or as part of a petition to modify, must be served on the person to be garnished under the Tohono O'odham Rules of Civil Procedure, and the petition must include:

(1) the name, address, and social security number of the person to be garnished;
(2) the tribal enrollment numbers of both the parent to be garnished and the petitioner, if applicable and known to the petitioner;
(3) the birthdates of both parents;
(4) a certified copy of the child support order, with all modifications;
(5) a statement that the judgment is final and that no appeal is pending;
(6) the amount of arrearages, if any;
(7) payment history; and
(8) the name and address of the employer of the person to be garnished.

**(b) Response.** The parent to be garnished may file a response. The parent must file a response if contesting any allegation in the petition, or raising the following:

(1) the amount of disposable earnings as defined by 4 T.O.C. Ch. 3 § 3103(I);
(2) the existence of multiple child support proceedings; or
(3) that the parent is a tribal elder or vulnerable adult.

**(c) Service on Employer.** When a wage assignment or garnishment of wages is ordered, service will be as follows:

(1) *Wage Assignment.* The petitioner will deliver the wage assignment to the employer.
(2) *Garnishment.* The Court will serve an order of garnishment on the employer.

**(d) Employer Certification.** Within 10 business days of being served with garnishment, the employer must file with the Court a certification signed by an authorized representative of the employer containing:

(1) whether the garnished parent was employed by the employer on the date the order was served;
(2) whether the employer anticipates owing earnings to the employee within 60 days after the date the order was served;
(3) if the employer is unable to identify the garnished person as an employee after making a good faith effort to do so, a brief statement of the effort made and the reason for the inability to identify;
(4) the dates of the employee's next two pay periods occurring after the date the order

was served;
(5) the amount of earnings and disposable earnings payable to the employee on the next two pay periods as defined by 4 T.O.C. Ch. 3 § 3103(I),(K);
(6) the pay period of the employee, whether weekly, biweekly, semimonthly, monthly, or other specified period;
(7) the outstanding judgment now due and owing as stated in the order;
(8) whether the employee is subject to another garnishment, and if so, a description of that garnishment and to whom it is owed, including the name, address, and telephone number;
(9) the name, address, and telephone number of the recipient; and
(10) the date and manner of service the employer will use to serve a copy of the certification on the employee and other parent.

**(e) Stay of Garnishment.** Any party may file a motion to stay the garnishment order. The motion must be signed and notarized, state specific grounds, and provide supporting evidence to establish:

(1) lack of personal or subject-matter jurisdiction;
(2) applicability of one or more of the withholding restrictions in 4 T.O.C. Ch. 3, Art. VI; or
(3) a mistake of fact:
(A) Error in the amount of current child support or arrears owing, or
(B) The identity of the alleged noncustodial parent.

## Rule 5. Precedence of Children's Court Child in Need of Care Cases.

**(a) Civil Court Stay Upon Notification.** The Civil Court will stay any pending or prior child custody or support matter upon notification from the Children's Court that a Child in Need of Care matter is pending in the Children's Court. If the Civil Court case involves more than one child, the stay will only apply to the children who are the subject of the Child in Need of Care matter.

**(b) Lift of Stay; Adoption of Children's Court Order.** When the Civil Court receives the final order from the Children's Court regarding custody and support, the Civil Court will lift the stay and adopt the Children's Court order as the Civil Court order.

**(c) Post-Adjudication Petitions.** Any post-adjudication petition to modify an order adopted by the Civil Court under this Rule must be filed in the Civil Court.

## Rule 6. Wills.

As of November 1, 2011, the Court's policy of storing wills is rescinded. Wills currently housed with the Judicial Branch are only held for safekeeping. It is the responsibility of the personal representative, family member, or other appropriate person to file a proper pleading with the Court to initiate a probate.

Section History

Adopted on December 10, 1987 by Administrative Order II. Amended, reorganized, and renumbered to consolidate the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2017 Tohono O'odham Rules of Court. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Rules of Children's Court

### Chapter 1. Children's Civil

**Rule 1. Classification of Children's Court Cases.**

The Children's Court has exclusive original jurisdiction over proceedings filed under Chapter 1 of the Tohono O'odham Children's Code ("Children's Code"), or other proceedings defined in 25 U.S.C. § 1903(1) for termination of parental rights, adoptions, and children's custodianships and guardianships. 3 T.O.C. Ch. 1, §§ 1202, 1301.

**Rule 2. Closed Proceedings; Confidentiality.**

In all proceedings the public is excluded, except as permitted by the Children's Code. 3 T.O.C. Ch. 1 § 1306. A person admitted to a Children's Court proceeding may not divulge information identifying the child or the family involved in the proceeding.

**Rule 3. Service of Process; Child in Need of Care Notice of Hearing.**

**(a) Service of Process.** Service of process for all matters heard by the Children's Court is governed by the Tohono O'odham Rules of Civil Procedure ("Rules of Civil Procedure"), unless otherwise specified under these rules.

**(b) Notice of Hearing in Child in Need of Care Cases.** When a Child in Need of Care petition is filed, the party will present a Notice of Hearing form directed to the parent or guardian of the child, or any other party in compliance with Section 1502(C) of Children's Code to the clerk. The Notice of Hearing must contain a statement in substantial compliance with: "To the parents or guardian: You have the right to have counsel represent you at your own expense."

**Rule 4. Removal Hearing.**

**Rule 4.1. Notice of Removal; Filing of Notice.**

Following removal of a child by the Tohono O'odham Nation, the Nation must file a verified notice of the removal. The notice must have the name and birth date of the child, the names and addresses of the parent or guardian, a brief statement of why removal was required, and the date and time of the hearing. The date and time of the hearing will be set according to the table in Rule 4.2.

**Rule 4.2. Removal Hearing Schedule.**

**(a) Hearing Date.** Upon removal of a child under the Children's Code, the Nation must, in writing, provide the parent or guardian notification of temporary custody in compliance with Section 1502(B)(1) of the Children's Code. The notice must also include the time and

date of the temporary custody hearing. The time and date of the hearing will be set according to this schedule:

| Day Child Removed | Date of Hearing Based on Time of Child's Removal | |
|---|---|---|
| | **Bef. 11:00 a.m.** | **Aft. 11:00 a.m.** |
| Monday | Thu. at 11:00 a.m. | Fri. at 11:00 a.m. |
| Tuesday | Fri. at 11:00 a.m. | Mon. at 11:00 a.m. |
| Wednesday | Mon. at 11:00 a.m. | Tue. at 11:00 a.m. |
| Thursday | Tue. at 11:00 a.m. | Wed. at 11:00 a.m. |
| Friday | Wed. at 11:00 a.m. | Thur. at 11:00 a.m. |
| Saturday or Sunday | Thur. at 11:00 a.m. | Fri. at 11:00 a.m. |

**(b) Holidays.** If a holiday falls within the three-day period, another day will be added to the calculation. For example, if a child is taken into custody on a Thursday, and Friday is a holiday, the time frames would change from Tuesday or Wednesday to Wednesday or Thursday.

**Rule 5. Subpoenas.**

Subpoenas in Children's Court must substantially follow the Rules of Civil Procedure.

**Rule 6. Duties of Counsel.**

The duties of counsel are governed by the Rules of Civil Procedure. In Child in Need of Care cases, the Tohono O'odham Attorney General does not have to file a notice of appearance.

**Rule 7. Child Support.**

**(a) Applicable Procedure.** In cases involving child support, the Tohono O'odham Rules of Family Law and Will Procedures apply if those Rules do not conflict with the Rules of Children's Court.

**(b) Exclusive Jurisdiction of Children's Court.** When the Children's Court has exclusive jurisdiction, any petition or application for child support, modification of child support, or enforcement of child support must be filed in the Children's Court.

**(c) Child Support in Child in Need of Care Cases.**

(1) *Initial Request for Child Support; Nation's Duty to Notify; Stay.*

(A) Request for Child Support. The Nation may ask for child to support in its disposition report and attach all forms required by the Tohono O'odham Rules of Family Law and Will Procedures.

(B) Nation's Duty to Notify of Civil Matters. The request for child support must also state whether the child is the subject of any pending or past child support, custody, or paternity matter in the civil court. If applicable, the request must also include the case name, case number, and description of the matter in civil court.

If the Nation later discovers a pending or past child support, custody, or paternity matter, the Nation must file a notice with the Children's Court within 10 business days of discovery with the case information set forth above.

(C) Children's Court Notice. After notification of a pending or past civil case involving the child, the Children's Court will immediately issue a notice to the civil court that a Child in Need of Care matter is pending.

(D) Stay by Civil Court. Upon receipt of the Children's Court's notice of a pending Child in Need of Care matter, the civil court will issue an order staying the child support matter pending the outcome of the Child in Need of Care case. In those civil court cases involving multiple children in a child support, custody, or paternity matter, the stay will only apply to the specific child or children subject to the Child in Need of Care case.

(2) *Termination of Child in Need of Care.*

(A) Permanency Plan Child Support Recommendation. If child support is ordered in a Child in Need of Care matter, the Nation must recommend in the permanency plan:

(i) whether arrearages are owed, to whom arrearages are owed, and the amount;
(ii) the date any child support to the Nation stops; and
(iii) whether any person should have to pay child support, to whom, the amount, and the date child support should begin.

(B) Child Custody, Support, and Paternity with No Pending Civil Matter. If a child is returned to a parent and child support is awarded, the Children's Court must:

(i) issue the order separately from the permanency order;
(ii) make and state the findings for awarding arrearages, if any, and child support;
(iii) order arrearages, if any, and child support based on the proper child support guidelines; and
(iv) provide a copy of the order to civil court, which will create a case file for the matter and adopt the order.

(C) Child Custody, Support, and Paternity with a Pending or Prior Civil Matter. When the Children's Court issues its final order regarding the custody, support, or paternity of a child who is the subject of a civil court matter, the Court will:

(i) issue the order separately from the permanency order;
(ii) make and state the findings for custody, support, or paternity order;
(iii) award custody, support, or paternity, and any arrearages based on the proper child support guidelines; and
(iv) provide a copy of the order to civil court, which will lift the stay and adopt the order.

(D) Continuing Duty to Update the Court. The parties have a duty to notify the Children's Court if the child is returned to a parent's custody or if a change in circumstances could affect a past child support order.

Section History

Original rules adopted by Administrative Order 05-07 on October 12, 2007. Amended,

reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended March 12, 2014 to follow 3 T.O.C. Ch. 1 § 1306 and 3 T.O.C. Ch. 1, Art. 12. Amended by the 2017 Tohono O'odham Rules of Court. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O’ODHAM RULES OF COURT

## Rules of Children’s Court

### Chapter 2. Juvenile Justice

**Rule 1. Closed Proceedings; Confidentiality.**

Children’s Court proceedings are closed to the public. A victim in the matter may, under Title 7, Section 4102(F) of the Tohono O’odham Code, request an advocate, parent, or other relative whose testimony is not required, to be present. A person present in a Children’s Court proceeding must not divulge information identifying the child or the family involved in the proceeding.

**Rule 2. Victims’ Rights.**

At the commencement of any proceeding, the judge will:

**(a)** Ask the prosecutor or otherwise determine if the victim has requested notice or has been notified of the proceeding.

**(b)** Determine if the victim is present and wishes to address the Court.

**(c)** Determine if the victim has been advised of his or her rights as a victim and received a copy of the victim’s rights. The Court may recess the hearing to permit the Nation to tell the victim of his or her rights and provide a copy of the victim’s rights.

**(d)** Determine if the victim has been notified about the hearing. If the victim has not been notified, the judge may reschedule the hearing so long as it does not violate the law or public policy.

**Rule 3. Service of Process in Child Offender Cases.**

**Rule 3.1. Issuance of Summons and Warrant.**

**(a)** **Filing.** Where the Nation files a child offender petition, the Nation must also file a prepared summons for a respondent and the respondent’s parent or legal guardian if the respondent is not in custody. The Nation may also file a motion requesting a warrant for the respondent.

**(b)** **Preference for Summons; Contents of Motion.** Unless good cause exists for issuing a warrant, a summons must be issued if the respondent is not in custody. If a warrant is requested by the Nation, the Nation must state in the motion the reasons why a warrant should be issued.

**(c)** **Arrest Warrant.** Before issuing an arrest warrant, the judge must determine that probable cause exists that the respondent committed the offense or that such a determination has previously been made. An arrest warrant will be issued to secure the respondent’s

appearance if:

(1) a respondent who has been summoned, fails to appear, or
(2) there is good cause to believe that the respondent will fail to appear, or
(3) the summons cannot readily be served or delivered.

**(d) In Custody.** If the respondent is in custody, the Nation may file a complaint and include a motion requesting that the Court set an initial appearance. If necessary, the Nation may request that the Court hold the respondent until the scheduled initial appearance.

**Rule 3.2. Content of Warrant or Summons**

**(a) Warrant.** A judge will sign the warrant. The warrant will have the name and any additional identifying information of the respondent. If the respondent's name is unknown, any name or description by which the respondent can be identified with reasonable certainty. It will state the offense with which the respondent is charged. The warrant will command that the respondent be arrested and brought before the Children's Court.

**(b) Summons.** Separate summonses must be prepared for the respondent and each parent/legal guardian to be summoned. The summons must have the name and address of the individual being summoned and command the individual to appear at the respondent's arraignment at the Tohono O'odham Justice Center. If no warrant is requested, a clerk will fill in the time and date of the arraignment at the time of filing, and the clerk will sign and date the summons.

**Rule 3.3. Execution and Return of Warrant.**

**(a) By Whom.** The warrant will be directed to, and may be executed by, all Tohono O'odham police officers or other officials having authority to execute warrants.

**(b) Manner of Execution.** A warrant must be executed by arrest of the respondent. The arresting officer need not have the warrant in possession at the time of the arrest, but the officer must show the warrant to the respondent or the respondent's parent/legal guardian as soon as possible upon request.

**(c) Return.** Return of the warrant will be made to the judge before whom the respondent makes his or her initial appearance.

**Rule 3.4. Service of Summons.**

A party may serve the summons like the summons in a civil action, except that service may not be by publication. Proof of service will be the same as in a civil action.

**Rule 3.5. Defective Warrant.**

The Court will not invalidate an arrest warrant or release a person in custody because of a

defect in the warrant's form. The Court may amend the warrant to remedy such defect.

**Rule 4. Duties of Counsel; Withdrawal.**

**(a) Notice of Appearance.** Counsel for the respondent, whether privately retained or provided by the Tohono O'odham Nation, must file a Notice of Appearance with the Court before filing any documents or appearing in any matter before the Court.

**(b) Duty of Continuing Representation.** Counsel representing a respondent must continue to represent the respondent in all further proceedings, including the filing of a notice of appeal, unless the Court permits counsel to withdraw, or a limitation of representation was in the notice of appearance.

**(c) Duty Upon Withdrawal.** All requests to withdraw as Counsel for a respondent must be filed as a written motion. If granted, the withdrawing counsel must give prompt notice of the entry of such order to the Nation. No counsel representing a respondent may withdraw after a case has been set for an adjudicatory hearing except upon a written motion including:

(1) a signed statement by the substituting counsel (with the counsel's contact information) that he or she will be prepared for the hearing;
(2) a signed statement by the client and the client's parent(s) or legal guardian(s) stating that they will be prepared for the hearing; or
(3) where the Court is satisfied for good cause shown that counsel should be allowed to withdraw.

**Rule 5. Diversion Program.**

**Rule 5.1. Purpose; Eligibility; Definition.**

**(a) Purpose.** The Diversion Program provides a community-based alternative to the formal court process for eligible child offenders.

**(b) Eligibility.** First time offenders between the ages of 10 to 17 years who are cited into Children's Court for committing an offense designated as an offense appropriate for diversion may be eligible to participate in the diversion program.

**(c) Probation Officer Definition.** As used in this Rule, "probation officer" also includes diversion officers.

**Rule 5.2. Referral; Continuance.**

**(a) Referral.** At arraignment, upon request of the Nation or a probation officer, the Children's Court may order that a child offender participate in the diversion program upon a finding that the following requirements are met:

(1) the child is a first time offender who is accused of committing an offense in Rule 5.5;

(2) the child has knowingly and voluntarily waived his or her rights and entered a plea of responsible to the child offender petition(s);
(3) the child has knowingly and voluntarily chosen to enter into the diversion program;
(4) the child's parent(s)/legal guardian(s) has/have knowingly and voluntarily chosen to permit the child to participate in the diversion program and agree(s) to participate as required with the child; and
(5) the Nation has conferred with the victim, if any, regarding placement of the child in the diversion program.

**(b) Continuance.** Upon motion by the Nation, the child's counsel, the child, or his or her parent(s) or legal guardian(s), or upon the Court's own motion, the arraignment may be continued for up to two weeks to permit:

(1) a referral to the division program for a review of the child's eligibility to participate in the program, and/or
(2) more time for the Nation to confer with the victim.

**Rule 5.3. Stay of Disposition; Time Periods; Review Hearings.**

**(a) Stay of Disposition.** A child offender who participates in the diversion program will have his or her disposition stayed.

**(b) Time Period.** The Court will order the disposition stayed for six months. The Court may shorten or lengthen the stay upon a finding of good cause, upon request by the parties or the probation officer. Good cause includes, but is not limited to:

(1) a request to end the child's participation in diversion and set for disposition because the child has violated his or her conditions of diversion and/or committed new offenses;
(2) a request for more time for the child to complete diversion; or
(3) a request for early discharge because the child has excelled in the program.

**(c) Review Hearings.** The Court will set a review hearing every three months to check on the child's progress.

**Rule 5.4. Additional Conditions and Terms.**

The Children's Court may impose additional conditions and terms for the child and child's parent or legal guardian to participate in the diversion program. Additional conditions and terms may include:

**(a)** community service;

**(b)** restitution in cases where property loss or damage is compensable in a monetary value. Work projects can be substituted for actual dollar payments, but must have the victim's consent;

**(c)** letter of apology; or

**(d)** counseling, education, and/or other informational or holistic classes or services.

**Rule 5.5. Eligible Offenses.**

**(a)** Public Nuisance (T.O.Crim.Code § 3.1);

**(b)** Disturbing the Peace (T.O.Crim.Code § 3.5);

**(c)** Disorderly Conduct (T.O.Crim.Code § 3.6);

**(d)** Loitering Around a School (T.O.Crim.Code § 3.12);

**(e)** Criminal Damage to Private/Personal Property (T.O.Crim.Code § 5.2);

**(f)** Malicious Mischief (T.O.Crim.Code § 5.10);

**(g)** Shoplifting (T.O.Crim.Code § 10.5);

**(h)** Public Intoxication (T.O.Crim.Code § 12.2);

**(i)** Underage Possession of Liquor (T.O.Crim.Code § 12.3);

**(j)** Unlawful Possession of Marijuana (T.O.Crim.Code § 13.1);

**(k)** Inhaling Toxic Vapors (T.O.Crim.Code § 13.8);

**(l)** Furnishing Tobacco to a Minor (T.O.Crim.Code § 13.10).

**Rule 5.6. Disposition; Dismissal.**

**(a)** **Disposition.** The Children's Court will set a disposition hearing when a child offender has not successfully completed the diversion program.

**(b)** **Dismissal.** The Children's Court will dismiss the case of a child offender who successfully completes the diversion program.

**Rule 6. Setting of Hearings.**

**(a)** **Hearings Set At Arraignment.** For child offender arraignments, these hearings will be set as closely as possible to the time frames stated below upon a plea denying the allegation(s) in a child offender petition:

(1) *Pre-Adjudication Conference.* The pre-adjudication conference date will be set two weeks after the arraignment on a date proposed by the Nation.

(2) *Pre-Adjudication Hearing.* The pre-adjudication hearing will be set two weeks after the pre-adjudication conference.

**(b) Adjudicatory Hearing Date.** The adjudicatory hearing will be set at the pre-adjudication hearing or at any subsequent hearing where it is determined that the matter will proceed to an adjudicatory hearing.

**Rule 7. Pre-Adjudicatory Conference; Disclosure; Pre-Adjudicatory Conference Case Status Report.**

**(a) Pre-Adjudicatory Conference.** Although the pre-adjudicatory conference is a date established in court, that date may be rescheduled by agreement of the parties without prior court approval.

**(b) Disclosure.** Disclosure by the parties will be governed by Rules 7.2, 8, and 9 of the Tohono O'odham Rules of Criminal Procedure.

**(c) Pre-Adjudicatory Conference Case Status Report.** The Nation must file a case status report with the Court after any scheduled, or rescheduled, pre-adjudicatory conference at least three days before the pre-adjudicatory hearing. The case status report must state:

(1) Whether the pre-adjudicatory conference took place.
(2) If the pre-adjudicatory conference took place, the case status report must identify the reports, other documents, and any other evidence, including any witnesses, disclosed to the respondent.
(3) If the scheduled pre-adjudicatory conference did not take place, the case status report must state the reason why the pre-adjudicatory conference did not occur. The case status report must also state any rescheduled date, and whether the information under Rule 7(b) was delivered or sent to the respondent, the respondent's parent/legal guardian, or the respondent's counsel on the original scheduled date.

**(d)** Upon motion of a party and for good cause shown, the Court must dismiss the case without prejudice if the primary police report, the investigative report, or a comparable report was not provided to the respondent at the pre-adjudicatory conference.

**Rule 8. Pre-Adjudicatory Hearings; Purpose; Attendance.**

**(a) Purpose.** The purpose of the pre-adjudicatory hearing includes: providing a forum for changes of plea; providing a forum for the parties to notify the Court about disclosure and discovery problems; verifying readiness to proceed to adjudication; and setting an adjudication date.

**(b) Attendance.** The attendance of the respondent, the respondent's parent or guardian, defense counsel (if any), and the prosecutor are required.

**Rule 9. Subpoenas.**

Subpoenas in child offender cases must substantially comply with the form in the Tohono O'odham Rules of Criminal Procedure and are subject to the rules governing subpoenas in a civil

action.

**Rule 10. Extradition.**

**Rule 10.1. Applicability.**

These Rules apply to persons under the age of eighteen who are charged in an action or order in the demanding jurisdiction that is criminal. This includes escape from confinement or violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding. No child as defined by Tohono O'odham law will be subject to extradition based upon proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or other proceeding that is not criminal. *See* 7 T.O.C. Ch. 2.

**Rule 10.2. Requirement of Certified Documents.**

When, under these Rules, a certified document from a demanding jurisdiction is required, the document must bear an original seal or electronic stamp from the demanding jurisdiction.

**Rule 10.3. Children's Court Jurisdiction.**

The Children's Court will have jurisdiction over the extradition of a child who is not under the jurisdiction of the Adult Criminal Division of the Court at the time of filing any petition or warrant.

**(a) Motion.** The Nation may file a motion for domestication of an arrest order of a foreign jurisdiction as defined by:

(1) Following the process listed in Rule 2.1 in the Tohono O'odham Rules of Recognition and Enforcement of Foreign Judgments; or

(2) Filing a motion stating that:

(i) Probable cause exists to believe that the child is not subject to Rule 10.1;

(ii) The child is within the exterior boundaries of the Tohono O'odham Nation or is subject to the Nation's jurisdiction;

(iii) The child is charged with a crime in the demanding jurisdiction or convicted of a crime in the demanding jurisdiction; and

(iv) The child has either escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction.

**(b) Order.** The Court will recognize the arrest order of the foreign jurisdiction after determining that the Nation has established probable cause on the allegations in its motion and issue an arrest warrant to obtain the appearance of the child.

**Rule 10.4. Petition for Extradition and Warrant.**

**(a) Petition.** The Nation may file a motion for the extradition of a child if:

(1) Probable cause exists to believe that the child is not subject to Rule 10.1;
(2) The child is within the exterior boundaries of the Tohono O'odham Nation or is subject to the Nation's jurisdiction;
(3) The child is charged with a crime in the demanding jurisdiction or convicted of a crime in the demanding jurisdiction; and
(4) The child has either escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction.

**(b) Contents.** The petition must have allegations supporting the requirements of Subsection (a). The petition must have: the name of the demanding jurisdiction, the crime charged or other basis for the demand, a copy of any applicable waiver of an extradition hearing signed by the respondent, and a certified copy of an arrest warrant, and it must include one of these:

(1) a statement by the issuing authority that the arrest warrant is based on probable cause that a crime has been committed and the respondent committed the crime, together with a copy of the law defining the crime;
(2) a certified copy of the charging instrument upon which the arrest warrant is based;
(3) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the respondent has violated any term of bail, probation, or an order arising out of a criminal proceeding; or
(4) a certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the respondent has escaped from confinement or violated any term of parole.

**(c) Additional Requests.** If a respondent is being prosecuted, is in custody, is on parole or probation, or is subject to an order arising out of a Children's Court proceeding on the Tohono O'odham Nation, the Nation may request:

(1) extradition upon conditions, including a provision that the respondent must be returned to the Tohono O'odham Nation immediately after completion of the demanding jurisdiction's prosecution;
(2) delay of the pending action on the Tohono O'odham Nation; or
(3) process the extradition, but waive the respondent's immediate return to the Nation. The waiver will be filed before an order to transfer custody is issued.

**(d) Warrant.** The Nation's warrant must have the name of the demanding jurisdiction and the crime charged or other basis for the demand. The warrant will become valid upon the signature of a judge of the Tohono O'odham Court.

## Rule 10.5. Initial Appearance.

**(a) Initial Appearance.** A respondent arrested under these Rules must be brought before a judge of the Tohono O'odham Courts within 36 hours for an initial appearance.

**(b) Rights.** The respondent must be informed of:

(1) the name of the jurisdiction demanding extradition;
(2) the crime charged or other basis for the demand;
(3) the right to the assistance of counsel at the person's expense;
(4) the right to an extradition hearing before a transfer of custody to the demanding jurisdiction, and that this right may be waived if the respondent consents to the extradition or if the respondent signed a waiver in the demanding jurisdiction;
(5) the right to be represented by counsel at the respondent's expense or the expense of the respondent's parent or guardian;
(6) the right to appointed counsel at the Court's discretion if the child is indigent and counsel was not retained by or for the child at the initial hearing;
(7) the right of the respondent or respondent's parent or guardian at all hearings to introduce evidence, be heard on his or her own behalf, and to examine witnesses;
(8) that the general public will be excluded from all proceedings, except persons whom the respondent requests and that no person admitted to a Children's Court proceeding will divulge information identifying the respondent or his or her family;
(9) the right against self-incrimination;
(10) that evidence of an extrajudicial statement that is illegally seized or is obtained contrary to the standard applicable in adult criminal proceedings will not be used against the respondent;
(11) that no extrajudicial statement made by a child in custody is admissible unless it would have been admissible in an adult criminal proceeding and the statement was made the presence of the respondent's parent or guardian who was not then requesting or agreeing to a removal of the child;
(12) that an "extrajudicial statement" means a statement, including a confession, admission, or other statement against interest, made to a prosecutor, a law enforcement official, an official of the Nation or a political subdivision, or a person acting on behalf of those official(s).

**(c) Setting Extradition Hearing.** If the respondent does not waive the extradition hearing, the hearing will be set within 10 days after the initial appearance. The Court will give notice of the time and place of the hearing in open court.

**(d) Release Pending Hearing.**

(1) *Mandatory Custody.* The respondent must be held in custody pending the extradition hearing unless the exception in Rule 10.6(d)(2), below, applies.
(2) *Discretionary Custody.* The Court may release the respondent on conditions in Rule 10.6(d)(3), if the arrest was made under Rule 10.4 and the Nation does not attach the documents as required under Rule 10.5(b); and the Nation fails to establish reasonable cause to believe that:
    (A) the respondent will commit injury to persons or the property of others, commit self-injury, or be subject to injury by others; or
    (B) the respondent has no parent, guardian, or custodian able or willing to provide adequate supervision and care for the respondent; or

(C) the respondent will run away or be taken away so as to be unavailable for court proceedings.

(3) *Conditions of Release.* If ordered, any conditions of release will also include posting a bond not less than any bond set in the demanding jurisdiction. An order setting release conditions under this subsection will not affect any custody or conditions of release ordered in a Children's Court action brought by the Nation.

(4) *Detention Hearing Not Required.* A separate detention hearing under Title 3, Chapter 2, Article 10 of the Tohono O'odham Code is not required.

**Rule 10.6. Waiver.**

**(a) Prior Waiver.** If the respondent has previously executed a waiver of extradition hearing as a condition of probation, parole, or otherwise, the Court will allow the transfer. The Court may, with the consent of the authority of the demanding jurisdiction, allow the voluntary return of the respondent. No previously executed waiver of extradition will be recognized unless the copy of the filed waiver was signed by the respondent.

**(b) Waiver at Initial Appearance.** If, after being informed of the right to an extradition hearing, the respondent waives the right to a hearing, the respondent and the respondent's parent or guardian must sign a written waiver in the presence of the judge. Upon signing the waiver, the Court will transfer custody under Rule 10.9, or with the consent of the executive authority of the demanding jurisdiction allow the voluntary return of the respondent.

**Rule 10.7. Extradition Hearing.**

**(a) Transfer Order; Defense.** Upon a finding that a petition and warrant comply with Rule 10.5, the Court will issue an order to transfer custody under Rule 10.10 unless the respondent establishes by clear and convincing evidence that the respondent is not the demanded person.

**(b) No Inquiry Into Guilt.** The Court will not inquire into the guilt or innocence of the respondent except as may be necessary in identifying the respondent as the person demanded.

**(c) Voluntary Return.** The Court may allow the voluntary return of the respondent if the Nation consents.

**(d) No Appeal.** Neither an order to transfer custody nor an order to deny transfer is appealable.

**Rule 10.8. Transfer of Custody.**

**(a) Order to Transfer.** The Court's order to transfer custody will direct a law enforcement officer to take or retain custody of a respondent until an agent of the demanding jurisdiction is available to take custody. *See* 7 T.O.C. Ch. 2 § 4.1(A).

**(b) Time Limits.** If the demanding jurisdiction has not taken custody of the respondent within five business days, the Nation may file a written motion requesting an extension of time for the transfer. The motion will be filed before the close of business on the fifth business day following the Court's original transfer order. The Court may extend the original order for an additional 10 days upon showing good cause by the Nation for the failure of the demanding jurisdiction to take custody.

**(c) Release.** If the respondent has not been taken into custody by the demanding jurisdiction within the time specified in the order, the respondent will be released. No order to transfer custody may be entered unless a new arrest warrant to obtain the appearance of the respondent is issued because of a new demand for extradition.

**(d) Effect on Tribal Proceedings.** An order releasing the respondent from custody under these Rules will not affect any custody or conditions of release ordered in a separate Children's Court child offender action brought by the Nation. Any Children's Court child offender action pending in the Court will be stayed pending a hearing in the Court after the respondent's return to the Tohono O'odham Nation.

**(e) Financial Liability.** A respondent who is acquitted of the change and returned to the Nation may petition that the Nation pay for the cost of the respondent's subsistence and transportation to the place of the respondent's initial arrest or residence. The Nation will have 10 days in which to respond, and the Court will schedule a hearing on the merits of the petition.

## Rule 11. Federal Habeas Corpus.

### Rule 11.1. Applicability.

These Rules apply to persons under the age of eighteen who are charged with an action or order in the demanding jurisdiction that is criminal. This includes escape from confinement or violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding. No child as defined by Tohono O'odham law will be subject to transfer based upon proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or other that is not criminal.

### Rule 11.2. Requirement of Certified Documents.

When, under these Rules, a certified document from a foreign jurisdiction is required, the document must bear an original seal or electronic stamp from the demanding jurisdiction.

### Rule 11.3. Motion to Grant Comity.

The Nation's motion to grant comity must include the federal writ of habeas corpus and a certified arrest warrant.

### Rule 11.4. Transfer Order.

(a) **No Pending Tohono O'odham Criminal Matters.** If a respondent does not have pending matters, the Court will grant comity and issue a transfer order, directing that the respondent be held in custody until transferred to an agent of the United States within five days.

(b) **Pending Tohono O'odham Criminal Matters.** If a respondent has pending matters, the Court will only grant comity and issue a transfer order, directing that the respondent be held in custody until transferred to an agent of the United States within five days upon finding that:

(1) the federal writ requires the respondent to be returned to the custody of the Tohono O'odham Nation immediately after completion of the federal prosecution, or
(2) the Nation files a written waiver of the respondent's immediate return with the Court.

**Rule 11.5. Time Limits.**

If an agent of the United States has not taken custody within five days of issuing the transfer order, the Nation may file a written motion requesting an extension of time for the transfer. A party must file the motion before the close of business on the fifth business day following the Court's original transfer order. The Court may extend the original order for an additional 10 days upon showing good cause by the Nation for the failure of the United States to take custody.

**Rule 11.6. Release.**

If the respondent has not been taken into custody by the United States within the time specified in the order, the respondent will be released. No order to transfer custody may be entered unless a new arrest warrant is issued because of a new writ of habeas corpus.

**Rule 11.7. Effect on Tribal Proceedings.**

If the Court grants comity to the federal writ, the Court will stay the Nation's proceedings pending a hearing after the respondent returns to the Tohono O'odham Nation.

**Rule 12. Restitution**

**Rule 12.1. Information Provided to Respondents and Victims.**

(a) **Respondents.** The Nation must provide a copy of the Respondent Restitution Information and Instructions documents to respondents at their pre-adjudicatory conference as part of disclosure when restitution is a potential penalty. The documents must be in substantial compliance with the form in the Tohono O'odham Rules of Criminal Procedure.

(b) **Victims.** Before any request for restitution as part of disposition or a plea agreement, the Nation must provide a copy of the Victim Restitution Information and Instructions documents to the victim. The documents must be in substantial compliance with the form in the Tohono O'odham Rules of Criminal Procedure.

**Rule 12.2. Restitution Form; Redaction; Payment Plan.**

**(a)** The Nation must file a completed Restitution Form with any plea agreement in which restitution is requested or before any disposition hearing where restitution will be requested.

**(b)** The Nation must provide a conformed copy to the respondent with all attachments.

**(c)** If the victim has opted to keep his or her contact information confidential, the Nation must redact all contact information from the form, except for the victim's name, on the copy delivered to the respondent. The Nation must file both the redacted copy and a full copy with the Court.

**(d)** If the respondent cannot pay restitution in full, the Court will set a payment plan at the restitution hearing. The parties may submit a proposed payment plan with the plea agreement.

**Rule 12.3. Restitution Orders.**

**(a)** When ordering restitution, the Court will specify in the order the restitution due to each victim in each case or charge and set a date by which restitution is due, or order a payment schedule.

**(b)** If a restitution amount has not been submitted before the disposition/plea hearing, the Court may waive restitution or may order restitution with an upper cap and set a restitution hearing within 30 days. If a restitution amount is not provided at the restitution hearing, the Court may waive the payment of restitution or reschedule the restitution hearing.

**Rule 12.4. Restitution Payment Form.**

For each restitution payment, a respondent must also complete a Restitution Payment Form that complies with the restitution form in the Tohono O'odham Rules of Criminal Procedure.

**Rule 13. Imposition of Detention Time.**

**(a) Presumption of Consecutive Sentences.** Any time the Court imposes a sentence for two or more offenses, the sentence is presumed that the respondent will serve the sentences consecutively. The Court may order concurrent sentences at the discretion of a judge.

**(b) Credit for Time Served.** Any time the Court orders credit for time served, the credit for time served is presumed that it follows the consecutive or concurrent designation of the underlying sentence and that the credit will be calculated consecutively or concurrently based on the designation of the underlying sentence. If the Court does not specifically order credit for time served, it is presumed that the sentence does not include credit for time served.

## Rule 14. Relocation of Juvenile Offenders Upon the Age of Majority.

**(a)** A juvenile offender who has not completed the term of detention will be transferred to the Tohono O'odham Adult Corrections Facility to serve the rest of his or her sentence immediately after reaching his or her eighteenth birthday.

**(b)** Upon receipt of notice that a juvenile offender will reach the age of majority, the Court will order the offender transferred to the Tohono O'odham Adult Corrections Facility to serve the rest of his or her term.

## Rule 15. Conversion of Fines to Community Service.

The Court will convert all community service imposed in lieu of a fine based on the applicable federal minimum wage at the time the community service is ordered.

Section History

Adopted by Administrative Order 01-96 on March 1, 1996. Amended December 18, 2007 by Administrative Order 06-07. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended March 12, 2014 to follow 3 T.O.C. Ch. 2 §§ 21004, 21301, and 2150. Amended by the 2023 Tohono O'odham Rules of Court. Section name changed to Juvenile Justice by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Protective Order Procedures

**Rule 1. Applicability of Rules.**

**(a) Scope of these Rules.** These Rules govern the procedures for protective orders, which are orders for the safety and protection of individuals, specifically Orders of Protection (*See* 7 T.O.C. § 8.10), Injunctions Against Harassment, and Injunctions Against Workplace Harassment. These Rules do not govern temporary restraining orders.

**(b) Applicability of Other Rules.** To the extent not inconsistent with these Rules, the Tohono O'odham Rules of Civil Procedure apply.

**Rule 2. Definitions.**

**(a) Parties.**

(1) *Defendant.* The Defendant is the person against whom the Plaintiff or other party is seeking protection.
(2) *Plaintiff and Other Appropriate Requesting Parties.*
  (A) Plaintiff. The Plaintiff is the person or other appropriate requesting party who files the petition for a protective order.
  (B) Other Appropriate Requesting Parties
    (i) Parent, Legal Guardian, or Legal Custodian of a Minor. If the person needing protection is a minor, then the parent, legal guardian, or person with legal custody of the minor may file the petition. The petition must name the parent, guardian, or custodian as the Plaintiff, and the minor as a specifically named person.
    (ii) Third Party on Behalf of a Minor. If a parent, legal guardian, or legal custodian named under Subsection (i) of this Rule is unavailable or is the Defendant, a third party may file for a protective order for a minor. The third party must show cause why the Court should let the third party file for the minor.
    (iii) Third Party on Behalf of a Person Unable to Request an Order. If a person cannot seek an order of protection, a third party, as defined by 7 T.O.C. § 4101(A), may request that order. After hearing the request, the Court will first decide if the third party is a proper requesting party.
  (C) *Protected Persons.* Protected persons are other specifically named persons in the Order.

**(b) Protective Orders.** A protective order includes:

(1) *Injunction Against Harassment.* The Court grants this to prevent a person from committing acts of harassment against another person. No relationship is required.
(2) *Injunction Against Workplace Harassment.* This protective order lets an employer seek a court order preventing a person from being on the premises of the employer.

The order also prevents a person committing acts of harassment against the employer, the workplace, the employer's employees, or any other person on or at the employer's property or place of business or who is performing official work duties.

(3) *Order of Protection.* The Court may grant this protective order to prevent a person from engaging in certain activity, and it is limited to parties in specific relationships. *See* 7 T.O.C. §§ 8.9–8.10.

**Rule 3. Children as Protected Persons.**

The Court will not include a minor child of the Defendant in a protective order unless there is reasonable cause to believe:

**(a)** physical harm has resulted or may result to the child, or

**(b)** the alleged acts of domestic violence involved the child.

**Rule 4. Commencement of Action; Defendants.**

**(a) Commencement of Action.** A Plaintiff must file a verified petition asking for a protective order with the Adult Civil Division Clerk.

**(b) One Defendant Per Petition.** Only one Defendant may be listed on a petition asking for a protective order. A Plaintiff must file a separate petition for each Defendant.

**Rule 5. Family Law Matters.**

**(a) Assignment to Civil Judge.** If an action for maternity, paternity, annulment, custody, dissolution of marriage or legal separation is pending and a party wants a protective order against the opposing party in the pending civil matter, the clerk will transfer the documents to the judge assigned to the civil matter.

**(b) Child Custody and Parenting Time.**

(1) Except as otherwise provided in this Rule, the Court will not decide on child custody, parenting time, maternity, paternity, child support, dissolution of marriage, or legal separation. The Court will address those issues in the proper forum.

(2) A protective order may restrain the Defendant from contacting or coming near named persons. Before the Court grants a protective order restricting contact with a child with whom the Defendant has a legal relationship, the Court must consider these factors:
   (A) whether the Defendant's contact may harm the child.
   (B) whether unsupervised contact may endanger the child.

(3) If there is no legal relationship between the Defendant and the child, the Court may, on request, prohibit the Defendant's contact with the child based on danger to the Plaintiff.

**Rule 6. Ex Parte Issuance; Hearing; Dismissal.**

**(a) Issuance of Protective Order.** If the Court finds reasonable cause exists that the Defendant has committed or may commit acts of domestic violence or harassment against the Plaintiff

or other person for whom protection is requested, then the Court may issue an ex parte protective order. The Defendant may file an objection and ask for a hearing under Rule 7.

**(b) Temporary Protective Order; Hearing Date.** If the Court determines more information is needed, the Court may set a protective order hearing within ten business days of filing the petition and may issue a temporary protective order pending the hearing. The clerk will issue a Notice of Hearing to the Plaintiff and the Defendant.

**(c) Dismissal.** If the Court decides that no reasonable cause exists to grant the petition either ex parte or after a hearing, the Court will dismiss the petition without prejudice.

**(d) Hearing Order.** The clerk will send a copy of the order to the Tohono O'odham Police Department for service and placement in appropriate databases.

## Rule 7. Objection to Protective Order; Hearing.

Any Defendant served with an ex parte protective order may file a request for a hearing within ten business days of service. The clerk will set a protective order hearing within ten business days of Defendant filing the request for hearing. The clerk will issue a Notice of Hearing to the parties.

## Rule 8. Motion to Modify Protective Order; Motion to Dismiss Protective Order.

**(a) Motion to Modify.** A Plaintiff may move to modify a protective order. A motion to modify made after a hearing cannot be granted without setting a hearing and the Plaintiff giving notice to the Defendant.

**(b) Motion to Dismiss.** A Plaintiff may move to modify a protective order. The Court may dismiss a protective order without a hearing.

## Rule 9. Service of Protective Orders; Return of Service.

**(a) Service of Protective Orders.** The clerk will send the protective order, including temporary protective orders, and a copy of the Defendant's Guide sheet to Protective Orders to an authorized agent for service.

(1) *Authorized Agents.* Law enforcement or public safety personnel will serve protective orders as the Chairman of the Tohono O'odham Nation has authorized in writing. Court officers may serve protective orders on judicial property.

(2) *Service on the Nation, Branch, District, or Other Entity.* An Authorized Agent will serve a protective order directed at the Tohono O'odham Nation, a Tohono O'odham governmental branch, district, authority, enterprise, officer or employee in an official capacity, on counsel of the named branch, district, authority, or enterprise. If the named branch, district, authority, or enterprise does not have counsel, the Authorized Agent will serve the branch head, district council chairperson, or chief executive officer of the authority or enterprise.

**(b) Return of Service.**

(1) *Successful Service.* On completion of service, the Authorized Agent will file the Certificate of Service.

(2) *Unsuccessful Service.* If the Authorized Agent cannot complete service after five attempts, he or she must file a Certificate of Non-Service in the Court, detailing the dates, places, and times of attempted service. The Authorized Agent should attach the protective order documents in Subsection (a) to the Certificate of Non-Service.

(3) *Request for Additional Information.* When the clerk receives a Certificate of Non-Service, the clerk will send the Plaintiff a one-time courtesy letter asking for more addresses to serve, noting the Order is not effective until served, no further letters will issue, and the case will close after one year if the Order remains unserved. If the Plaintiff timely files more addresses, the clerk will resend the protective order documents to an Authorized Agent for a final attempt at service. It is the Plaintiff's responsibility to know whether the protective order has been served and to communicate with the Authorized Agent for that purpose.

## Rule 10. Term of Protective Order; Request to Extend Protective Order.

**(a) Term of Protective Order.** Protective orders are effective for six months after service on the Defendant.

**(b) Request to Renew Protective Order.** A Plaintiff may file a request to extend a protective order for an extra six months before the order's expiration. The Plaintiff must serve a copy of the request per the Tohono O'odham Rules of Civil Procedure.

## Rule 11. Administrative Dismissal.

If a protective order is not served within one year after issued, the Court will administratively dismiss the case.

Section History

Adopted by the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Rules of Procedure for Extraordinary Writs

**Rule 1. Writ of Habeas Corpus.**

**(a) Availability.** After all trial and appellate procedures have been exhausted and/or timelines have passed, a person may file a writ of habeas corpus to test the legality of his or her current detention or imprisonment. *See* Section 1303 of the Indian Civil Rights Act (as amended by the Tribal Law and Order Act of 2010 (25 U.S.C. § 1303)) and Article III, Section 4 of the Tohono O'odham Constitution.

**(b) Petition for Writ; Filing; Service; Amendments; Notification of Change of Address; Effect of Non-Compliance.**

(1) *Requirements.* The petition must substantially comply with the form in these Rules; must be typed or legibly handwritten and signed in blue or black ink; and must include:
- (A) the name and location of the petitioner;
- (B) the name, title, position and address of the person having or who will have custody of the petitioner (the respondent);
- (C) Whether the petitioner is in custody pursuant to a judgment of the trial court, as well as the name of the deciding judge and court;
- (D) the date of the judgment or conviction and the length of confinement;
- (E) the nature of the case or offenses involved and the plea entered;
- (F) all grounds upon which the petitioner asserts he/she is being held unlawfully and a summary of the facts supporting each ground; and
- (G) the relief the petitioner is seeking.

(2) *Filing; Copies; Summons.* The petition, two copies of the petition, and a prepared summons for the respondent must be filed in the Tohono O'odham Civil Court. The summons must substantially comply with the form in these Rules.

(3) *Service of Petition and Summons*.
- (A) Represented Petitioners. If represented by counsel, the petitioner must serve the respondent and the Tohono O'odham Office of the Attorney General with the petition and the summons. Service of process must be completed by the provisions of the Tohono O'odham Rules of Civil Procedure.
- (B) Unrepresented Petitioners. If a petitioner does not have counsel, the court clerk will provide a court officer with conformed copies of the petition and the summons to be served upon the respondent and the Tohono O'odham Office of the Attorney General. Service of process must be completed by the provisions of the Tohono O'odham Rules of Civil Procedure.

(4) *Amendment of Application for Writ.* The petition may be amended or supplemented as allowed under the Rules of Civil Procedure. An amended petition may not incorporate or reference any part of the prior petition. Any ground not included in the amended petition is considered dismissed. Service will be pursuant to Subsection 3.

(5) *Notice of Change of Address.* Petitioner must notify the Clerk of Court by filing a

notice of change of address if the petitioner's address changes while the case is pending. Petitioner must also serve a copy of the notice on the respondent.

(6) *Effect of Non-Compliance.* If the petition and/or service does not substantially comply with the requirements of this Rule, the court may strike or dismiss the petition.

**(c) Assignment of Judge.** The petition will be heard by a judge who did not preside over the petitioner's criminal matter for which the petitioner is currently incarcerated.

**(d) Answer to Petition for Writ.** The respondent's answer must be filed and served upon the petitioner pursuant to the Rules of Civil Procedure within 30 days of receipt of the petition, and the respondent must respond to each allegation in the petition and include:

(1) A copy of those portions of the trial record which the respondent deems relevant to the court's determination of the claims at hand.

(2) A statement of whether the respondent:

(A) has the party in his or her custody or under his or her power or restraint, and if so, by what authority, and the cause of such imprisonment or restraint, setting forth any such authority and cause in detail, or

(B) has had the party in his or her custody or under his or her restraint any time before the date of the writ of habeas corpus, but has transferred the custody or restraint to another, and state particularly at what time and place, for what reason, and by what authority the transfer was made;

(3) if the party is restrained by virtue of any writ, warrant, or other written authority, a copy of the document must be attached to the answer and the original must be produced and exhibited to the court at any hearing;

(4) If no answer is filed within the applicable timeframe, and no pre-answer motion is filed pursuant to Subsection (f) below, the petitioner may file for judgment on the petition.

**(e) No Reply.** No reply will be allowed to any answer filed pursuant to Subsection (d).

**(f) Pre-Answer Motion; Response.** The respondent may file a pre-answer motion requesting dismissal of part or all of the petition. The pre-answer motion must be served upon the petitioner pursuant to the Rules of Civil Procedure. The petitioner may file a response within 15 days of receipt of the pre-answer motion. No reply will be allowed. The Court may order a hearing and, if the case is not dismissed, set a new date for the answer to be filed.

**(g) Motions.** Motions, responses, and replies permitted under the Tohono O'odham Rules of Civil Procedure, including dispositive motions, may be filed in habeas corpus proceedings, subject to the filing and service requirements of the Rules of Civil Procedure.

**(h) Evidentiary Hearing.** After the answer is filed, or the time to file the answer has passed, the judge will review the petition, the answer, if any, the transcript, and the record. The judge determine whether adequate relief can be ordered or whether an evidentiary hearing is required.

(1) If an evidentiary hearing is required, it will be held within 30 days of the judge's

review, and a decision will be issued promptly after the hearing.

(2) If an evidentiary hearing is not required, the judge will render a decision on the petition promptly.

**(i) Appeal.** The petitioner or respondent may file an appeal on an adverse habeas corpus decision pursuant to the Tohono O'odham Rules of Appellate Procedure.

**(j) Effect.** All habeas corpus matters pending in the Tohono O'odham Court of Appeals at the time of the adoption of this Rule will be remanded for further proceedings pursuant to this Rule.

## Rule 2. Writs of Mandamus and Other Extraordinary Writs.

**(a) Petition for Writ; Contents.** A party may file with the Court a petition for a writ of mandamus or other writ guaranteed by the Tohono O'odham Constitution pursuant to this Rule. Writs of habeas corpus will be governed by Rule 1 of these Rules. For all other writs, the party must a pre-prepared summons in substantial compliance with the summons form in these Rules. The petition must include:

(1) the names or titles, addresses, and telephone numbers of the persons against whom relief is sought unless the court determines that including the address or telephone number of any person would place that person in physical jeopardy;
(2) a statement of the facts necessary to understand the issues presented;
(3) a statement of the issues and the relief sought; and
(4) a statement of the reasons why the writ should issue; and, a copy of any order, opinion, final judgment, or parts of the record essential to understanding the petition.

**(b) Service.** The filing party, pursuant to the service rules of the Rules of Civil Procedure, must serve the person against whom the writ is sought.

**(c) Answer to Petition for Writ.** The respondent's answer must be filed and served upon the petitioner pursuant to the Rules of Civil Procedure within 30 days of receipt of the petition, and the respondent must respond to each allegation in the petition.

**(d) No Reply.** No reply will be allowed to any answer filed pursuant to Subsection (d).

**(e) Evidentiary Hearing.** After the answer is filed, or the time to file the answer has passed, the judge will review the petition and answer, if any, and determine whether adequate relief can be ordered or whether an evidentiary hearing is required.

(1) If an evidentiary hearing is required, it will be held within 30 days of the judge's review, and a decision will be issued promptly after the hearing.
(2) If an evidentiary hearing is not required, the judge will render a decision on the petition promptly.

**(f) Expedited Review and Hearing.** If the petitioner requests an expedited writ and sets forth sufficient grounds for expedited review, the Court may issue a temporary writ and/or set a hearing within 10 days. The Court may also order the parties to appear and order the respondent to show cause why the writ should not be issued.

(g) **Motions.** Motions, responses, and replies permitted under the Tohono O'odham Rules of Civil Procedure may be filed in proceedings concerning extraordinary writs, subject to the filing and service requirements of the Rules of Civil Procedure.

(h) **Effect of Denial.** The denial of a petition for a writ is not a final decision on the merits of a case.

(i) **Appeal.** The petitioner or respondent may file an appeal on an adverse decision pursuant to the Tohono O'odham Rules of Appellate Procedure.

(j) **Effect.** All writs of mandamus or other extraordinary writs pending in the Tohono O'odham Court of Appeals at the time of the adoption of this Rule will be remanded for further proceedings pursuant to this Rule.

Section History

Adopted by Administrative Order 04-03 on April 28, 2003 as part of the Tohono O'odham Rules of Appellate Procedure. 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 and moved to the Tohono O'odham Rules of Procedure for Extraordinary Writs on March 12, 2014. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Judicial Review of Administrative Decisions (Administrative Appeals)

**Rule 1. Definitions.**

In this article, unless the context otherwise required:

**(a)** "Administrative agency" or "agency" means every agency, board, commission, department or officer authorized by Tribal law to exercise rulemaking powers or to adjudicate contested cases, whether created by constitutional provision or legislative enactment. This definition does not include any agency of the Tohono O'odham Judicial Branch.

**(b)** "Administrative decision" or "Decision" means any decision, order or determination of an administrative agency that is rendered in a case that affects the legal rights, duties or privileges of any person and terminates the proceeding before the administrative agency. Where a statute or rule of the administrative agency requires or permits a rehearing or other review, and the party has requested a rehearing or review, the decision is not final until the rehearing or review is completed. Administrative decision or decision does not include either:

(1) Rules, standards, or statements of general policy applications issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it. Unless the rule, standard or statement of policy is involved in a proceeding before the agency and its applicability or validity is in issue in the proceeding.

(2) Rules about the internal management of the agency that do not affect private rights or interests.

**Rule 2. Scope of Article.**

This article applies to and governs:

**(a)** Every action to judicially review a final decision of an administrative agency except decisions made under federal or state law. This article will also apply if the law provides for judicial review of the agency decisions and defines a procedure for the review.

**(b)** Unless review is sought of an administrative decision within the time and in the way provided in this article, the parties to the proceeding before the administrative agency will be barred from obtaining judicial review of the decision. But if the period for filing an appeal from an Administrative Agency's decision conflict with these Rules, the appeal period of the Administrative Agency will control and supersede the period provided under Rule 4(A). If the law provides that an administrative decision becomes final because the party failed to file any document like an objection, protest, or a request for a hearing within a specified time, the decision is not subject to judicial review under this article. This article does apply if a party is questioning the jurisdiction of the administrative agency over the

person or subject matter.

## Rule 3. Commencement of Action; Transmission of Record.

**(a)** A party starts an action by filing a Notice of Appeal and Request for Record with the Tohono O'odham Adult Civil Court and the Administrative Agency within 30 days from the date of the administrative decision is served on the party. Documents requiring a signature must be signed using blue or black ink. The method of service of the decision will be as provided by the rules of the agency. If no method is provided in the agency's rules, a decision will be considered to have been served when personally delivered or mailed to the party's last known residence. Service is completed on personal service or five days after the date that the final administrative decision is mailed.

**(b)** The party seeking judicial review must file a Notice of Appeal and Request for Record with the agency that conducted the hearing, and that agency must send the records to the Adult Civil Court. The record must include the following, at a minimum and must be delivered to the Court within 15 days. The agency must also deliver a copy of the record to the requesting party.

(1) The original agency action from which review is sought.
(2) Any motions, memoranda or other documents submitted by the parties to the appeal.
(3) Any exhibits admitted as evidence at the administrative hearing.
(4) The decision by a decision making body, the administrative law judge, or hearing officer and any revisions or modifications to the decision.
(5) A copy of the transcript of the administrative hearing, if the party seeking judicial review wants a transcript to be included in the record and provides for preparation of the transcript at the party's own expense. Any other party may have a transcript included in the record by filing a notice with the agency that conducted the hearing within 10 days after receiving the complaint. The party is responsible for the costs for preparing the transcript.

**(c)** Within 15 days of the Court receiving the record, the party seeking judicial review must file a written complaint or brief with the Adult Civil Court detailing the basis for, and in support of, the appeal.

## Rule 4. Jurisdiction and Venue; Jury Trials Unavailable.

**(a) Jurisdiction and Venue.** Jurisdiction to review final administrative decisions is vested in the Tohono O'odham Adult Civil Court. If a statute or the agency's rule(s) provide a different venue, then that venue will control.

**(b) Jury Trials.** Jury trials are not available for judicial review of final administrative decisions.

## Rule 5. Service of Process.

The party must serve the complaint under the service of process rules in the Tohono O'odham Rules of Civil Procedure.

**Rule 6. Appearance of Defendant and Answer.**

Within 20 days after service of the summons and complaint/brief, the defendant agency and all other defendants must answer or respond to the complaint.

**Rule 7. Parties.**

In an action to review a final decision of an administrative agency, the agency and all persons, other than the plaintiff, who are parties of record in the proceedings, will be made defendants.

**Rule 8. Pleadings and Record on Review.**

**(a)** The complaint must include a statement of the findings and decision sought to be reviewed, and must clearly specify the grounds upon which review is sought. It must also state whether a transcript is to be designated as part of the record under Rule 3(b)(5).

**(b)** Except as otherwise provided, the defendant must file an answer. If the Court orders or all the parties stipulate to it, the record may be shortened or supplemented.

**(c)** If the cause is remanded to the administrative agency and the party appeals the new administrative decision, the original and supplemental record, will be the record on review.

**Rule 9. Scope of Review.**

**(a)** **Timing.** An action to review a final administrative decision will be heard and determined with convenient speed. After receiving an answer, the Court will hold an evidentiary hearing. At the hearing, the Court will hear testimony and argument, and the Court will make a decision under Rule 10. The Court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.

**(b)** **Exhibits and Testimony.** Exhibits and testimony may be admitted that were not offered during the administrative hearing, and objections that a party did not make at the administrative hearing may also be considered.

**(c)** **Standard of Review.**

(1) *Normal Standard of Review.* Unless subsection (2) applies or Tohono O'odham law provides a different standard of review, the Court will review final administrative decisions for violations of due process.

(2) *De Novo Review.* The Court will review final administrative decisions *de novo* only if:

(A) either party requests *de novo* review in the complaint or answer; and

(B) the agency did not hold a hearing or a transcript/recording of the agency's hearing is not available.

**(d)** **Court Record.** The record in the Adult Civil Court will consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial *de novo*.

**Rule 10. Court Powers.**

**(a) The Adult Civil Court may**

(1) Stay the decision in whole or in part pending final disposition, with or without bond, unless required by the authority of which the administrative decision was entered, and after notice to the agency and for good cause shown.
(2) Affirm the agency action.
(3) Reverse the agency action if the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion.
(4) Make any order that it considers proper for the amendment, completion or filing of the record of the proceedings of the administrative agency.
(5) Allow substitution of parties because of marriage, death, bankruptcy, assignment or other cause.
(6) Dismiss parties.
(7) Modify or remand the action.
(8) Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
(9) When a hearing has been held by the agency, remand to take more evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just.
(10) In the case of affirmation or partial affirmation of an administrative decision requiring payment of money, enter judgment for the amount indicated by the record and for costs, upon which execution may be ordered.

**(b)** Technical errors in the proceedings before the administrative agency or the agency's failure to observe the rules of evidence are not grounds for reversing the decision. The Court may reverse the decision if the error or failure substantially affected the party's rights and resulted in a substantial injustice.

**(c)** The Court will make findings of fact and state conclusions of law.

**Rule 11. Appellate Review.**

A party may appeal the final decision, order, judgment, or decree of the Court to the Tohono O'odham Court of Appeals. Appeals must be filed within 30 days.

**Rule 12. Tohono O'odham Court of Appeals.**

Where applicable, the Tohono O'odham Rules of Appellate Procedure will apply to the proceedings except as otherwise provided in this article.

Section History

Adopted March 13, 2002 under Administrative Order 01-02 and affirmed on April 28, 2003 by Administrative Order 04-03. Amended, renumbered, and reorganized 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.

# TOHONO O'ODHAM RULES OF COURT

## Recognition and Enforcement of Foreign Judgments

**Rule 1. Purpose.**

The purpose of these Rules is to facilitate and improve the recognition and enforcement of judgments between the Tohono O'odham Nation and other jurisdictions.

**Rule 2. Foreign Judgments that May be Recognized.**

The Court may recognized judgments of United States federal courts; state courts, including municipal, county, and other lower courts; tribal courts. The Court may recognized judgments from courts of another country if the judgments comply with Rule 3.3 and the party seeking recognition complies with Rule 3.

**Rule 2.1. Foreign Civil Orders and Petition for Recognition and Enforcement; Contents; Certification; Notice.**

A person or entity seeking recognition and enforcement of a foreign judgment must file a petition signed under oath requesting recognition and enforcement of the judgment.

**(a) Contents of Petition.** The petition must contain:

(1) the name and last known mailing address of the parties;
(2) whether the person or entity seeking recognition and enforcement was a party to a lawsuit to whom a money judgment was awarded;
(3) the jurisdiction and name of the court that entered the order;
(4) the date the order was entered;
(5) whether the judgment is final with no pending appeal, or is not final;
(6) whether any subsequent orders vacating, modifying, or reversing the judgment have been entered in the rendering jurisdiction;
(7) whether the judgment is valid and enforceable in the rendering jurisdiction; and
(8) enough information to show that the person against whom the judgment has been rendered is subject to the jurisdiction of this court regarding enforcement of the judgment.

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

**(c) Pre-Prepared Notice.** The party seeking enforcement must, at the time of filing, submit a pre-prepared notice to each party against whom enforcement is requested for the clerk's signature and seal. The notice must:

(1) state the name of this court and the names and addresses of the parties and counsel (if any); and
(2) contain this statement: "A petition to enforce a judgment issued by a court outside of the Tohono O'odham Nation has been filed. An order recognizing and enforcing the judgment against you will be entered 30 days from service unless you file a written objection with the Tohono O'odham Court prior to the expiration of the 30 days."

**(d) Service; Return.** The party seeking enforcement must serve a copy of the petition and the notice on each party against whom enforcement is requested. Service of the petition and notice and the return of service is governed by the Tohono O'odham Civil Rules of Procedure.

**Rule 2.2. Foreign Child Support Orders and Petition for Order of Garnishment.**

**(a) Petitions Allowed.**

(1) Petition for Recognition and Enforcement. A party seeking recognition of the child support order without garnishment of wages may file for recognition under Rule 2.1.
(2) Petition for Order of Garnishment. A party seeking garnishment in addition to recognition of the foreign child support order may file a Petition for Order of Garnishment instead of a Petition for Recognition and Enforcement.
  (A) The Petition must be signed under oath and contain the following information:
    (i) the name and address of the agency or person to whom support payments should be transmitted;
    (ii) the name, address, birthdate, social security number, and tribal enrollment number–if applicable and known to the petitioner–of the person to be garnished;
    (iii) the birthdates of both parents;
    (iv) the name and address of the employer of the person to be garnished;
    (v) whether the judgment is final and if any appeal is pending;
    (vi) whether any subsequent orders vacating, modifying, or reversing the judgment have been entered in the rendering jurisdiction, or in any other jurisdiction;
    (vii) why the person against whom the judgment has been rendered is subject to the jurisdiction of the Tohono O'odham Court for enforcement of the judgment;
    (viii) why the rendering jurisdiction had both personal jurisdiction over the party against whom the judgment was rendered, and subject-matter jurisdiction; and
    (ix) why the rendering jurisdiction was entitled to issue the order, including a statement of the amount of arrearages, and a statement that all procedural due process requirements of the rendering jurisdiction have been carried out.
  (B) The filing party must attach to the Petition for Order of Garnishment:
    (i) a certified copy of the foreign child support order, with all modifications

made by the rendering jurisdiction; and

(ii) a certified copy of any income or wage-withholding order entered by the rendering jurisdiction, if any.

**(b) Pre-Prepared Notice.** The party seeking enforcement must, at the time of filing, submit a pre-prepared notice for each party against whom enforcement is requested for the clerk's signature and seal. The notice must state the name of the court and the names and addresses of the parties and counsel (if any), and contain the following statement:

(1) Petition for Recognition and Enforcement: "A petition to enforce a judgment issued by a court outside of the Tohono O'odham Nation has been filed. An order recognizing and enforcing the judgment against you will be entered 30 days from service unless you file a written objection with the Tohono O'odham Court prior to the expiration of the 30 days."

(2) Petition for Order of Garnishment: "A petition for an order of garnishment to enforce a judgment issued by a court outside of the Tohono O'odham Nation and to garnish wages has been filed. An order recognizing and enforcing the judgment against you will be entered 30 days from service unless you file a written objection with the Tohono O'odham Court prior to the expiration of the 30 days."

**(c) Service; Return.** The party seeking enforcement must serve a copy of the petition and the notice on each party against whom enforcement is requested. Service of the petition and notice and the return of service is governed by the Tohono O'odham Civil Rules of Procedure.

## Rule 3. Objections; Non-Enforceable Judgments; Hearing.

### Rule 3.1. Objection; Request for Hearing.

A party objecting to enforcement of a foreign judgment or a petition for order of garnishment must file a written objection within 30 days of service of the petition. The written objection must request a hearing and give a brief statement explaining why the Court should not recognize the judgment.

### Rule 3.2. Summons; Service.

When filing an objection, the objecting party must submit a pre-prepared summons for each party under the Tohono O'odham Rules of Civil Procedure. The clerk will set the hearing date, sign the summons, and return the summons to the objecting party for service and return of service.

### Rule 3.3. Non-Enforceable or Non-Recognizable Judgments.

A judgment will not be recognized or enforced if:

**(a)** the judgment was rendered by a process that does not assure the requisites of an impartial judicial proceeding, including, notice and the right to a hearing;

**(b)** the rendering court did not have both personal jurisdiction over the party against whom enforcement is sought, and jurisdiction over the subject matter;

**(c)** the judgment was obtained by fraud;

**(d)** the cause of action on which the judgment is based, if recognized, is contrary to the laws, custom and tradition, or public policy of the Tohono O'odham Nation;

**(e)** the judgment involves enforcement of child custody provisions, and

(1) the rendering court did not have jurisdiction over the child;
(2) the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), if applicable, was not properly followed; or
(3) due process was not provided to all interested persons or parties participating in the court proceeding.

**(f)** the judgment involves enforcement of a criminal judgment wherein this Court lacks the authority to otherwise adjudicate a criminal proceeding against a particular defendant; or

**(g)** the judgment is not valid or enforceable in the rendering jurisdiction.

**Rule 3.4. Hearing.**

The party objecting to enforcement of a foreign judgment must show why the Tohono O'odham Court should not recognize and enforce the foreign judgment. At the hearing, after reviewing all the relevant evidence concerning the foreign judgment, the Court will issue an order either granting or denying recognition of the foreign judgment.

**Rule 4. Entry of Order Where No Objection.**

If no one files a written objection within the applicable period, and the Court finds the petition complies with these Rules, the Court will grant recognition and enforcement of the foreign judgment or the petition for order of garnishment.

**Rule 5. Appeal; Stay of Execution; Stay of Proceedings.**

If an objecting party proves that an appeal from the foreign judgment is pending or will be filed, or that a stay of execution has been granted, the Court may dismiss the petition without prejudice. Instead of dismissing the petition, the Court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

**Rule 6. Postjudgment Proceedings Regarding Foreign Judgment.**

The entry of the order recognizing and enforcing the foreign judgment by this Court will entitle the judgment holder to enforce its judgment provided by Tohono O'odham law.

## Rule 7. Application for Garnishment.

**(a) When Filed.** The Application for Garnishment in compliance with the Tohono O'odham Rules of Civil Procedure may be filed with the Petition for Recognition and Enforcement, or may be filed after recognition of the foreign judgment.

**(b) Filing Fee.** A filing fee applies to the Application for Garnishment.

Section History

History: Adopted January 4, 2005 as Administrative Order 01-05. Amended June 3, 2005 by Administrative Order 03-05. Amended, reorganized, and renumbered to consolidate the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2017 Tohono O'odham Rules of Court. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## (Reserved) Rules of Evidence

# TOHONO O'ODHAM RULES OF COURT

## Rules of Appellate Procedure

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

**(a)** These Rules govern the procedure for all appeals from the Judicial Court of the Tohono O'odham Nation to the Court of Appeals 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.

**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, which is granted expressly 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 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 a enough judges are available, the Chief Judge will appoint an appellate panel, and send a copy of the appointment order to the parties; or
(2) If enough judges are not available, then the Chief Judge will:
  (A) Notify the parties that a panel could not be selected due to an insufficient judges and that a panel will be appointed when enough judges are eligible to hear the appeal 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 appellate judge panel will select a presiding appellate 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 tribal constitution, legislative authority, or resolution.

**(b)** Stipulations by parties as to jurisdiction are allowed.

**(c)** The Appellate Court may review any:

(1) Final civil judgment, order, or commitment ending litigation, and giving rise to good-faith claims of an error of law or procedure affecting 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 would have affected the outcome of the case.

(3) Trial court action, which is not final by filing an interlocutory request for permission to appeal as permitted under Rule 14.

**(d)** Appeal of a final judgment of acquittal by a jury in a criminal case will not be heard.

**(e)** Administrative Appeals of decisions by a branch, agency, district or regulatory body must be taken directly to the Adult Civil Court. Rule 3 of 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 Court of Appeals will limit its review to the record of the trial court proceeding, issues 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 will not allow hearings *de novo*.

**Rule 6. Definitions.**

As used in these Rules:

**(a)** "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.

**(b)** "Appellate court" refers to the Tohono O'odham Court of Appeals.

**(c)** "Appellate panel" or "panel" refers to a group of judges designated to hear and decide an appeal. This group ordinarily includes three judges.

**(d)** "Attorney" means a person who has graduated from an American Bar Association accredited law school and is admitted to practice in the Judicial Court of the Tohono O'odham Nation.

**(e)** "Counselor" see "advocate" and/or "attorney."

**(f)** "File" or "filing" means to formally deposit documents into the custody of a court.

**(g)** "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.

**(h)** "Final judgment or decision" means a judgment or decision which affects a substantial right leaving nothing open to dispute and which ends the action between the parties in the trial court.

**(i)** "Hearing *de novo*" means a new hearing for the second time in which a court hears the same matter as a trial court or a court of original and not appellate jurisdiction.

**(j)** "Motion" means any request for an order other than the complaint, petition, or answer.

**(k)** "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.

**(l)** "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.

**(m)** "Self-represented litigant" means that a person or party to an appeal is without the assistance of an attorney, counselor, or advocate.

**(n)** "Proof or certification of service" is a document has been served or delivered to a party, which has the date and time of service, name of the person served, and name of the person who made service.

**(o)** "Trial court" refers to the Judicial Court of the Tohono O'odham Nation from which an appeal arises.

**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 embodied 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 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 the 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)** Should the Tohono O'odham Judicial Branch suspend or disbar an attorney, counselor, or advocate, that disciplinary action will be forwarded to the 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)** In matters of immediate concern likely to adversely impact communities or litigants and upon the written request of either party, the appellate court may suspend or extend schedules.

**(b)** This rule will not be construed to allow the appellate court the authority to extend the period for filing an appeal or request for review set by Tohono O'odham law. The time allowed for filing a notice of appeal in Rule 12 will be extended when the Tohono O'odham Rules of Court or Tohono O'odham law provides a different time frame.

**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 standard mail service provided by the United States Postal Service, 5 more days will be added into 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 follows Rule 12(d).

**(b)** Pleadings must be typed or legibly handwritten, must be in blue or black ink (including any signatures), and 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. The party must file the certification of service with the appellate court.

**(e)** Service will be governed by Rule 3 of the Civil Rules of 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.

**(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 the officials, employees, and 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 that 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 nature of the 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 does not have 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 within 48 hours on all adverse parties.

**(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 or opposing the interlocutory appeal.

**(d)** The trial court will issue its order granting or denying the request within 20 days after 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 previously has been provided such affidavits, documents, and relevant parts of the record. 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 required number of 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. 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 of 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 as 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) copies of pertinent laws, rules, or regulations being reviewed 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 compelling.

**(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 as the merits of the case and the interests of justice may 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.

# TOHONO O'ODHAM RULES OF COURT

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

### I. PREAMBLE.

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

### II. DEFINITIONS.

For these canons, the following definitions apply:

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

### III. CANONS OF CONDUCT.

**CANON 1: Judiciary Responsibilities.**

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

(a) **Judges Pro Tempore.** A judge pro tempore is a judge who is appointed to act as a judge for the Nation on a temporary basis. A temporary judge:

(1) must comply with these canons;
(2) may not practice law in the Tohono O'odham Nation courts while serving as a judge pro tempore; and
(3) may not appear as an advocate in a proceeding in which he or she has presided as a judge or in any related matter.

**(b) Oath of Office.** All judges sitting in the Nation's Courts must take an Oath of Office before the Chief Judge before assuming his or her duties. A written recitation of the oath will be signed and given to the court administrator for filing and will be available for review upon request. Conduct in violation of the oath or any part of it may subject the judge to disciplinary action under these canons. The judicial oath is as follows:

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

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

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

**(a) Separation of Branches.** A judge must recognize a separation between the trial court and the Court of Appeals of the Judicial Branch, between the Judicial Branch and other branches of the tribal government. A judge must avoid any conduct or action that violates such separation, or raises an appearance of impropriety.

**(b) Decision-Making.** A judge may not participate in legislative or executive decision-making unless such participation is in accordance with the custom and tradition of the Nation.

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

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

**(a) Honesty and Integrity.** A judge must respect and follow the laws, customs, and traditions of the Nation and must at all times act in a way that promotes public confidence in the honesty and integrity of the Tohono O'odham Judiciary.

**(b) Outside Influences.** A judge may not allow family, social, or other personal relationships to influence his or her judicial conduct. A judge may not try to use the prestige of his or her office to advance the private interests of others, nor may the judge convey the impression that anyone has special influence on the court.

**CANON 4: Diligence and Impartiality.**

A judge must perform the duties of the judiciary impartially and diligently. The judicial duties of a tribal judge take precedence over all other activities. The judicial duties of the judge include

all duties of the office prescribed by tribal law, custom, or tradition. In the performance of these duties, these standards apply:

**(a) Adjudicative Responsibilities.**

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

**(b) Administrative Responsibilities.**

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

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

(1) The judge has a personal bias or prejudice about a party or personal knowledge of disputed evidentiary facts;
(2) The judge served as an advocate or personal representative before the court, or a person with whom the judge has been associated in a professional capacity served as an advocate or personal representative about the matter;
(3) The judge knows that he or she individually, or any member of the judge's family, or a person living in his or her house has a financial interest, or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

(4) The judge, or his or her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:
  (A) is a party to the proceeding or is an officer, director, or trustee of a party to the proceeding;
  (B) is acting as an advocate in the proceeding;
  (C) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding, or
  (D) is, to the judge's knowledge, likely to be a material witness in the proceeding.

(5) A judge may not recuse himself or herself from a case without an adequate reason, such as those listed above.

**(d) Alternative to Disqualification**. A judge with a potential disqualification under the terms of Canon 4(c)(3) or (4) may, instead of withdrawing from the proceeding, disclose on the record the basis of his or her potential conflict. If, after such disclosure, the parties and their advocates or spokespersons, independent of the judge's participation, all agree on the record that the judge's participation is not prejudicial or that his or her financial interest is insubstantial, the judge may participate in the proceeding.

**(e) Necessity**. A judge with a potential disqualification under the terms of Canon 4(c) where that judge is the only judge available to hear a matter requiring immediate judicial action, such as an initial appearance setting release conditions or a temporary restraining order, must:

(1) Disclose on the record the basis for possible disqualification;
(2) Make sure that neither party gains a procedural, substantive, or tactical advantage; and
(3) Make utmost efforts to transfer the matter to another judge as soon as possible.

## CANON 5: Improvement of the Legal System.

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

**(a) Education.** A judge may speak, write, lecture, teach, and participate in other activities about tribal law and custom, the legal system of the Nation, and the administration of justice.

**(b) Public Hearings.** A judge may appear at a public hearing before a tribal executive, legislative body, or official on matters about the tribal legal system and the administration of justice. The judge may otherwise consult with a tribal executive, legislative body, or official, but only on matters about the general administration of justice.

**(c) Participation in Organizations and Boards.** A judge may serve as a member, officer, or director of an organization, board, or tribal government agency devoted to the improvement of tribal law, the Nation's legal system, or the administration of justice. A judge may not serve as a member, officer, or director of any other tribal governmental entity.

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

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

**(a) Avocational Activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities if the activities do not interfere with the performance of his or her duties.

**(b) Civil and Charitable Activities.** A judge may participate in civic, charitable, and other activities that do not reflect on his or her impartiality or interfere with the performance of his or her judicial duties. A judge may participate in any educational, charitable, or similar organization provided that the judge should not participate if the organization will likely be involved in proceedings which would ordinarily come before the court or will likely be involved in adversary proceedings in any court.

**(c) Financial Activities.**

(1) A judge should avoid financial and business dealings that reflect adversely on his or her impartiality, interfere with the performance of his or her judicial duties, exploit his or her position as a judge, or involve such judge in frequent transactions with attorneys, advocates, or others likely to come before the court regularly.

(2) A judge may participate in the operation of a business so long as the activity does not interfere with his or her judicial responsibilities or reflect adversely on the judge or the tribal judiciary.

(3) Except as allowed by the laws and traditions of the Nation, neither a judge nor a member of his or her family living in the judge’s household should accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her fairness or impartiality in any judicial proceedings that come before the judge.

**(d) Extra-Judicial Appointments.** Unless allowed by tribal law or tradition, a judge may not accept appointment to any tribal governmental entity or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the tribal legal system, or the administration of justice. A judge may, however, represent the tribe on ceremonial occasions or with historical, educational, or cultural activities.

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

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

Section History

Adopted by Administrative Order 01-05 effective January 4, 2005. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O’odham Rules of Court on November 1, 2011. Amended by the 2023 Tohono O’odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Canons of Conduct for Judicial Employees of the Tohono O'odham Nation

### PREAMBLE

A fair and independent court system is necessary to the administration of justice. Proper conduct by judicial employees inspires public confidence and trust in the courts. Certain principles govern the conduct of all judicial employees. This code of conduct provides uniform standards for the conduct of all judicial department officers and employees other than judges. It is intended to reinforce the Judges' Canons of Conduct that govern the judges and should be read in a way consistent with the Judges' Canons of Conduct. Violations of this section will be enforced locally in the same way as violations of local personnel rules that apply to judicial employees.

### DEFINITIONS

These terms have specific meanings within the context of this code.

A "canon" is a basic rule governing the conduct of judicial employees. The broad statement appearing before each major section of the code is the canon. There are five canons in this code.

"Court administrators" or "division managers" are high-level administrative staff who work in close proximity to judges such that their actions, decisions, or conduct might be viewed as official acts or positions of the judiciary.

"Court clerks" are staff, including those with the title "clerk" and others such as court officers, who are assigned to work in courtrooms with judges.

"Judge" means any person who performs judicial functions within the judicial system of the Tohono O'odham Nation.

"Personal staff" means assistants, secretaries, law clerks, court officers, and court clerks employed by, assigned regularly to, or reporting directly to a judge.

"Relative" means a spouse, child, grandchild, parent, grandparent, or other person with whom the judicial employee has a close familial relationship, including any person living in the employee's household.

**CANON 1: Judicial Employees Must Uphold the Integrity and Independence of the Judiciary.**

**(a) Independence.** Judicial employees must maintain high standards of conduct so the independence of the judiciary is preserved.

**(b) Integrity.** Judicial employees must maintain and observe the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.

*Commentary:*

The attitudes and work habits of individual employees reflect on the integrity and independence of the judiciary. This independence is vitally important in maintaining the confidence of the public in the judiciary. Honesty and truthfulness are essential to the judiciary.

**CANON 2: Judicial Employees Must Avoid Impropriety and the Appearance of Impropriety in All of Their Actions.**

**(a) Compliance with law.** All judicial employees must respect and follow the law. Employees must act at all times in a way that promotes public confidence in the integrity and impartiality of the judiciary.

*Commentary:*

As public servants, judicial employees should act in ways that do not violate the law or the requirements of this code. Public confidence in the judiciary is only sustained by the willingness of each employee to live up to these standards. When faced with conflicting loyalties, judicial employees should first seek to maintain public trust.

**(b) Gifts and extra compensation.** Judicial employees must not solicit or accept gifts or favors from counsel, litigants, or other people doing business with the court. Employees must not request or accept any additional payments for help given as part of their official duties.

*Commentary:*

Improper conduct includes seeking a favor, receiving a gift or the promise of a gift–whether money, services, travel, food, entertainment, or hospitality–which could be viewed as a reward for past or future services. Receiving fees or compensation not provided by law in return for public services may be a criminal offense. Receiving these may subject the judicial employee to criminal charges under Tohono O'odham law. Accepting food and refreshments of insignificant value when attending a conference, seminar, business lunch or meeting is allowed. It is also okay to accept or exchange gifts and social hospitality on customary occasions (i.e. birthdays, weddings, or holidays) with friends outside of the workplace. Employees may accept awards presented in recognition of public service. The standard to remember here is that employees should always conduct themselves in a way that inspires public confidence in their role as judicial employees.

**(c) Abuse of position.** Judicial employees must not use or try to use their positions within the judiciary to secure privileges or exemptions for themselves or another.

*Commentary:*

Judicial employees must not seek or provide special consideration in any matters pending before the Court, including traffic citations. Employees must not provide special treatment to parties or cases. Employees must not discuss the merits of cases pending before the court. Employees must not be inappropriately friendly with litigants, counsel, or anyone who does business with the court in order to prevent giving the appearance of preferential treatment. Employees should consider how opposing parties and counsel might view the situation. Accepting,

agreeing to accept, giving, or requesting a gift or favor with an understanding that any court business or proceeding would be influenced may be a crime. It may subject the judicial employee to criminal charges under the laws of the Tohono O'odham Nation.

(d) **Employment of relatives.** Judicial employees must not be appointed by, or be directly supervised by, a relative or by a supervisor reporting directly to a relative. Employees must not try to influence the employment or advancement of a relative by the court unless they are providing letters of reference or verifying references.

*Commentary:*

A court or division manager's employment of relatives may be cause for suspension or dismissal from employment by the Tohono O'odham Judiciary.

(e) **Use of public property.** Judicial employees must not use public funds, property, or resources wastefully. Employees must not use resources for private purposes that are not pre-authorized by judicial or other administrative authorities.

*Commentary:*

Employees should not knowingly make false entries on time cards or personnel records. Employees must not backdate a court document or falsely claim reimbursement for mileage or expenses. Employees must not misuse the telephone, facsimile machine, or copying machine. Employees must not take office supplies home for private use unless allowed to do so in relation to any work-from-home assignments. This conduct may be seen as theft, and charged as a crime under the laws of the Tohono O'odham Nation.

(f) **Former employees. Judicial employees must not do business with a former judicial employee:**

(1) Anyone who held a position involving substantial discretion over that part of the court's activities;
(2) Who left the court's employment during the preceding 12 months; and,
(3) Whose participation could harm the interests of the judiciary or be perceived as favoritism.

*Commentary:*

This section does not apply to former employees who create a small business, such as jewelry making or food vending, which in no way interferes with the daily business of the Court. Abuse of former employment may be a crime under the laws of the Tohono O'odham Nation.

## CANON 3: Judicial Employees Must Perform Their Duties Impartially and Diligently.

(a) **Professionalism.** Judicial employees must be patient, prompt, and courteous to litigants, jurors, witnesses, counsel, and all others who come in contact with the court.

(b) **Impartiality.** Judicial employees must perform their duties impartially, and must not be influenced by kinship, social or economic status, political interests, public opinion, or fear of criticism or reprisal.

*Commentary:*

Employees who think they may be influenced in a particular matter should discuss the situation with a supervisor, administrator, or judge to determine their next steps. The employee may need to be removed from that particular case to maintain the Court's impartiality.

**(c) Prejudice.** Judicial employees must perform their duties without bias or prejudice. Employees must not behave or speak with bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

**(d) Information and records.** Authorized judicial employees must provide accurate, timely information. Employees must provide access to public court proceedings and records according to established procedures. A judicial employee must not disclose any confidential information received in their official duties, except as required in the performance of those duties. An employee must not use confidential information for personal gain or advantage.

**(e) Legal assistance.** Judicial employees may help members of the public in identifying available procedural options. Employees may help members of the public in understanding and following court procedures. Judicial employees must not advise a particular course of action.

*Commentary:*

Employees may help members of the public with matters that fall within the scope of that employee's responsibilities and knowledge, depending on the court's available resources. This assistance may include:

- Giving information within court records;
- Providing examples of forms or pleadings;
- Explaining court rules, procedures, practices, and due dates; and
- Helping to complete forms with information provided by a member of the public.

Although a member of the public may be informed of the options for addressing a matter, judicial employees should not advise members of the public on a particular course of action. Employees should not try to answer questions outside their knowledge and experience. Unless the employee works in a court-approved lawyer-referral program, employees should not recommend the names of private counsel to members of the public. Employees may refer members of the public to bar associations or legal aid organizations for help.

**(f) Education.** Judicial employees must follow education requirements, maintaining any licensing or certification required for their position.

**(g) Communication with judges.** Judicial employees must not communicate personal knowledge about the facts of a pending case to the judge assigned to the case. Employees must not make or repeat remarks about a case pending before the court that might affect the fairness or outcome of the proceeding.

**(h) Duty to report.** Judicial employees must report to a supervisor, administrator, or judge

any violation of the law or this code by another judicial employee. Employees making a report in good faith must not be subject to retaliation.

*Commentary:*
Reporting illegal conduct to a law enforcement agency or other appropriate authority is allowed. Employees must cooperate with the court regarding any alleged misconduct by a judge without fear of retaliation.

**CANON 4: Judicial Employees Must Manage Their Activities Outside of Work to Minimize Conflicts with Their Employment Responsibilities.**

**(a) General activities.** Judicial employees must conduct activities outside of work in a way that avoids a negative effect on the court or upon that employee's ability to perform their job.

**(b) Financial activities.** Except as provided by law or court rule, judicial employees must not engage in any business activity or secondary employment that:

(1) Involves an organization or a private employer that regularly conducts business with the court;
(2) Is conducted during the employee's normal working hours;
(3) Places the employee in a position of conflict with his or her official role in the judicial department;
(4) Requires the employee to appear regularly in judicial or administrative agency proceedings;
(5) Identifies the employee with the judicial department or gives an impression the employment or activity is on behalf of the judicial department; or,
(6) Requires use of court equipment, materials, supplies, telephone services, office space, computer time, or facilities.

*Commentary:*
An employee must avoid employment that conflicts with an employee's official role within the judiciary. For example, an employee should not work for a police department, public defender, or prosecutor. Judicial employees may become foster parents. Employees may teach, lecture, or write on any subject, so long as any payment received is at a rate that does not exceed the average amount paid to others in that field. The employee must make sure any presentations or documents clarify that the judicial employee is not representing the judicial department. Further, they must not disclose confidential documents or information.

**(c) Conflict of interest.** Judicial employees must handle personal and business matters in a way that avoids any situation that may lead to a conflict, or the appearance of a conflict, in the performance of their employment.

(1) Judicial employees must inform the appropriate supervisor of any potential conflicts of interest involving their duties.
(2) Any member of a judge's personal staff or the courtroom clerk must inform the presiding judge of any potential conflict of interest, involvement with the people involved in a case, or activities of outside employment in a case pending before the

judge where there is a possible appearance of undue influence on the Court.

(3) Judicial employees must withdraw from participation in any court proceeding or court business in which they have a personal, business, or familial interest that actually or appears to influence the outcome of court proceedings or business.

*Commentary:*

Employees have a duty to identify, disclose, and avoid conflicts of interest. A potential conflict of interest exists when an official action or decision in which an employee participates clearly benefits or harms a personal, business, or employment interest of the employee, the employee's relative, or the employee's close friends. In a judicial proceeding, a potential conflict of interest arises if a judicial employee's business associate, relative, or close friend is an interested party. Even if nothing dishonest, unacceptable, or unsuitable actually occurs, a conflict of interest creates the appearance of those things that can seriously undermine the public's confidence and trust in the court system.

If withdrawal of an employee from a particular case would cause unnecessary hardship in the Court's operations, the Chief Judge or court administrator may allow the employee's participation. An employee should only participate if the Code of Judicial Conduct allows their involvement, no reasonable alternative exists, and safeguards, including full disclosure to the parties involved, ensure official duties are properly performed. The key in this circumstance is that the Court maintains transparency to the public to cultivate public confidence and trust.

**(d) Solicitation.** Judicial employees must not use their positions or offices to solicit funds from the general public. Other than members of a judge's personal staff, courtroom clerks, or division managers or administrators, judicial employees may solicit funds with outside activities as long as the solicitation does not interfere with the employee's duties.

*Commentary:*

Supervisors should not personally request contributions of funds to any organization or activity from a subordinate. Supervisors may inform other employees to bring awareness about a general fund-raising campaign. A member of a judge's personal staff, the courtroom clerk, or a court manager should not request a contribution from any employee when that employee's close contact with a judge could reasonably be viewed to give weight to the request.

**CANON 5: Judicial Employees Must Not be Involved in Political Activities that Give an Appearance of Judicial Endorsement.**

**(a) General activities.** Judicial employees may participate in political activities that do not give the impression that the judiciary itself endorses a particular political candidate or political cause. The only exception is when an employee has been assigned to do so in order to improve the law, the legal system, or the administration of justice.

*Commentary:*

The judiciary seeks to maintain neutrality in political matters. While judicial employees may express personal opinions about political candidates and speak out on issues like other members of the public, they should maintain neutrality in action and appearance when performing their jobs,

unless their positions allow political advocacy by the judiciary. To this end, judicial employees should separate their political activities from employment duties.

**(b) Personal staff, courtroom clerks, and managers.** Members of a judge's personal staff, courtroom clerks, and court managers have the same political limitations contained in the Canons of Judicial Conduct. These employees may not hold any elected office.

**(c) Elected office.** Judicial employees who are not members of a judge's personal staff, courtroom clerks, or court managers may be candidates for elected office under these conditions:

(1) Such judicial employees may be candidates for elected office if the employee takes an unpaid leave of absence.
(2) The leave of absence must begin before any public declaration of their intention to seek office, filing campaign papers, or any campaign fundraising.
(3) The employee must publicly disclose that he or she is on a leave of absence from court employment.
(4) If elected, the employee must resign from court employment before assuming office.

**(d) Workplace activity.** During scheduled work hours or while at the workplace, employees must not engage in political campaigning activities. Employees must not display literature, badges, stickers, signs, or other political advertisements on behalf of any party, political committee, agency, or candidate for political office. Employees allowed to do so may participate in approved activities about measures to improve the law, the legal system, or the administration of justice.

**(e) Political pressure.** Employees must not use their official authority or position, directly or indirectly, to influence or try to influence any other employee to become a member of any political organization or to take part in any political activity.

Section History

The "Canons of Conduct for Judicial Employees of the Tohono O'odham Nation" were adopted by the court by Administrative Order 01-05 effective January 4, 2005. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2023 Tohono O'odham Rules of Court.

# TOHONO O'ODHAM RULES OF COURT

## Rules Governing Admission to Practice in the Tohono O'odham Courts

### PURPOSE

The Judicial Branch of the Tohono O'odham Nation has an interest in the quality of justice within this Nation's system of government and in protecting participants in the Nation's judicial system. Under Article VIII, Section 10(d) of the Constitution of the Tohono O'odham Nation, Title II of the Law and Order Code of the Tohono O'odham Nation, Courts and Procedures, Section 1-106, and the court's inherent power to regulate practice before it, the Tohono O'odham Judiciary is empowered to establish rules governing court procedures and parties practicing before the Court. Accordingly, these Rules Governing Admission to Practice impose requirements on anyone seeking to represent clients in the courts of the Tohono O'odham Nation.

**Rule 1. General Requirements.**

An applicant who meets the qualifications described below will be admitted and certified to practice in the courts of the Tohono O'odham Nation:

**(a)** At least 21 years of age;

**(b)** Shows his or her competency to represent clients as described in Rule 2;

**(c)** Shows his or her good character and fitness to represent clients as described in Rule 3;

**(d)** Submits his or her Tohono O'odham enrollment number, if the applicant is a member of the Tohono O'odham Nation; and

**(e)** Takes the oath prescribed in Rule 6.

The burden of proof is on the applicant to show that he or she meets the requirements for admission. Refusal to furnish information or answer questions relating to the qualifications is enough reason to deny the application for admission to practice.

**Rule 2. Competency Requirements.**

An applicant must show his or her competence.

**(a) Attorney Applicants:** Must provide current proof of admission (such as a copy of a bar card or a letter or certificate of good standing from the jurisdiction of licensure) to practice law before the highest court of any state or in any federal or U.S. territorial court.

**(b) Non-Attorney Applicants:**

(1) *Non-Tohono O'odham Tribal Members:* must provide:

(A) Proof of satisfactory completion of a course of study for lay advocates sponsored or certified by the Arizona Tribal Judges Association, the National American Indian Court Judges Association, or the National Institute for Trial Advocacy;
(B) Proof of satisfactory completion of a degree program in tribal justice systems or lay advocacy with at least 42 semester credits of coursework, including substantive and procedural law as well as skills development; or
(C) Proof of admission to practice lay advocacy before a tribal court of a federally recognized tribe which extends a similar admission to practice to Tohono O'odham advocates.

(2) *Tohono O'odham Tribal Members:* No formal law training is required; however, some knowledge of court procedures is recommended.

**(c) Law Student Applicants:** Law students may appear as advocates. To be admitted to practice, a law student must meet these requirements:

(1) Is currently attending an American Bar Association (ABA) accredited law school and in good standing.
(2) Has completed at least one academic year of credits.
(3) Is supervised by a licensed attorney in good standing in his or her state or territory of licensure and is admitted to practice before the Tohono O'odham Courts.
(4) The supervising attorney must be responsible to the Court for the student. The student's ability to practice before the Court is ancillary to the supervising attorney's license and certification.
(5) Provide a written and signed affidavit to the Court–by a dean, registrar, or a professor of the student's ABA-approved law school–that the student meets the above requirements.
(6) Upon graduation, the law student admitted to practice in the Tohono O'odham Courts must inform the court of the change in status and seek to qualify as an attorney or other category of practicing counsel under these Rules.

**(d) Orientation and Continuing Legal Education:** The Court may require any additional education and/or training that would improve the quality of representation for the O'odham.

## Rule 3. Character Requirements.

**(a)** An applicant must show good character and fitness to represent clients in the Tohono O'odham Nation by:

(1) Submitting affidavits of support from two people, known to the applicant for a reasonable amount of time and familiar with the applicant's integrity, honesty, moral character, judgment, courtesy, and self-reliance; and
(2) Providing background information and permission to contact other references as requested by the court; and
(3) Submitting to a fingerprint check and background check if requested by the court.

**(b)** Any applicant who knowingly makes a false statement or fails to disclose a fact necessary

to correct a mistaken understanding by the Court with his or her application will not be admitted to practice. If a false statement or failure to disclose a necessary fact is discovered after being admitted to practice, the applicant will be barred from practice in the Court. The applicant must reapply for admission if he or she wishes to continue as a legal practitioner.

**(c)** An applicant who is not in good standing or who has been suspended from practice in another jurisdiction and has not been reinstated will be barred from practice in the Court. The applicant must reapply for admission if he or she wishes to continue as a legal practitioner.

**(d)** Criminal convictions:

(1) An applicant with a felony criminal conviction in any jurisdiction–state, tribal, or federal–within the last 5 years will not be admitted to practice in the courts of the Tohono O'odham Nation.
(2) Felony convictions more than five years before filing an application must be disclosed on the application form and may, at the discretion of the panel, be cause for rejection of the application.
(3) Misdemeanor convictions must be disclosed on the application form and may, at the discretion of the panel, be cause for rejection of an application.
(4) It is solely within the court's discretion whether a felony more than 5 years old or a misdemeanor conviction is a bar to admission to practice before the court.

**Rule 4. Application Process.**

**(a)** The applicant must complete an official application to practice in the Tohono O'odham Courts. Applications can be picked up at the Tohono O'odham Justice Center. They are also available on the Court's website.

**(b)** The applicant must submit his or her application for admission to practice, along with the necessary affidavits and releases of information, if any, in one filing. Before being admitted, the applicant must certify that he or she has received a complete copy of these Rules and the Code of Ethics for Legal Practitioners Practicing in the Courts of the Tohono O'odham Nation.

**(c)** The Receptionist at the Justice Center may return an application missing any required documents

**(d)** Applications will be given to a panel consisting of the Chief Judge, Deputy Chief Judge, and another full-time judge ("panel") who will review the application and documents, request more information as needed, and grant or deny the application. The panel will hear all other matters regarding the application to practice, disciplinary action (Rule 8), and reinstatement (Rule 9).

**(e)** If an applicant is admitted to practice, the court will issue an admission certificate to the individual evidencing the authority of the legal practitioner to practice before the courts of the Tohono O'odham Courts. The admission certificate may be picked up by the applicant when he or she is sworn into practice before a judge of the court under Rule 6 below.

**(f)** An applicant who is denied admission to practice will receive a written notice of the reason for the denial. The applicant may then ask for reconsideration of such denial by the panel. A written request for reconsideration and any additional documents the applicant wishes to have considered must be submitted to the panel within 10 business days of the date of the denial notice. The reviewing panel has the sole discretion to interview the applicant. The panel's decision will be made within 5 business days of filing the request for reconsideration.

**(g)** The panel's decision is final.

**Rule 5. Confidentiality.**

All information received by the Court with an application for admission is confidential and will be released only upon written authorization of the applicant or by order of the Court.

**Rule 6. Oath.**

Below is the oath or affirmation to be taken to qualify for admission to practice before the courts of the Tohono O'odham Courts. The oath must be in the form shown below. The oath must be recited before any judge of the Tohono O'odham Nation, and submitted in writing to the Court after the signatures of the applicant and judge, along with the stamp of the Tohono O'odham Nation, are affixed thereto.

*I do solemnly swear:*

*I will support the Constitution and laws of the Tohono O'odham Nation.*

*I will maintain the respect due to the courts and judicial officers.*

*I consent to the Court's jurisdiction, including the jurisdiction to sanction legal practitioners.*

*I will not counsel or maintain any suit or proceeding which appears to be unjust or to present any defense except as I believe to be honestly debatable under the laws of the Nation or of the United States of America.*

*I will maintain the causes confided to me by means that are consistent with truth and honor, and I will never seek to mislead the Courts by any artifice or false statement of fact or law.*

*I will maintain the confidence and protect the secrets of my client, and I will accept no compensation from my client's business except from my client or with my client's knowledge and approval.*

*I will abstain from unprofessional conduct and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.*

*I will never reject from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for monetary gain or for malice.*

*So help me Creator.*

**Rule 7. Continuing Duty to Inform.**

**(a) Contact Information.** All legal practitioners have a continuing duty to update their contact information with the Court. If a return of mailing occurs for the legal practitioner, he or she will be removed from the legal practitioner list and must reapply for admission.

**(b) Attorney Legal Practitioners**: All attorney advocates must, upon renewal of his or her bar card, send a copy of the new card to the Court. Failure to do so each year will result in an administrative suspension. The attorney will be required to Petition for Reinstatement as required in 9(c) in order to return to practice in the Court. An attorney advocate on administrative suspension for one year or more will be permanently removed and be required to reapply for admission.

**(c) Admitted Practitioners List.** Legal practitioners must notify the Court if they wish to opt-in to the Court's "List of Practitioners Accepting Clients," a document provided to members of the public seeking a practitioner admitted to practice in the Court. Practitioners must notify the Court when they want to be removed from that list. Annually the Court will send a letter to each practitioner requesting an update on the practitioner's status. If there is no response to this letter or it is returned as undeliverable, the practitioner will be removed and must reapply for admission.

**(d) Deceased Practitioners.** Legal practitioners who, through a verifiable source, are determined by the Judiciary to be deceased will be removed from the list.

**(e) External Disciplinary Action.** All legal practitioners have a continuing duty to inform the Court of any disciplinary action taken against them by any legal regulatory entity or organization within 10 business days. Legal practitioners must provide a copy of the disciplinary document to the Court. Failure to comply with this section will result in the legal practitioner losing his or her privilege to practice.

**(f) Criminal Convictions.** All legal practitioners have a continuing duty to inform the Court and provide a copy of the order regarding any criminal conviction in any tribal, state, federal, or United States territorial court within 10 business days of the conviction. Failure to comply with this section will result in the legal practitioner losing his or her privilege to practice before the Tohono O'odham Courts.

**Rule 8. Disciplinary Action.**

Any legal practitioner who violates the oath or ceases to be in compliance with the requirements in Rules 2 and 3 may lose the privilege to practice in the Tohono O'odham Courts.

**(a)** If a judge, during a proceeding, finds reasonable cause to believe that a legal practitioner may be in violation of his or her oath, the judge may issue an Order to Show Cause against the legal practitioner. The Court will set a date and time for the legal practitioner to appear and demonstrate that the individual has not violated the oath and is in compliance with these Rules. The legal practitioner will be given notice and an opportunity to be heard

regarding the allegations of misconduct. The proceeding will be closed to the public and a record will be made. Potential sanctions may include a combination of probation, suspension from practice, permanent loss of practicing privileges, or imposition of costs of the disciplinary proceedings. A legal practitioner who is suspended from practice may resume appearing in the Court at the end of the suspension period provided the individual complied with any imposed conditions.

**(b)** If any judge, outside a proceeding, receives a sworn statement that a legal practitioner may be in violation of his or her oath or that the legal practitioner is not in compliance with these Rules, the judge may issue an Order to Show Cause. The Court will give the practitioner notice and an opportunity to be heard regarding the allegations of misconduct. The proceeding will be closed to the public and a record will be made. After the proceeding, written recommendations will be made and findings–including any sanction to be imposed on the legal practitioner and the length and severity of the loss of privileges to practice in the Tohono O'odham Court–will be imposed. The sanctions will be the same as provided for in Rule 8(a).

**(c)** A practitioner who is not in good standing or has been suspended from practice in another jurisdiction and has not been reinstated, will be removed from the Court's list of practitioners. The practitioner is not permitted to practice in the Court until he or she reapplies and is accepted for readmission.

**Rule 9. Petition for Reinstatement.**

**(a)** If a suspension is for an indefinite period of time, the legal practitioner may petition the panel of judges for reinstatement no sooner than 45 calendar days after the date of suspension.

**(b)** If a suspension is due to an attorney's failure to provide to the Court a copy of his or her active bar card or for failure to provide the Court with an updated address, the legal practitioner must apply for reinstatement under Rule 9(c).

**(c)** A written request for reinstatement and any additional documents the legal practitioner wishes to have the panel consider, must be submitted within 10 business days of the date of the Suspension Order. An interview of the practitioner is at the sole discretion of the panel.

**(d)** The panel's decision is final.

**Rule 10. Relinquishment.**

A legal practitioner may request, in writing, to relinquish his or her admission to practice before the courts of the Tohono O'odham Nation by certifying that he or she is not counsel of record in any pending matter. This must be done in writing, signed in blue or black ink, dated, and filed with the Court. If granted, the relinquishment is effective the date authorized in writing by the Chief Judge or designee.

## Section History

Adopted by Administrative Order 01-05 on January 4, 2005, effective February 14, 2005. Amended June 3, 2005 by Administrative Order 03-05. 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.

# TOHONO O'ODHAM RULES OF COURT

## Code of Ethics for Legal Practitioners Practicing in the Courts of the Tohono O'odham Nation

**Rule 1. Competence.**

Legal practitioners must provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

**Rule 2. Scope of Representation.**

Legal practitioners must abide by a client's wishes about the goals of legal representation and must consult with the client about the means of pursuing those goals. Legal practitioners should not pursue legal goals without their client's approval, nor should they assist a client in criminal or fraudulent activity.

**Rule 3. Diligence.**

Legal practitioners must act with reasonable diligence and promptness in representing a client. Unless the client agrees to modify the scope of representation, the legal practitioner must complete all matters undertaken on the client's behalf.

**Rule 4. Communication.**

Legal practitioners must keep a client well informed and must respond promptly to requests for information. Legal practitioners must fulfill reasonable client requests for information to help the client make decisions about his or her case.

**Rule 5. Fees.**

**(a) Reasonableness of Fee.** Legal practitioners' fees must be reasonable. The determination of reasonable fees should include these considerations:

(1) the experience and ability of the legal practitioner providing the legal services;
(2) the time and skill involved in performing the service; and
(3) the fee usually charged in the Tohono O'odham Nation and surrounding communities for similar services.

**(b) Contingency Fees.** A fee may be contingent on the outcome of the representation. A contingent fee agreement should, however, be in writing and state the method by which it will be calculated. Legal practitioners must not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property settlement. Legal practitioners may not enter into a contingent fee arrangement for the representation of a defendant in a criminal case.

**(c) Pro Bono Services.** Representation should not be denied people because they cannot pay for legal services. The legal profession encourages provision of legal services at no fee or at a substantially reduced fee.

**Rule 6. Confidentiality of Information.**

Legal practitioners must not reveal information communicated by a client. A legal practitioner, however, may reveal information to the extent the legal practitioner reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. Legal practitioners may also reveal information necessary to allegations in any proceedings about the legal practitioner's representation of a client.

**Rule 7. Conflict of Interest.**

**(a)** Legal practitioners should not represent a client if that representation will be adverse to the interests of another client, or if the legal practitioner's own interests conflict with those of a client, unless:

(1) the legal practitioner reasonably believes the representation will not adversely affect his or her ability to represent each client fully and competently; and
(2) each client consents after disclosure and consultation.

Examples of conflict of interest between clients include but are not limited to: representing opposing parties in litigation, representing more than one defendant in a criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated.

Examples of conflicts of interest between a lawyer and client include but are not limited to: entering into a business transaction with a client, and acquiring a financial interest adverse to the client.

**(b)** Legal practitioners who have formerly represented a client must not thereafter represent another client in a related matter in which that client's interest are adverse to the interests of the former client, unless the former client consents after consultation.

**(c)** Legal practitioners must not represent a client in a matter in which that legal practitioner served as a judge, arbitrator, peacemaker, or mediator without the consent of all parties to the proceeding.

**Rule 8. Client Under Disability.**

When a legal practitioner believes a client is incapable of acting in his or her own best interests, the legal practitioner should seek the appointment of a guardian for the client. Otherwise, the legal practitioner must, to the extent possible, maintain a normal legal practitioner-client relationship with the client.

**Rule 9. Safekeeping Property.**

A client's property held by a legal practitioner with representation of that client must be kept separate from the legal practitioner's own property. A legal practitioner must also keep funds in separate accounts.

**Rule 10. Declining or Terminating Representation.**

**(a)** A legal practitioner must terminate representation if a client requests that the legal practitioner engage in illegal or fraudulent conduct or conduct that violates these Rules of conduct.

**(b)** A legal practitioner may withdraw from representing a client if withdrawal can be done without adversely affecting the client's interests, or if:

(1) the client fails substantially to meet a duty to the legal practitioner regarding the legal practitioner's services and the client has been notified that the legal practitioner will withdraw if the duty is not met;
(2) the representation will result in an unreasonable financial burden on the legal practitioner or has been made unreasonably difficult by the client; or
(3) other good cause for withdrawal exists.

**(c)** When the legal practitioner is representing the client in a court matter, withdrawal can only be accomplished upon motion to the court. When ordered by a court of the Tohono O'odham Nation to continue representation, legal practitioners must do so despite good cause for terminating the representation. If termination of representation is granted, legal practitioners must take reasonable steps to protect the client's interests. Such steps include giving reasonable notice and time to appoint new counsel, as well as surrendering papers and property to which the client is entitled.

**Rule 11. Advice and Meritorious Claims.**

When representing a client, legal practitioners must give candid advice based on his or her best professional judgment. Legal practitioners should not raise or controvert issues without a substantial basis.

**Rule 12. Expediting Litigation.**

Legal practitioners must make reasonable efforts to expedite litigation consistent with a client's interests. Legal practitioners must not engage in delay tactics designed solely to frustrate the opposing party's attempt to obtain a legal remedy.

**Rule 13. Honesty towards the Courts of the Tohono O'odham Nation.**

Legal practitioners must act with honesty toward the courts of the Tohono O'odham Nation. Legal practitioners must not knowingly make false statements to the court or knowingly offer false evidence. Legal practitioners must not fail to disclose significant legal authority directly adverse to his or her client's position.

**Rule 14. Fairness to Opposing Party.**

Legal practitioners must act fairly to the opposing party. So fair access to evidence is maintained, legal practitioners must not:

**(a)** destroy or conceal evidence, including documents or other materials of possible evidentiary value;

**(b)** falsify existing evidence or create new evidence; or

**(c)** influence a witness to give false or misleading testimony.

**Rule 15. Impartiality and Decorum of the Tohono O'odham Courts.**

Legal practitioners must not try to influence a judge or juror sitting on his or her case other than through authorized legal means. Legal practitioners must not privately confer with a judge about any case before that judge. Legal practitioners must not meet with a juror or prospective juror in a case that legal practitioner is handling.

**Rule 16. Conduct before the Courts.**

Legal practitioners must act with respect and courtesy toward the courts of the Tohono O'odham Nation. This requires that legal practitioners follow rules established by the court for courtroom demeanor and procedure.

**Rule 17. Legal Practitioner as Witness.**

Legal practitioners must not act as an advocate at a trial in which the legal practitioner is likely to be a necessary witness unless:

**(a)** the testimony relates to an uncontested issue;

**(b)** the testimony relates to the nature and value of legal services rendered; or

**(c)** disqualification of the legal practitioner would substantially burden the client.

**Rule 18. Special Responsibilities of a Prosecutor.**

Tribal prosecutors must uphold their special responsibilities. It is a tribal prosecutor's duty to make sure a defendant in a criminal case is given justice under all laws, codes, ordinances, resolutions, and rules of the Tohono O'odham Nation. To carry out this responsibility, a tribal prosecutor must:

**(a)** not prosecute a charge the prosecutor knows is not supported by probable cause;

**(b)** Try to make sure the accused has the opportunity to obtain counsel;

**(c)** not try to obtain waivers of important pretrial rights from an accused who is not represented by counsel;

**(d)** disclose to the defense all evidence and information known to the prosecutor negating and mitigating the guilt of the accused; and

**(e)** exercise care to prevent other people associated with the prosecutor in a criminal case from talking publicly about the case before trial.

**Rule 19. Communication with Person Represented by Counsel.**

When representing a client, Legal practitioners must not communicate about that representation with a party the legal practitioner knows to be represented by another legal practitioner in the same proceeding unless the legal practitioner has that legal practitioner's consent.

**Rule 20. Communications Concerning Legal Practitioners's Services.**

Legal practitioners must not make false or misleading statements about his or her services. A communication is false or misleading if it has a material misrepresentation of fact or law or is likely to create unreasonable expectations about the results legal practitioners can achieve.

**Rule 21. Soliciting Clients.**

Legal practitioners must not solicit employment from a prospective client through direct communications. Apart from family members, it is unethical for legal practitioners to contact in person, by phone, or by mail prospective clients to persuading them to accept legal assistance. This does not include mailings to people not known who might ask for legal services. Such mailings may only give general information about legal practitioners' services. Legal practitioners may advertise through public media such as telephone directories, newspapers, and television.

Section History

Section adopted by Administrative Order of the Court # 01-05 on January 4, 2005. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Revised by the 2023 Tohono O'odham Rules of Court to amend the Rule Section name and terms to "legal practitioner" instead of legal counsel and attorney. Amended by the 2023 Tohono O'odham Rules of Court.