

Rules of Children's Court

Chapter 1. Children's Court Civil

Rule 1. Classification of Children's Court Cases.

The Children's Court has exclusive original jurisdiction over proceedings commenced 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 the 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 ~~general~~-public ~~shall be~~is excluded, except ~~as may be~~permitted by the ~~Tohono O'odham~~Children's Code. 3 T.O.C. Ch. 1 §1306. A person admitted to a Children's Court proceeding ~~shall 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 ~~shall be~~is governed by ~~Rule 3 of the~~ Tohono O'odham Rules of Civil Procedure ("Rules of Civil Procedure"), unless otherwise specified under these ~~R~~rules.

(b) **Notice of Hearing in Child in Need of Care Cases.** When a child in need of care petition is filed, the party filing ~~shall will~~present a Notice of Hearing form directed to the parent or guardian of the child, or any other party already prepared in compliance with Section 1502(C) of Chapter 1 of the ~~Tohono O'odham~~Children's Code to the clerk for signature and seal ~~for the parent or guardian of the child, and any other party~~. The Notice of Hearing ~~shall must~~contain a statement in substantial compliance with the following: "To the child and your parents or guardian: You have the right to have counsel represent you at your own expense."

Rule 4. ~~Temporary Shelter Care Hearings~~Removal Hearing.

Rule 4.1. Notice of Removal; Filing of Notice.

Following removal of a child by the Tohono O'odham Nation ~~(Nation)~~, the Nation ~~shall must~~file a verified notice of the removal. The notice ~~shall must~~contain the name and birth date of the child ~~(ren)~~, the names and addresses of the parent(s) ~~/ or~~ guardian(s), a brief statement of why removal was required, and the date and time of the hearing, which ~~shall will~~be set according to the table in Rule 4.2.

Rule 4.2. Temporary Shelter Care Hearing Schedule.

(a) **Hearing Date.** Upon removal of a child ~~pursuant to under~~ the ~~Tohono O'odham~~Children's Code, the Division ~~shall will~~, in writing, provide the parent(s) ~~/ or~~ legal

guardian(s) notification of temporary custody in compliance with Section 1502(B)(1) of the ~~Tohono O'odham~~ Children's Code, and include the time and date of the temporary custody hearing. The time and date ~~shall~~will be set according to ~~the following~~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 ~~shall~~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 comply with the Rules of Civil Procedure, cases shall be in substantial compliance with the form in Rule 6 of the Tohono O'odham Rules of Civil Procedure and are subject to the rules governing subpoenas in a civil action.~~

Rule 6. Duties of Legal Counsel.

The duties of legal counsel ~~shall be~~are governed by ~~Rule 2 of~~ the Rules of Civil Procedure, with the exception that in Child in Need of Care cases the Tohono O'odham Attorney General's Office ~~is not required~~does not have to file a notice of appearance when appearing on behalf of the petitioner.

Rule 7. Child Support.

(a) Applicable Procedure. In cases involving child support, the Tohono O'odham Rules of Family Law and Will Procedures apply to the extent that 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, and/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 request child support in its disposition report and attach all forms required by 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 prior child support, custody, or paternity matter in the civil court and include the case name, case number, and description of the type of action. If the Nation later discovers a pending or prior child support, custody, or paternity matter, the Nation must file a notice with the Children's Court within ten (10) business days of discovery with the case information set forth above.
- (C) Children's Court Notice. Upon notification of a pending or prior 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.

(2) Termination of Child in Need of Care.

- (A) Disposition 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 ceases; and
 - (iii) whether any person should be obligated 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; 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; and
 - (iv) provide a copy of the order to civil court, which will lift the stay and adopt order.