

TITLE 6 - COURTS

CHAPTER 3 - RULES OF COURT

ARTICLE 3 - JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

History: Administrative Order No. 01-02, adopting Tohono O'odham Court Rules of Appellate Procedures Chapter II, Judicial Review of Administrative Decisions, was ordered on March 13, 2002.

NOTE: Pursuant to Article VIII, Section 10(d) of the Constitution of the Tohono O'odham Nation and Section 1106(A) of 6 T.O.C. Chapter 1, Courts and Procedures, the Judicial Court is vested with the power to promulgate rules regulating pleading, practice and procedure in all Judicial Court proceedings. The Judicial Court rules are therefore subject to enactment, amendment, or repeal at any time by administrative order issued by the chief judge. Practitioners are accordingly cautioned to contact the Judicial Court for copies of current court rules.

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CHAPTER II

JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

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 rule-making powers or to adjudicate contested cases, whether created by constitutional provision or legislative enactment. Administrative agency or agency does not include an agency of the Tohono O'odham Nation Judicial department.
- (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 persons and terminates the proceeding before the administrative agency. In all cases in which a statute or rule of the administrative agency requires or permits an application for a rehearing or other method of administrative review, and an application for rehearing or review is made, no administrative decision of such agency is final as to the party applying for the rehearing or review until the rehearing or review is denied or the decision on rehearing or review is rendered. Administrative decision or decision does not include either:
 - (1) Rules, standards or statements of policy general application 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 concerning the internal management of the agency and not affecting private rights or interest.

Rule 2. Scope of article

This article applies to and governs:

- (a) Every action to review judicially, a final decision of an administrative agency except decisions made pursuant to Federal and/or State law or if the act creating or conferring power on an agency or a separate act provides for judicial review of the agency decisions and prescribes a definite procedure for the review.
- (b) Unless review is sought of an administrative decision within the time and in the manner provided in this article, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of the decision. However, should the time period for filing an appeal from an Administrative Agency's decision conflict with that prescribed herein, the appeal period of the Administrative Agency shall control and supercede the time period provided under Rule 4 (A). If under the terms of the law governing procedure before an agency an administrative decision becomes final because of failure to file any document in the nature of an objection, protest, petition for hearing or application for administrative review within the time allowed, the decision is

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not subject to judicial review under the provisions of this article except for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

Rule 3. Power of Tohono O'odham Court of Appeals to make procedural rules

The Tohono O'odham Court of Appeals may make rules of pleading, practice and procedure supplementary to but not inconsistent with the provisions of this article, and to amend such rules, for the purpose of making this article effective for the convenient administration of justice, and simplifying procedure so far as it affects judicial review of administrative decisions.

Rule 4. Commencement of action; transmission of record

- (a) An action to review a final administrative decision shall be commenced by filing a Notice of Appeal and Request for Record with the Tohono O'odham Court and the Administrative Agency within thirty (30) days from the date a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by rules of the agency, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at 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 to the party's last known address.
- (b) Pursuant to this article, the party seeking judicial review shall file a Notice of Appeal and Request for record with the agency that conducted the hearing, and the agency that conducted the hearing shall transmit the records to the Tohono O'odham court. The record shall consist of but not be limited to the following and be delivered to the court within fifteen (15) days with a copy's 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 desires 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 ten days after receiving notice of the complaint and providing for preparation of the transcript at the party's own expense.
- (c) Within fifteen (15) days of the Court receiving the Record, the party seeking Judicial Review shall file a written complaint or brief with the Tohono O'odham Court detailing the basis for and in support of the appeal.

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Rule 5. Jurisdiction and venue

- (a) Jurisdiction to review final administrative decisions is vested in the Tohono O'odham Court.
- (1) If the venue of the action to review a final administrative decision is expressly prescribed in the rules or guidelines under authority of which the decision was made, such venue shall control; but if the venue is not prescribed, an action to review a final administrative decision may be commenced in the Tohono O'odham court.

Rule 6. Service of process

In an action to review the decision of an administrative agency, a copy of the complaint shall be served as in civil actions and as provided by the rules of civil procedure, upon the agency at its principal office and upon all other defendants.

Rule 7. Appearance of defendant and Answer

Within twenty days after service of the summons and complaint/brief, the defendant agency and all other defendants shall answer or respond to the complaint.

Rule 8. 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, shall be made defendants.

Rule 9. Pleadings and record on review

- (a) The complaint shall contain a statement of the findings and decision or part thereof sought to be reviewed, and shall clearly specify the grounds upon which review is sought. It shall also state whether a transcript is to be designated as part of the record pursuant to Rule 4 (d) 5.
- (b) Except as otherwise provided, the defendant shall file an answer. Notwithstanding Rule 4 on by order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.
- (c) If the cause is remanded to the administrative agency and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all the parties, shall constitute the record on review.

Rule 10. Scope of review

- (a) An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after the filing an answer to a complaint, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required by 11 (2) of this section. The court may hear testimony from witnesses who testified at the administrative hearing. who were not called to testify at the administrative hearing.

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- (b) Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party filed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:
 - (1) The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.
 - (2) Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.
- (c) For review of final administrative decisions, the trial shall be de novo if trial de novo is demanded in the complain or answer of the defendant other than the agency or a hearing was not held by the agency or the proceedings before the agency was not stenographically reported or mechanically recorded so that a transcript might be made. The matter shall be to the court.
- (d) The record in the Tohono O'odham Court shall consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial de novo.
- (e) When no evidentiary hearing or trial de novo is requested, a judge shall be assigned who shall review the record and enter a judgment making findings of fact and conclusions of law.

Rule 11. Powers of trial court

- (a) The Tohono O'odham Court may
 - (1) With or without bond, unless required by the authority of which the administrative decision was entered, and before or after answer, stay the decision in whole or in part pending final disposition of the case, after notice to the agency and for good cause shown.
 - (2) Affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.
 - (3) Make any order that it deems proper for the amendment, completion or filing of the record of the proceedings of the administrative agency
 - (4) Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.
 - (5) Dismiss parties or realign parties plaintiff and defendant.
 - (6) Modify, affirm, reverse, modify and remand the action in whole or in part.
 - (7) Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
 - (8) When a hearing has been held by the agency, remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just.
 - (9) In the case of affirmation or partial affirmation of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, upon which execution may issue.
- (b) Technical errors in the proceedings before the administrative agency or its failure to observe technical rules of evidence shall not constitute grounds for reversal of the

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decision unless it appears to the trial court that the error or failure affected the rights of a party and resulted in injustice to him.

- (c) On motion of a party before rendition of judgment, the trial court shall make finds of fact and state conclusions of law upon which its judgment is based.

Rule 12. Costs

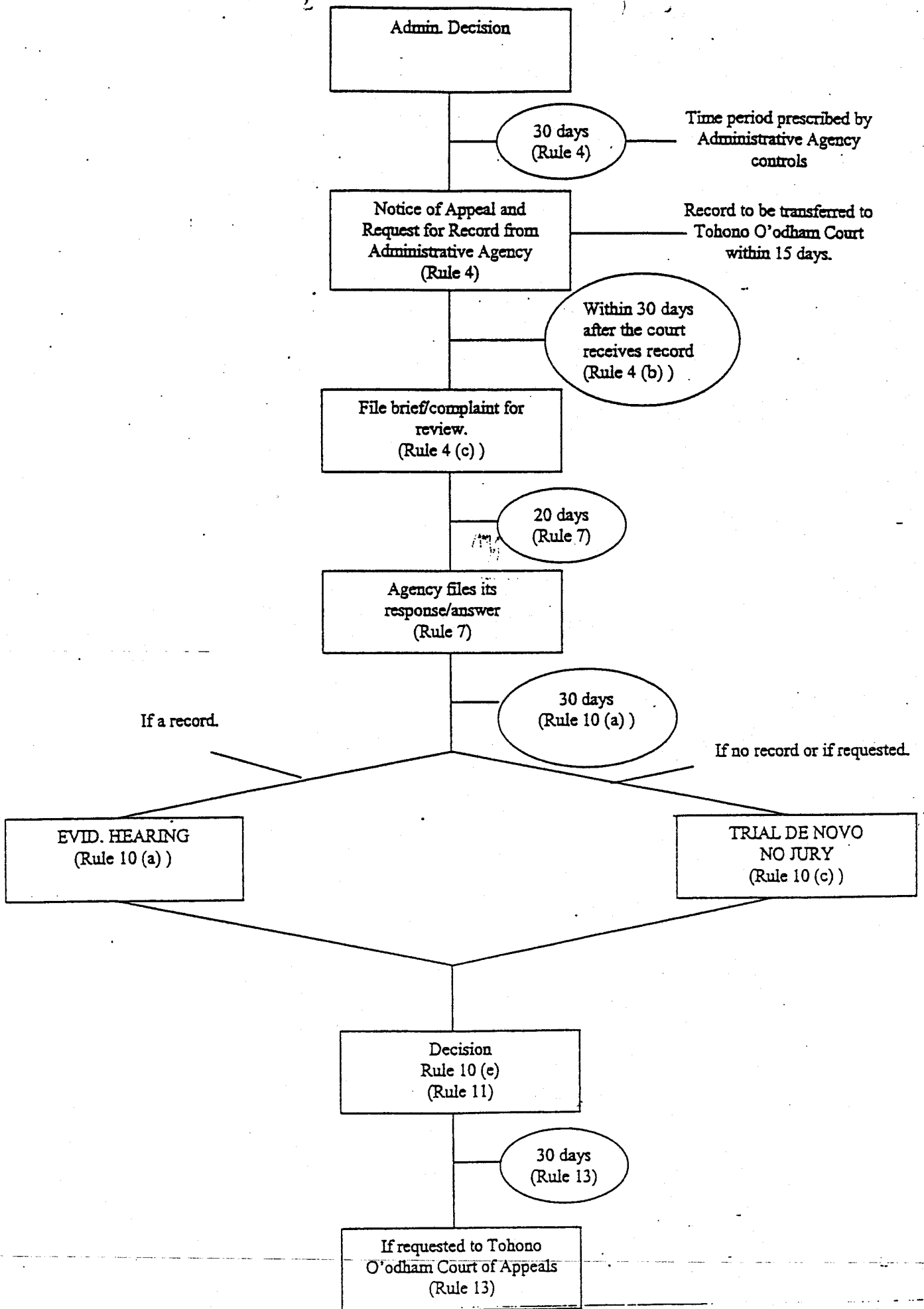
Costs may be awarded to defendant agency if a judgment adverse to the plaintiff is rendered. Such costs may be awarded in an amount deemed reasonable by the trial court, based upon the expense the defendant agency has incurred in preparing the record of the proceedings before trial.

Rule 13. Appellate review

The final decision, order, judgment or decree of the Tohono O'odham court entered in an action to review a decision of an administrative agency may be appealed to the Tohono O'odham Court of Appeals. Appeal shall be taken within thirty (30) days.

Rule 14. Tohono O'odham Court of Appeals

Where applicable, the rules of civil procedure in Tohono O'odham Courts, including rules relating to appeals to the Court of Appeals, shall apply to all proceedings except as otherwise provided in this article.



1 In the Judicial Court of the Tohono O'odham Nation
2 County of Pima, In the State of Arizona
3 Adult Civil Division
4

5 ORDER ESTABLISHING AN) ADMINISTRATIVE ORDER
6 INTERIM ADMINISTRATIVE) Case No.: 01-02
7 AGENCY DECISION APPEAL)
8 PROCESS)
9)
10)

11 The Tohono O'odham Justice Court in working toward its goals of continued
12 development and professionalism finds the Court in need of an immediate Appeal
13 Process. This need is the result of and is in response to various decisions made by
14 Tohono O'odham Administrative Agencies, not only recently but also in the past;

15 THEREFORE IT IS ORDERED, the attached, entitled "Chapter II, Judicial
16 Review of Administrative Decisions", shall be and is effective immediately and will
17 remain in effect on an interim basis until further order of the Court.

18 Dated this 13th of March, 2002

19 
20 Malcolm Escalante, Chief Judge

