

In the Judicial Court of the Tohono O'odham Nation

IN RE: Adoption of the Rules of Civil) ADMINISTRATIVE ORDER
Traffic Procedure) No.: 2016-04
_____)

The Tohono O'odham Rules of Civil Traffic Procedure are hereby adopted as part of the Tohono O'odham Rules of Court. This Administrative Order is effective December 1, 2016, and supersedes and rescinds any prior practice, order, or rule.

Dated and entered this 2nd day of November, 2016.



Donald Harvey
Chief Judge

TOHONO O'ODHAM RULES OF COURT

RULES OF CIVIL TRAFFIC PROCEDURE

Rule 1. Applicability.

These Rules apply only in cases in which a person is charged with a civil traffic offense pursuant to Title 23, Chapter 3 of the Tohono O'odham Code.

Rule 2. Commencement; Citation.

- (a) **Commencement.** A civil traffic offense is commenced by a citation issued by a Tohono O'odham law enforcement officer.
- (b) **Contents of Citation.** A civil traffic offense citation must contain 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 traffic offense(s) violated with the fine for each offense listed; 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.
- (c) **Service of Citation.** The citation must be served on the respondent with an accompanying form specifying the total fine for each offense and the process for paying the fine or contesting the citation.
- (d) **Filing of Citation.** The civil traffic citation must be filed with the Court within five (5) business days of the date the citation was issued. The court clerk will not accept a civil traffic citation if the citation is provided to the Court after five (5) business days of the date the citation was issued.
- (e) **Hearing Date.** The hearing date listed on the civil traffic offense citation will be set pursuant to an arraignment schedule adopted by the chief judge.

Rule 3. Amendment of the Citation.

- (a) A civil traffic citation may be amended at any time if no additional or greater violation is charged and substantial rights of the respondent are not prejudiced.
- (b) The Court will amend the civil traffic citation to conform to the evidence offered at the hearing if no additional or greater violation is charged and if the amendment does not prejudice the substantial rights of the respondent.
- (c) All amendments to a civil traffic citation shall relate back to the date of violation.

Rule 4. Legal Counsel.

- (a) **Notice of Appearance.** Legal 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) Purpose. A respondent cited for a civil traffic offense may plead responsible and submit a fine payment to the Court prior to the time set for arraignment. A respondent is not required to appear for the arraignment if the total fine is paid in full and the respondent has a receipt showing that payment has been made in full.

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

(c) 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 in the form of 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 (5) business days following the issuance of the civil traffic citation.
- (4) *Partial Payment.* A payment less than the total due shall be credited toward the fine(s) owed. Respondent is responsible for paying the balance due prior to the hearing.

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

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

Rule 6. 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 payment will be returned to the respondent and the court may set a new arraignment date.

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

(c) No Payment Accepted Pending Rescheduled Arraignment Date. No fine payment in the rescheduled matter will be accepted pending the arraignment.

Rule 7. 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) *Non-Appearance.* If the respondent fails 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 failure 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 set forth 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 traffic hearing for the denied allegation(s). The civil traffic hearing will be set as closely as possible to thirty (30) days following the arraignment. The hearing will be heard without a jury.

Rule 8. Discovery.

- (a) No pre-hearing discovery is required.
- (b) Immediately prior to the civil traffic 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. Failure to comply with this Rule may result, in the Court's discretion, granting of a recess or continuance to permit such inspection or excluding the evidence not produced for inspection.
- (c) Either party may subpoena witnesses.

Rule 9. Continuances and Rescheduling.

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

Rule 10. Civil Traffic 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 traffic 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, legal 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 11. Findings and Judgment.

(a) Finding of Responsibility. If the Court finds in favor of 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 in favor of the respondent, the Court will enter a finding of not responsible and dismiss the case.

Rule 12. Appeal.

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

Rule 13. Community Service.

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

- (1) The respondent appears at the arraignment and, if applicable, the civil traffic hearing.
- (2) The respondent pleads responsible to the civil traffic offense(s) charged or is found responsible at civil traffic 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 shall be calculated using the applicable federal minimum wage in effect at the time the community service is ordered.

Rule 14. Procedure for Payment Errors.

(a) Early Payment. Payments will not be accepted if made within five (5) business days of the date of the citation. The respondent may resubmit the payment prior to 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 ninety (90) days of the payment if the respondent believes the payment exceeded the total amount of the fine. The respondent must set forth the amount that should be refunded, and why the respondent believes the amount paid was in error.