

## **TITLE 6 - COURTS**

### **CHAPTER 1 - COURTS AND PROCEDURES**

*Legislative History: Tohono O’odham Code Title 6, Chapter 1, Courts and Procedures was passed by the Legislative Council on December 5, 2008 pursuant to Resolution No.08-704 and was vetoed by the Nation’s Chairman on December 12, 2008; veto overridden by Resolution No. 08-713 effective December 15, 2008. Courts and Procedures repeals Law and Order Code Chapter 1, “Papago Tribal Courts,” as amended, and Ordinance No. 01-89, which was formerly compiled in this chapter. Resolution No. 11-489 amended Section 1209 effective October 17, 2011. Resolution No. 12-169 adopted amendments to subsections 1102(B)(1), 1106(C), and 1107(C) effective May 16, 2012. Resolution No. 12-395 adopted amendments to subsection 1103(C) effective October 16, 2012. Resolution No.13-390 adopted amendments to Section 1103(D) (amending qualifications for judges in certain criminal cases) and Section 1108 (adding provisions addressing the right to counsel in certain criminal cases) effective October 3, 2013. Resolution No. 14-237 adopted amendments to Section 1103(B) (qualifications for judges in holdover status), Section 1205(amending compensation for pro tempore judges), Section 1210(A) (amending court fees exemption), Section 1211(A) and (B) (deleting jury fee costs for civil trials), and technical amendments to Section 1207(B), Section 1208, and Section 1209(B) effective June 11, 2014. Resolution No.16-022 adopted the “Master Jury List Amendments” adding new Section 1215 (provides for the creation and maintenance of a master jury list) effective January 21, 2016.*

*Related history: Repealed Ordinance No. 01-89, “Designating Judicial Branch Rules and Procedures as Title II with the Enactment of Chapters 1 & 2,” was approved on February 17, 1989 and codified as Title II of the Laws of the Tohono O’odham Nation. The Law and Order Code Chapter 1, “Papago Tribal Courts” was enacted by the Papago Council in 1945; amended in 1983 by Ordinance No. 05-83.*

*Note: Resolution No. 08-704 provides that (1) Section 1103(C) shall apply only to judicial appointments made after the effective date of resolution and shall not be interpreted to remove any current Judicial Court judge from office, and (2) any references in the laws of the Nation to the provisions of Ordinance No. 01-89 shall be construed as referring to the corresponding, renumbered sections of 6 Tohono O’odham Code Chapter 1.*

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#### **ARTICLE 1 - TOHONO O'ODHAM JUDICIAL BRANCH**

##### **Section 1101 Judicial Branch.**

The judicial power of the Tohono O'odham Nation shall be vested in an integrated Tohono O'odham Judicial Court consisting of trial courts, a court of appeals, and such inferior courts as may be provided by law.

##### **Section 1102 Trial and Appellate Courts.**

(A) The trial courts of the Judicial Court shall be divided into criminal, civil, juvenile and traffic divisions.

(B) Court of Appeals.

(1) The appellate power of the Tohono O'odham Nation shall be vested in the court of appeals, which shall have jurisdiction to hear all appeals from the Tohono O'odham Judicial Court trial courts. Decisions of the court of appeals on all matters within its jurisdiction shall be final. Each designated appellate panel shall meet promptly upon appointment and resolve appeals in a timely manner in accordance with the appellate rules.

(2) The court of appeals shall consist of three Judicial Court judges designated by the chief judge to serve on the court of appeals, none of whom shall have presided at the trial of the case appealed; provided that no judge shall be designated to hear any matter in which he or she has a conflict of interest.

##### **Section 1103 Judges.**

(A) Terms. The trial court shall consist of at least six judges appointed by the Tohono O'odham Legislative Council, provided that the number of judges may be increased by law. The trial court judges' terms of office shall be staggered, with two judges' terms expiring every odd-numbered year. Trial court judges shall serve six-year terms, provided that an appointment to fill a vacancy occurring before the expiration of a term shall be made only for the remaining balance of that term.

(B) Continuance in Office. A judge who satisfies the requirements of subsection (C)(2) and (3) shall continue to discharge the duties of that office, although the judge's term has expired, until a successor is appointed and sworn in.

(C) Qualifications.

(1) Preference. Preference shall be given to candidates for Judicial Court judge who are qualified, enrolled members of federally recognized Indian tribes, with first preference given to qualified, enrolled members of the Tohono O’odham Nation.

(2) Disqualifications. A person shall not be eligible for appointment as a judge of the Judicial Court if he or she

(a) has been convicted of a felony;

(b) has been convicted of a misdemeanor (other than a non-moving traffic violation or a traffic violation on the Nation that would be a civil offense in the State of Arizona) within the past ten years; or

(c) has been admonished, censured, reprimanded, or disciplined in any jurisdiction for a violation of applicable ethical rules or canons applicable to judges, lawyers, or non-attorney legal advocates.

(3) In addition to meeting the requirements of subsection (C)(2),

(a) a candidate for Judicial Court judge who possesses a juris doctorate shall be licensed to practice in any state, be a member in good standing with a state bar association, and have at least three years of experience as a practicing attorney, provided that at least two Judicial Court judges shall satisfy the requirements of this subsection (C)(3)(a);

(b) a candidate for Judicial Court judge who does not possess a juris doctorate but possesses a bachelor’s degree shall have at least six years of work experience and training in a judicial or law-related field which provides the desired knowledge, skills and abilities; and

(c) a candidate for Judicial Court judge who is an enrolled member of the Nation and does not possess a bachelor’s degree shall possess an associate’s degree, and have served as a judge for at least six years or have at least ten years of work experience and training in a judicial or law-related field, provided that not more than two Judicial Court judges shall be appointed pursuant to this subsection (C)(3)(c) and serve on the bench at the same time.

(D) A judge presiding over a criminal proceeding in which a total term of imprisonment of more than one year is imposed shall be a state-licensed attorney with sufficient legal training to preside over the criminal proceedings.

(E) Removal. A Judicial Court judge may be removed from office in accordance with the provisions of Article XIII of the Constitution of the Tohono O’odham Nation and Article IX of the Uniform Election Ordinance, as amended.

**Section 1104 Duties; Jurisdiction.**

(A) The Judicial Court shall carry out the duties mandated and exercise the jurisdiction conferred by the Constitution and laws of the Tohono O’odham Nation.

(B) The judicial power of the Tohono O’odham Judicial Court shall extend to all cases and matters in law and equity arising under the Nation’s Constitution, laws of or applicable to the Nation, and Tohono O’odham customs. The Judicial Court shall have the power to:

(1) Interpret, construe and apply the laws of, or applicable to, the Tohono O’odham Nation.

(2) Declare the laws of the Tohono O’odham Nation void if such laws are not in agreement with the Nation’s Constitution.

(3) Issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and to issue writs of habeas corpus to any part of the Tohono O’odham Nation upon petition by, or on behalf of, any person held in actual custody.

(4) Establish court procedures for the Judicial Court in accordance with the Nation’s Constitution.

**Section 1105 Chief Judge.**

(A) Selection. The judges of the Judicial Court shall select a chief judge from among their number, who shall be the chief administrative officer of the Tohono O’odham Judicial Court and shall serve in such capacity for two years or until a successor is elected.

(B) Authority. The chief judge shall exercise administrative supervision over the Judicial Court and shall have such other duties as provided by the Constitution and laws of the Tohono O’odham Nation.

**Section 1106 Rules of Court; Practice and Procedure.**

(A) The chief judge, by rules promulgated from time to time, shall regulate pleading, practice and procedure in judicial proceedings in all divisions of the Tohono O’odham Judicial Court to promote speedy determination of cases.

(B) In order to ensure that all persons appearing before the Court are guaranteed equal protection and due process of the law, the application of the rules of court shall not be

discretionary but shall be applied by all judges to the matters before the Court. Court rules promulgated by another jurisdiction or entity and adopted by the chief judge that directly conflict with a Tohono O'odham Nation law or Judicial Court rule or order shall be inapplicable.

(C) In order to ensure that all persons appearing before the Court are provided due process, court rules shall be published and made readily available to the public.

#### **Section 1107 Records; Publication of Opinions.**

(A) In the determination of causes, all decisions of the Court shall be in writing, and the grounds of the decision shall be stated.

(B) The Judicial Court shall keep a record of all Court proceedings, which shall, at a minimum, reflect the title of the case, name of the parties, the substance of all witness testimony and evidence, the date of the hearing or trial, by whom conducted, the jury or Court's findings, and the judgment, together with any other facts or circumstances deemed of importance to the case.

(C) The trial and appellate courts shall be courts of record. Unless expressly prohibited by law and to ensure that all individuals before the Court have notice of its precedents, trial and appellate opinions which the chief judge determines possess precedential value shall be published and made readily available to the public.

#### **Section 1108 Right to Counsel.**

(A) Any party not subject to the provisions of subsection 1108(B) shall have the right to assistance of counsel at his or her expense, provided that such counsel, whether a licensed attorney or lay advocate, must be authorized to practice in accordance with any applicable law or court rule.

(B) Indigent criminal defendants

(1) An indigent defendant shall have the right to a state-licensed attorney at the expense of the Tohono O'odham Nation in a criminal proceeding in which a total term of imprisonment of more than one year is actually imposed.

(2) The Court shall appoint a state-licensed attorney to represent an indigent defendant in a criminal proceeding in which a total term of imprisonment of more than one year is actually imposed; provided that an indigent defendant who is entitled to a court-appointed attorney may waive the right to counsel in writing after the Court has determined the waiver is made knowingly, intelligently and voluntarily. A criminal defendant is indigent when the defendant certifies that he or she is financially unable to retain private counsel via a sworn financial affidavit indicating the defendant's income and debts.

(3) The Court shall appoint attorneys to indigent criminal defendants in the following order: (a) Advocate Program or another Nation's program designated to provide criminal defense services; (b) conflict attorneys contracted by the Nation to provide criminal defense services; then (c) on a rotating basis, any attorney authorized to practice law in the Tohono O'odham Judicial Court and who is not employed by the Nation.

(C) At the initial appearance in a criminal proceeding, the Nation shall inform the Court whether the Nation will seek to impose at sentencing 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 at any time after the initial appearance, the Nation shall notify the Court not later than 30 days before trial and the defendant shall have the right to state-licensed attorney in accordance with this section.

**Section 1109 Disqualification.**

A party to any civil or criminal action shall have the opportunity to a change of judge as of right without cause and may move to disqualify a judge for cause.

**ARTICLE 2 - JUDICIAL OFFICERS AND PERSONNEL**

**Section 1201 Appointment Pro Tempore Judges.**

The Council may upon the recommendation of the chief judge appoint pro tempore judges to the Judicial Court without regard to the number of judges prescribed in Article I, subject to the qualifications, term, rate of compensation, and powers and duties set forth in this Chapter.

**Section 1202 Assignment of Work to Pro Tempore Judges.**

Division of work among the pro tempore judges of the Tohono O'odham Nation shall be the responsibility of the chief judge. The chief judge may assign cases or other matters to a judge pro tempore appointed by the Tohono O'odham Legislative Council.

**Section 1203 Qualifications of Pro Tempore Judges.**

Notwithstanding the provisions of Section 1103(C) of this Chapter, a judge pro tempore shall be of good moral character, a resident of Arizona for not less than five years, and admitted to the practice of law in any State for not less than three years preceding the appointment, except that pro tempore judges shall not hold an elected office with any government or hold an appointed position with the Tohono O'odham Nation or be employed by the Nation or any of its entities.

**Section 1204 Term of Office of Pro Tempore Judges.**

The term of a pro tempore judge shall be set forth in the resolution of the Legislative Council appointing the judge, but in no case shall the term be longer than six years, provided that the

judicial powers of a pro tempore judge shall extend beyond the period of appointment for the purpose of hearing and determining any proceeding necessary to a final determination of a cause being heard by that judge.

**Section 1205 Compensation for a Pro Tempore Judge.**

The rate of compensation for a judge pro tempore shall be not less than \$250.00 per day plus mileage for each day the judge holds court, presides over any proceeding, or attends a judicial training when directed by the chief judge.

**Section 1206 Clerk of the Court.**

The chief judge shall, in accordance with the Judicial Court's personnel policies, employ a clerk of the court and assistants thereto who shall have such power and perform such duties as may be provided herein or by rule of the Judicial Court.

**Section 1207 Powers and Duties of Clerk of the Court.**

(A) The Clerk of the Court shall have the administrative duties and responsibilities of monitoring and managing the Judicial Branch's support staff and court records and performing other duties assigned by the chief judge.

(B) The clerk shall furnish a copy or certified copy of any record or proceeding of the Court upon payment of any fee, except that no fee shall be required from the Nation or other official whose duties require such a copy or certified copy.

(C) Employee theft and dishonesty insurance covering the clerk of the Court and any other Court employee handling funds or property shall be maintained.

**Section 1208 Court Commissioned Officer.**

The chief judge may employ such juvenile and adult probation officers, juvenile detention officers, and court officers as court commissioned officers as necessary to ensure the orderly transaction of the business of the Court. The chief judge shall prescribe the duties of the court commissioned officer.

**Section 1209 Court Fees.**

(A) The chief judge shall recommend reasonable filing, docketing, other court fees, and jury compensation rates, which shall be posted at the Court, provided that the Court shall adopt a rule and procedure for waiving or reducing fees for eligible persons. The amounts of such fees and compensation shall be subject to Legislative Council approval.

(B) The Court shall transmit the monies collected pursuant to this section to the Nation's treasurer for deposit in a separate fund account that may be expended by the Judicial Court in accordance with a budget approved by the Legislative Council.

(C) All fees are payable at the time the service is rendered, unless otherwise provided by order of the Court.

(D) The Court or any judge thereof may, for good cause shown, extend the time for paying any fees required by law, or may relieve a default caused by non-payment of a fee within the time provided by law, but no fees paid will be refunded.

**Section 1210 Exemption of Government Agencies.**

Court fees will not be charged to:

(A) The Tohono O'odham Nation or a district, provided that fees shall be charged when a governmental entity is acting on behalf of a private individual.

(B) A commission, board, or department of the Nation.

(C) An official of the Nation or district, who is a party to any action in an official capacity.

**Section 1211 Costs in the Judicial Court.**

Costs in the Judicial Court shall include:

(A) fees of officers;

(B) cost of copies or certified copies of papers or records for background checks and other purposes; and

(C) disbursements made or incurred as a result of an order or agreement of parties.

**Section 1212 Probation Officers.**

The Court shall employ probation staff as necessary to provide services to the Judicial Court.

The salary of a probation officer shall be fixed in accordance with the salary schedule approved by the Legislative Council.

**Section 1213 Powers and Duties.**

Probation Officers employed pursuant to Section 1212 shall:

- (A) Make and maintain complete records of persons under suspended sentence, subject to control and direction by the Court.
- (B) Exercise general supervision and monitoring over persons under suspended sentence, subject to control and direction by the Court.
- (C) Serve warrants, make arrests and bring persons before the Court who are under suspended sentences.
- (D) Investigate cases referred to him/her for investigation by the Court and report to the Court.
- (E) Secure and keep a complete identification record of every person released under a suspended sentence and a written statement of the conditions of the suspension.
- (F) Obtain and maintain information concerning the conduct of persons placed under suspended sentence and report the information to the Court.
- (G) Bring defaulting probationers into court when in the probation officer's judgment the conduct of the probationer justifies the Court to revoke suspension of sentence.
- (H) Seize any contraband or other evidence related to probation or parole violations.
- (I) Search the residence, property, or person of a probationer or parolee.

**Section 1214 Judicial Employees.**

The chief judge may employ such support staff as deemed necessary to carry out the business of the Tohono O'odham Judicial Court in accordance with the Court's personnel policies and subject to the appropriation and availability of funds.

**Section 1215 Master Jury List.**

- (A) The Judicial Court shall create and maintain a master jury list including the names, dates of birth, and addresses of all enrolled adult members of the Tohono O'odham Nation.
- (B) The Judicial Court shall not disclose the master jury list information provided by the Tohono O'odham Enrollment Program or use that information for any purpose other than to create a master jury list, except that information may be shared with the Enrollment Program for verification purposes.