

TITLE 6 – COURTS

CHAPTER 3 - RULES OF COURT

ARTICLE 7 - RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

History: The “Rules Governing Recognition and Enforcement of Foreign Judgments,” Tohono O’odham Rules of Court Section 10, were adopted on January 4, 2005.

Note: The Rules Governing Recognition and Enforcement of Foreign Judgments were formerly designated as Section 11 of the Rules of Court but were renumbered as Section 10 on April 27, 2005 when the Court vacated former Rule 10, “Rules Establishing and By-laws Governing the Tohono O’odham Bar Association.”

NOTE: Pursuant to Article VIII, Section 10(d) of the Constitution of the Tohono O’odham Nation and § 1-106 of Ordinance No. 01-89, 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.

TOHONO O'ODHAM NATION RULES OF COURT, SECTION 11

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

Chapter 1. Purpose and Definitions

- A. *Purpose.* The purpose of this section is to facilitate and improve the recognition and/or enforcement of judgments between the Tohono O'Odham Nation and (i) the State of Arizona, along with its counties and municipalities, (ii) various Indian tribes within Arizona and outside of Arizona, (iii) federal courts and state courts other than the state of Arizona, and (iv) other jurisdictions, including foreign tribunals.
- B. *Definitions.* When used in this section, unless the content otherwise indicates, the following definitions shall apply:
- (1) "*Attorney*" means an individual who is a current member of the State Bar of Arizona or some other state. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be admitted to practice before this court pursuant to Section 9 of these rules. *See also* "lawyer."
 - (2) "*Court*" means the court of the Tohono O'Odham Nation.
 - (3) "*Foreign court*" means all courts other than the courts of the Tohono O'Odham Nation, including federal, state, or tribal courts and courts of a foreign country.
 - (4) "*Foreign judgment*" means any judgment, decree, or order by any United States federal court, state court, other tribal court or court of a foreign country that is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory, or other relief.
 - (5) "*Judgment creditor*" means one who has had a judgment rendered in his or her favor; judgment creditor is synonymous with the term judgment holder.
 - (6) "*Judgment debtor*" means the party against whom a judgment has been rendered.

- (7) *"Judgment holder"* means one who has had a judgment rendered in his or her favor; judgment holder is synonymous with the term judgment creditor.
- (8) *"Lawyer"* is synonymous with the term "attorney". Further, a lawyer must be admitted to practice before this court pursuant to Section 9 of these rules.
- (9) *"Lay advocate"* means a person who is a non-lawyer and who has been qualified by this court to serve as an advocate on behalf of a party. Further, a lay advocate must be admitted to practice before this court pursuant to Section 9 of these rules.
- (10) *"Nation"* means the Tohono O'Odham Nation.
- (11) *"Rendering Jurisdiction"* means the jurisdiction in which the foreign judgment was entered.
- (12) *"Rules"* means the Tohono O'Odham Nation Rules of Court.

Chapter 2. Judgments that May be Recognized

- A. *Arizona Court Records and Judgments.* The judgments of an Arizona state court or an Arizona city, town, or county court shall have the same full recognition and enforcement in the courts of the Tohono O'Odham Nation as any other judgment of the Tohono O'Odham court, provided that:
 - (1) The applicable Arizona court provides reciprocal recognition and enforcement to the judgments of the Tohono O'Odham Nation; and
 - (2) The party seeking recognition and enforcement complies with the conditions and procedures set forth in Chapter 3 of this section.
- B. *Tribal Court Records and Proceedings.* The judgments of another tribal court of a federally recognized tribe shall have the same full recognition and enforcement in the courts of the Tohono O'Odham Nation as any other judgment of the Tohono O'Odham court, provided that:
 - (1) The applicable tribal court provides reciprocal full recognition and enforcement to the judgments of this Nation; and

- (2) The party seeking recognition and enforcement complies with the conditions and procedures set forth in Chapter 3 of this section.

C. *Federal Court and other State Court Proceedings.* The judgment of a United States federal court or other state court shall have the same recognition and enforcement in the courts of the Tohono O'Odham Nation as any other judgment of the Tohono O'Odham court, provided that:

- (1) The applicable federal court or other state court provides reciprocal full recognition and enforcement to the judgments of this Nation; and
- (2) The party seeking recognition and enforcement complies with the conditions and procedures set forth in Chapter 3 of this section.

D. *Court Records and Proceedings of a Foreign Country.* The judgments of a court in a foreign country may have, in the discretion of this court, the same recognition and enforcement in the courts of the Tohono O'Odham Nation as any other judgment of the Tohono O'Odham court, provided that:

- (1) The applicable court of a foreign country provides reciprocal recognition and enforcement to the judgments of this Nation; and
- (2) The party seeking recognition and enforcement complies with the conditions and procedures set forth in Chapter 3 of this section.

In all cases, this court shall have full discretion as to whether recognition and enforcement shall be granted and shall be guided by principles of due process, fairness, and justice under the laws of the Tohono O'Odham Nation.

Chapter 3. Registration and Enforcement of a Foreign Judgment

A. *Registration of Foreign Judgment.* A person seeking enforcement of a foreign judgment shall file:

- (1) A copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court, in the following manner:

- a. The clerk or registrar of the foreign court must attest in writing that s/he:
 - (i) is the clerk or registrar of the subject foreign court;
 - (ii) is the custodian of the records of the subject foreign court; and
 - (iii) has compared the copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of such original(s).
 - b. Upon completing the written attestation referenced above, the clerk or registrar of the foreign court must:
 - (i) sign and date said attestation;
 - (ii) affix the seal of the foreign court to said attestation; and
 - (iii) attach a true copy of the foreign judgment to said attestation.
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- (2) A sworn affidavit by the judgment holder, or his or her lawyer or lay advocate, which includes the following:
- a. The name and last known post office address of the judgment debtor and the judgment creditor;
 - b. A statement that the judgment is final and that no appeal is pending;
 - c. A statement that no subsequent orders vacating, modifying or reversing the judgment has been entered in the rendering jurisdiction;
 - d. A statement providing evidence that the person against whom the foreign judgment has been rendered (i.e., judgment debtor) is subject to the jurisdiction of this court with regard to enforcement of said judgment; and
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- e. A statement providing evidence that the court from which the foreign judgment was issued provides reciprocal full faith and credit to the judgments of this Nation, along with an attachment of the legislation or court rule that provides said recognition.
- (3) A filing fee for registering said foreign judgment in the amount of thirty (\$30.00) dollars, payable by cash, cashier's check or money order.
- B. *Notice of Registration of Foreign Judgment.* Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the clerk of the Tohono O'Odham court shall promptly mail notice of the filing of the foreign judgment along with a copy of the foreign judgment, attestation, and affidavit to the judgment debtor at the address provided by the judgment creditor and shall make a note of the mailing in the docket and complete a proof of mailing. The notice to the judgment debtor shall include the following:
- (1) The name and post office address of the judgment holder and the judgment holder's lawyer or lay advocate, if any, in this court; and
 - (2) A directive that an order registering the foreign judgment shall be entered by the court within twenty-one (21) days of the same having been served on the judgment debtor unless the judgment debtor files written objections with the court along with a request for a hearing on the same within said twenty-one (21) day period.¹

In addition, the judgment holder shall also mail a notice of the filing along with a copy of the foreign judgment, attestation, and affidavit referenced in Chapter 3.A. to the judgment debtor and shall file proof of mailing with the clerk of the court. Such notice shall be served on the judgment debtor in a manner consistent with the proof of service provision set forth in the Tohono O'Odham Rules of Court.

- C. *Objections; Hearing; Entry of Order Where Objections.* In the event that the judgment debtor files written objections within the twenty-one (21) day period set forth in Chapter 3.B. above along with a request for a hearing, the clerk of the court shall send, by first-

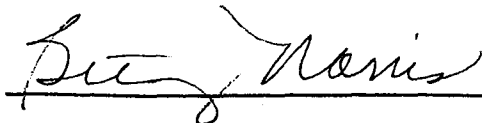
¹ Weekends and tribal holidays shall be included when computing the twenty-one (21) day time period.

class mail, a copy of the objections and the request to the judgment holder or his/her lawyer or lay advocate. In addition, the clerk of the court shall send, also by first-class mail, a notice of hearing setting forth the date and time of hearing to the judgment holder and judgment debtor, or their respective lawyer(s) or lay advocate(s). At the hearing, the judgment debtor will be required to show cause why the foreign judgment should not be registered by this court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the court shall issue an order either granting or denying registration of the foreign judgment.

- D. *Entry of Order Where No Objections.* In the event that the judgment debtor does not file any written objections within the twenty-one (21) day time period set forth in Chapter 3.B. above, an order granting registration of the foreign judgment shall be issued by the court.
- E. *Not Enforceable or Non-recognizable Foreign Judgment.* A foreign judgment is not recognizable or enforceable and will not be registered in this jurisdiction under the following circumstances:
- (1) The judgment was rendered by a process that does not assure the requisites of an impartial administration of justice, including but not limited to due notice and a hearing;
 - (2) The foreign court did not have both personal jurisdiction over the judgment debtor and jurisdiction over the subject matter;
 - (3) The judgment was obtained by fraud;
 - (4) The cause of action on which the judgment is based is repugnant to the public policy or tribal custom of the Nation;
 - (5) The judgment involves enforcement of child custody provisions, and
 - a. the foreign court did not have jurisdiction over the child(ren); or
 - b. the provisions of the Indian Child Welfare Act [25 USC Sections 1901-1963], if applicable, were not properly followed; or

- c. due process was not provided to all interested persons or parties participating in the foreign court proceeding; or
 - d. the foreign court proceeding violated the public policies, customs, or common law of the Nation.
- (6) The judgment involves enforcement of a criminal judgment wherein this court lacks the authority to otherwise adjudicate a criminal proceeding against a particular defendant.
- F. *Appeal; Stay of Execution; Stay of Proceedings.* If the judgment debtor satisfies the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.
- G. *Post-judgment Proceedings Regarding Foreign Judgment; No Waiver of Immunity.*
- (1) The entry of the order registering the foreign judgment by this court shall entitle the judgment holder to enforce its judgment against the judgment debtor in any manner provided by law for enforcement of judgments of the courts of the Tohono O'Odham Nation.
 - (2) This section shall not be construed as a waiver of the Nation's sovereign immunity from suit with regard to the registration, recognition or enforcement of a foreign judgment in any proceedings, even when the Nation is served as a garnishee defendant for the wages or property of an employee who is a judgment debtor.

 The foregoing "Recognition and Enforcement of Foreign Judgments" rules are hereby adopted this 04 day of January, 2005, by the courts of the Tohono O'Odham Nation.



Chief Judge Betsy Norris