

**In the Appellate Court of the Tohono O’odham Nation
In the State of Arizona**

In the Matter of the Estate of:)
)
Verna Ann Miguel)
)
DOB: 11/22/1956)
DOD: 03/23/2020)
_____)

Case No.: AP2023-0002
(Re: AV2022-0165)

ORDER

FILED
WITHIN THE
TOHONO O'ODHAM JUDICIARY
2023 AUG 31 A 9:31
Tiffany Mase
JUDICIARY SERVICE CLERK

Before: Hon. Rene Alcoverde Jr., Hon. Barbara Atwood, and Hon. Tessa L. Dysart.

The Appellate Court reviewed the trial court’s order permitting an interlocutory appeal by the Tohono O’odham Advocate Program on behalf of Leatrice Escalante. This Court finds that interlocutory review is not appropriate. Under Rule 15(a) of the Tohono O’odham Rules of Appellate Procedure, this Court will grant an interlocutory appeal only if:

- (1) the trial court has committed an obvious error;
- (2) the error would render further trial 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.

Although the Nation’s Rules do not define “obvious error,” *Nation v. Salcido*, AP2023-0001 (Ct. App., Jun. 23, 2023) (scheduled for publication) states that “obvious error” is synonymous with “clear error” and defines clear error as “a trial

judge's decision or action that appears to a reviewing court to have been unquestionably erroneous." A courtesy copy of the *Salcido* opinion is included.

Here, the record is devoid of obvious error in the trial court's response to the Advocate Program's Stipulation and Notice of Substitution of Counsel, filed on June 14, 2023, and the Notice of Substitution of Counsel Within the Same Office, filed on June 23, 2023. The trial court's Notice Requesting Clarification is consistent with Rule 6(b) of the Tohono O'odham Rules of Court, Rules of Civil Procedure.

The Advocate Program contended that the trial court should look to Arizona law governing substitution of counsel, specifically Rule 5.3(a)(2)(D), Arizona Rules of Civil Procedure. The Tohono O'odham courts, however, only look to Arizona law for guidance if there is no Tohono O'odham law or custom on point. See 4 T.O.C. Ch. 1, § 1-102. Likewise, Rule 1 of Section 1 of the Tohono O'odham Rules of Court provides the sequence the trial court must follow when applying Rules of Court:

- (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.

In this case a Tohono O'odham Rule directly addresses the question at hand. Rule 6 of Section 2 of the Tohono O'odham Rules of Court outlines what must be included in a motion to substitute counsel. These requirements conflict with Rule

5, Arizona Rules of Civil Procedure, thereby making the application of Arizona's Rule inappropriate.

Having found interlocutory review inappropriate, the stay is lifted, and the case is remanded to the trial court for further proceedings. The Appellant's Opening Brief is stricken.

Dated August 31, 2023.

Signing for a unanimous Court:



Rene Alcoverde, Jr.
Presiding Appellate Judge.

