

Tohono O'odham Rules of Court

~~Section 9.~~ Recognition and Enforcement of Foreign Judgments

Rule 1. Purpose.

The purpose of ~~this section~~ these Rules is to facilitate and improve the recognition and ~~or~~ enforcement of judgments between the Tohono O'odham Nation and ~~outside other~~ jurisdictions.

Rule 2. Foreign Judgments that ~~m~~May be Recognized; ~~Petition for Enforcement.~~

~~Rule 2.1.~~ Foreign Judgments that may be Recognized.

The judgments of United States federal courts; state courts, including municipal, county, and other lower courts; ~~and~~ tribal courts; and courts of another country ~~shall will~~ have the same full recognition and enforcement in the courts of the Tohono O'odham Nation as any judgment of the Tohono O'odham court, provided that the judgments are recognizable and enforceable pursuant to ~~under~~ Rule 3.3 of ~~this Section~~ these Rules and the party seeking recognition and enforcement complies with the conditions and procedures in this rule and Rule 3.

~~(a) The applicable court provides reciprocal recognition and enforcement to the judgments of the Tohono O'odham Nation; and~~

~~(b) The party seeking recognition and enforcement complies with the conditions and procedures set forth in Rule 3 of this section.~~

~~Rule 2.2.~~ Rule 2.1. Foreign Civil Orders and ~~Petition for Enforcement; Contents; Certification; Notice.~~

A person or entity seeking recognition and enforcement of a foreign judgment ~~shall must~~ file a ~~verified~~ petition signed under oath requesting recognition and enforcement of the judgment.

(a) **Contents of Petition.** The petition ~~shall include~~ must contain the following information:

(1) ~~T~~ the name and last known mailing address of the parties;

(2) whether the person or entity seeking recognition and enforcement was a party to a lawsuit to whom a money judgment was awarded;

(3) the jurisdiction and name of the court that entered the order;

(4) the date the order was entered;

~~(2)(5)~~ A statement that ~~whether~~ the judgment is final ~~and that~~ with no pending appeal, or is pending, or is not final;

~~(3)(6)~~ A statement that ~~now~~ whether any subsequent orders vacating, modifying, or reversing the judgment ~~has~~ have been entered in the rendering jurisdiction;

(7) Whether the judgment is valid and enforceable in the rendering jurisdiction; and

~~(4)(8)~~ A statement providing evidence ~~enough information to show~~ that the person against whom the judgment has been rendered is subject to the jurisdiction of this court with ~~regarding~~ to enforcement of the ~~said~~ judgment. ; and

~~(5) A statement providing evidence that the jurisdiction that rendered the judgment provides reciprocal full faith and credit to the judgments of the Tohono O’odham Nation, and attaches a copy of the law or court rule of that jurisdiction providing such recognition.~~

(b) Certified Copy of Judgment. A copy of the judgment to be enforced ~~shall~~must be attached to the petition. The copy ~~shall~~will, at minimum, be certified by the clerk or registrar of the court issuing the judgment as a true and correct copy. A record is certified if it contains language substantially stating that the copy is true and correct, is signed and dated by the clerk or registrar of the court issuing the judgment, and bears the seal of the issuing court. Judgments containing language that the copy is true and correct that have been exemplified (signatures by the clerk of court and deputy clerk and two seals) or authenticated (signatures by the clerk of court, deputy clerk of court, and a judge, and three seals) may also be submitted.

(c) Pre-Prepared Notice. The party seeking enforcement ~~shall~~must, at the time of filing, submit a pre-prepared notice to each party against whom enforcement is requested for the clerk’s signature and seal. The notice ~~shall~~must:

- (1) state the name of ~~the~~this court and the names and addresses of the parties and legal counsel (if any); and
- (2) contain the following statement: “A petition to enforce a judgment issued by a court outside of the Tohono O’odham Nation has been filed. An order recognizing and enforcing the judgment against you ~~shall~~will be entered thirty (30) days from the ~~filing date~~service unless you file a written objection with the Tohono O’odham ~~Civil Division~~Court prior to the expiration of the thirty (30) days.

(d) Service; Return. The party seeking enforcement ~~shall~~must serve a copy of the petition and the notice on each party against whom enforcement is requested. Service of the petition and notice and the return of service ~~shall be~~is governed by ~~Rule 3 of~~ the Tohono O’odham Civil Rules of Procedure.

Rule 2.2. Foreign Child Support Orders and Petition for Order of Garnishment.

(a) Petitions Allowed.

- (1) *Petition for Recognition and Enforcement.* A party seeking recognition of the child support order without garnishment of wages may file for recognition under Rule 2.1.
- (2) *Petition for Order of Garnishment.* A party seeking garnishment in addition to recognition of the foreign child support order may file a Petition for Order of Garnishment instead of a Petition for Recognition and Enforcement.
 - (A) The Petition must be signed under oath and contain the following information:
 - (i) the name and address of the agency or person to whom support payments should be transmitted;
 - (ii) the name, address, birthdate, social security number, and tribal enrollment number – if applicable and known to the petitioner – of the person to be

garnished;

(iii) the birthdates of both parents;

(iv) the name and address of the employer of the person to be garnished;

(v) whether the judgment is final and if any appeal is pending;

(vi) whether any subsequent orders vacating, modifying, or reversing the judgment have been entered in the rendering jurisdiction, or in any other jurisdiction;

(vii) why the person against whom the judgment has been rendered is subject to the jurisdiction of the Tohono O’odham court for enforcement of the judgment;

(viii) why the rendering jurisdiction had both personal jurisdiction over the party against whom the judgment was rendered, and subject matter; jurisdiction; and

(ix) why the rendering jurisdiction was entitled to issue an income or wage-withholding order, including a statement of the amount of arrearages, and a statement that all procedural due process requirements of the rendering jurisdiction for issuance of the income or wage-withholding order have been carried out in full.

(B) The filing party must attach to the Petition for Order of Garnishment:

(i) a certified copy of the foreign child support order, with all modifications made by the rendering jurisdiction;

(ii) a certified copy of any income or wage-withholding order entered by the rendering jurisdiction, if any.

(b) Pre-Prepared Notice. The party seeking enforcement must, at the time of filing, submit a pre-prepared notice for each party against whom enforcement is requested for the clerk’s signature and seal. The notice must state the name of the court and the names and addresses of the parties and legal counsel (if any), and contain the following statement:

(1) *Petition for Recognition and Enforcement:* “A petition to enforce a judgment issued by a court outside of the Tohono O’odham Nation has been filed. An order recognizing and enforcing the judgment against you will be entered thirty (30) days from service unless you file a written objection with the Tohono O’odham Court prior to the expiration of the thirty (30) days.”

(2) *Petition for Order of Garnishment:* “A petition for an order of garnishment to enforce a judgment issued by a court outside of the Tohono O’odham Nation and to garnish wages has been filed. An order recognizing and enforcing the judgment against you will be entered thirty (30) days from service unless you file a written objection with the Tohono O’odham Court prior to the expiration of the thirty (30) days.”

(c) Service; Return. The party seeking enforcement must serve a copy of the petition and the notice on each party against whom enforcement is requested. Service of the petition and notice and the return of service is governed by the Tohono O’odham Civil Rules of Procedure.

Rule 3. Objections; Non-Enforceable Judgments; Hearing.

Rule 3.1. Objection; Request for Hearing.

A party objecting to the enforcement of a foreign judgment or a petition for order of garnishment must ~~shall~~ file a written objection within thirty (30) days of the filing date ~~service~~ of the petition. The written objection ~~shall~~ must request a hearing and give contain a brief statement ~~of why the judgment~~ explaining why the Court should not recognize the judgment ~~be recognized and enforced, and a request for a hearing.~~

Rule 3.2. Summons; Service.

The objecting party ~~shall~~ must, ~~at the time of the~~ when filing ~~of~~ the objection, submit a pre-prepared summons for each party ~~pursuant to the form in~~ under the Tohono O'odham Rules of Civil Procedure. The court clerk ~~shall~~ will set the hearing date, sign the summons, and return the summons to the objecting party for service and return of service ~~pursuant to the form in the Tohono O'odham Rules of Civil Procedure.~~

Rule 3.3. Non-Enforceable or Non-Recognizable Judgments.

A judgment ~~by a non-Tohono O'odham court is not recognizable or enforceable and~~ will not be recognized or enforced ~~on the Tohono O'odham Nation~~ if:

- (a) ~~The~~ judgment was rendered by a process that does not assure the requisites of an impartial judicial proceeding, including, but not limited to, notice and the right to a hearing;
- (b) ~~The~~ issuing-rendering court did not have both personal jurisdiction over the party against whom enforcement is sought, and jurisdiction over the subject matter;
- (c) ~~The~~ judgment was obtained by fraud;
- (d) ~~The~~ cause of action on which the judgment is based, if recognized, is repugnant contrary to the laws, custom and tradition, or public policy of the Tohono O'odham Nation;
- (e) ~~The~~ judgment involves enforcement of child custody provisions, and
 - (1) the issuing-rendering court did not have jurisdiction over the child(ren); ~~or~~
 - (2) the ~~provisions of the~~ Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), if applicable, were was not properly followed; or
 - (3) due process was not provided to all interested persons or parties participating in the court proceeding; ~~or~~
 - (4) ~~the issuing court proceeding violated the laws, custom and tradition, or policies of the Tohono O'odham Nation.~~
- (f) ~~The~~ judgment involves enforcement of a criminal judgment wherein this court lacks the authority to otherwise adjudicate a criminal proceeding against a particular defendant; or
- (g) the judgment is not valid or enforceable in the rendering jurisdiction.

Rule 3.4. Hearing.

The party objecting to enforcement of a foreign judgment ~~shall~~must show cause why the foreign judgment should not be recognized and enforced by the Tohono O'odham courts. At the hearing, after reviewing all the relevant evidence concerning the foreign judgment, the court ~~shall~~will issue an order either granting or denying recognition of the foreign judgment.

Rule 4. Entry of Order Where No Objection.

In the event ~~that there is~~ no written objection is filed within the applicable ~~time~~ period, and the court finds the petition meets the requirements set forth by these Rules, the court will an order granting recognition and enforcement of the foreign judgment or the petition for an order of garnishment shall be issued by the court.

Rule 5. Appeal; Stay of Execution; Stay of Proceedings.

If an objecting party 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 dismiss the petition without prejudice; or 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.

Rule 6. Post-judgment Proceedings Regarding Foreign Judgment.

The entry of the order recognizing and enforcing the foreign judgment by this court ~~shall~~will entitle the judgment holder to enforce its judgment in any manner provided by law ~~or rule for enforcement of judgments of the courts of the Tohono O'odham Nation.~~

Rule 7. Application for Garnishment.

(a) When Filed. The Application for Garnishment in compliance with the Tohono O'odham Rules of Civil Procedure may be filed with the Petition for Recognition and Enforcement, or may be filed after recognition of the foreign judgment.

(b) Filing Fee. A filing fee applies to the Application for Garnishment.