

~~Tohono O'odham Rules of Court~~

Chapter 1. Section 6.—Family Law and Will Procedures

Rule 1. Wills-General Procedures

~~Unless otherwise provided by these rules, the Tohono O'odham Rules of Civil Procedure will apply. As of November 1, 2011, the Court's policy of accepting wills is rescinded. Wills currently housed with the Judicial Branch are merely held for safekeeping. It is the responsibility of the personal representative, family member, or other appropriate person to file a proper pleading with the court to initiate a probate.~~

Rule 2. Child Support.

Rule 2.1. Purpose.

- (a) To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay;
- (b) To make child support awards consistent for persons in similar circumstances;
- (c) To give parents and courts guidance in establishing child support orders and to promote settlements;
- (d) To comply with federal law (42 U.S.C. ~~Section~~ §651 et seq., 45 C.F.R. §302.56).

Rule 2.2. Premises.

- (a) These guidelines apply to all child support calculations in adult civil and children's civil courts. ~~children whether born in or out of wedlock.~~
- (b) The child support award should permit the children a standard of living which as closely as possible approximates the one they would have had if the family remained together, recognizing the cost of maintaining two households.
- (c) The child support obligation has priority over all other financial obligations.
- (d) The fact that a custodial parent receives child support does not mean ~~that he or she may not also be entitled to~~ ineligible for spousal maintenance.
- (e) The obligation to support other children ~~may be taken into account~~ will be considered by the court, but ~~shall may~~ not necessarily entitle the paying parent to a reduction of support, proportionate or otherwise.

Rule 2.3. Presumption.

In any action to establish or modify child support, whether temporary or permanent, these ~~Rules~~ rules should be used ~~in the establishment or modification of the amount of~~ establish or modify child support. The Court may deviate from the guidelines where their application would be inequitable. In such cases the court ~~should~~ must specify the reasons these ~~R~~ rules were not

applied. A child support guidelines worksheet in substantial compliance with the forms in these Rules ~~shall~~ should be used in the child support calculations.

Rule 2.4. ~~Determination of Gross Income.~~ Child Support Calculations.

(a) Determination of Gross Income.

- ~~(a)~~(1) Gross income includes income from any source, and may include, but is not limited to: income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workman’s compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal maintenance received.
- ~~(b)~~(2) Gross income does not include benefits received from means tested public assistance programs including, but not limited to, aid to families with dependent children, supplemental security income, food stamps, general assistance, or sums received as child support.
- ~~(c)~~(3) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income. “Ordinary and necessary expenses” does not include amounts for determined by the court to be inappropriate for determining gross income for the purposes of child support.
- ~~(d)~~(4) Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.
- ~~(e)~~(5) If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, such as caring for children, the court may attribute income to the parent up to his or her earning capacity.
- ~~(f)~~(6) The court may take into account the benefits a parent derives from remarriage, residence with a third party, expense-sharing, or other sources.

Rule 2.5.(b) Adjustment of Gross Income.

- ~~(a)~~(1) Spousal maintenance and court-ordered child support of other children, actually paid, ~~shall~~ will be deducted from the gross income of the payer. “Other children” means children who are not the subject of this particular child support determination, but support of children not covered by a court order may be considered.
- ~~(b)~~(2) The cost of court-ordered medical insurance coverage for the children ~~shall~~ will be deducted from the gross income of a parent.
- ~~(c)~~(3) Supplemental considerations – other factors which may warrant adjustments to the gross income of the payer. These include:
 - ~~(1)~~(A) the overall financial circumstances and need of both parents;
 - ~~(2)~~(B) the proportionate share of community debts and expenses actually paid;
 - ~~(3)~~(C) tax considerations; and
 - ~~(4)~~(D) any other relevant factors.
- (4) The amount of any particular supplemental consideration must be determined by

the court on an individual basis and lies within the sound discretion of the court.

Rule 2.6.(c) Determination of Parental Adjusted Gross Income.

Adjusted Gross Income is gross income minus adjustments. The Adjusted Gross Income for each parent shall be established. ~~These sums shall be, then~~ added together. The product is the Combined Adjusted Gross Income.

Rule 2.7.(d) Determination of Basic Child Support.

~~The combined Adjusted Gross Income figure shall be located on the Schedule of Basic Child Support Obligation, matching it to the column for the number of children involved. The parties will match the combined Adjusted Gross Income figure on the Schedule of Basic Child Support Obligation to the column for the number of children involved.~~ The product is the Basic Child Support Obligation.

Rule 2.8.(e) Determination of Total Child Support.

~~(a)~~(1) The court may add the following to the Basic Obligation:

- ~~(1)~~(A) Child Care Costs. Child care expenses appropriate to the parents' financial abilities and to the life-style of the children had the family remained intact.
- ~~(2)~~(B) Education Expenses. Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child, when such expenses are incurred by agreement of both parents, or ordered by the court.
- ~~(3)~~(C) Older Child Adjustment. The average expenditures for children over age twelve (12) exceed the average expenditures for all children by approximately ten (10) percent. The court, therefore, may increase child support for an older child by an amount up to ten (10) percent of the support shown on the schedule.

~~(b)~~(2) The net figure derived from adding any of these allowable sums to the Basic Child Support Obligation is the total Child Support Obligation.

Rule 2.9.(f) Determination of Parental Proportionate Shares of Total Child Support. The Total Child Support Obligation ~~shall~~ will be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying each parent's share of their Combined Adjusted Gross Income by the Total Child Support Obligation. The custodial parent shall be presumed to spend his or her share on the children.

Rule 2.10, Rule 2.5. Child Support Award.

The court ~~shall~~ will order the noncustodial parent to pay child support in an amount equal to his or her proportionate share of the Total Child Support Obligation.

Example: For one child, age 15, a Combined Adjusted Gross Income of \$1,000, and Adjusted Gross Income is \$600 the non-custodial father.

The father's Adjusted Gross Income is divided by the Combined Adjusted Income. The product is the father's share of the Combined Adjusted Gross Income. Therefore: \$600 divided by \$1000 = 60% for the father's share. On the Schedule, the Basic Child Support Obligation for Combined Adjusted Gross Income of \$1,000 for One Child is \$189. To this the court adds \$11 because the child is over the age of twelve (12), approximately 6% in this example. The total Child Support Obligation is \$200.

The father's share is 60% of \$200, or \$120. The mother's share is 40% of \$200, or \$80. Since the mother is presumed to spend her contribution directly to the child as she is the custodial parent, the Child Support Award is that the father pays the mother \$120 per month.

Rule 2.11. Rule 2.6. Shared Custody Situations.

~~It is the intention of these~~ These guidelines intend to remove financial incentives associated with custody and visitation arrangements. Shared custody ~~shall will~~ warrant child support less than provided in these ~~R~~rules only where the court specifies and apportions an offsetting amount of the children's expenses to the parent paying support.

Rule 2.12. Rule 2.7. Visitation.

The court may consider the costs of visitation and may allocate such costs between the parents in proportion to their ability to pay.

Rule 2.13. Rule 2.8. Abatement.

When the noncustodial parent is directly providing for the children's needs for an extended period of time, such as on a long visit, the court may order a reduction of child support paid to the custodial parent.

Rule 2.14. Rule 2.9. Gifts in Lieu of Money.

The child support award is to be paid in money. Gifts of clothing, etc. in lieu of money are not to be offset against the support award except by court order.

Rule 2.15. Rule 2.10. Medical Insurance.

An order for child support ~~shall will~~ assign responsibility for providing medical insurance for the children who are the subject of the support award. The court ~~shall will~~ specify the percentage of uninsured medical expenses for the children which each parent ~~shall must~~ pay. The apportionment ~~shall will~~ reflect the parents' respective ability to pay.

Rule 2.16. Rule 2.11. Exchange of Financial Information.

The court ~~shall will~~ order that every twelve (12) months the parties exchange financial information such as tax returns, spousal affidavits, and earning statements.

Rule 2.17. Rule 2.12. Judge's Findings.

The court ~~shall~~must make findings in the record as to gross income, adjusted gross income, basic child support obligation, total child support obligation, each parent's proportionate share of the total child support obligation, and the child support award. These findings may be made by incorporating a worksheet containing this information into the file.

Rule 2.18.~~Rule 2.13.~~ Adoption, Modification of Child Support Rules.

The adoption or subsequent modification of these rules ~~or any subsequent modifications~~ is not, by itself, a substantial and continuing change of circumstance sufficient to support ~~modification of~~modifying an existing child support award.

Rule 2.19.~~Rule 2.14.~~ Child Support Payments; ~~Voluntary Wage Assignment.~~

(a) Child Support Ledger. The court will maintain a child support ledger to keep track of child support payments and any arrearages.

~~**(a)(b) Child Support Payments; Non-Payroll Deduction Payments.** A parent may be ordered to pay child support that does not involve wage assignments or garnishment. A parent ordered to pay child support who is not required to make the payments through an automatic payroll deduction must deliver the payment to the court for the child support to be documented. The parties must notify the court in writing of of any change of address or employment within five (5) business days of the change. The court maintains a child support ledger to keep track of child support payments and any arrearages. A parent ordered to pay child support who is not required to make the payments through an automatic deduction ~~in the parent's paycheck shall~~must deliver the payment to the Court ~~in order~~ for the child support to be documented. The parties must notify the court in writing of of any change of address or employment within five (5) business days of the change. The judicial accounting department shall contact the parent receiving the child support of the payment. Any child support payment not made through the Tohono O'odham Judicial Branch will appear as a non payment. A party disputing the court's child support record is responsible for proving payment.~~

~~**(b)(c) Voluntary Wage Assignment; Proof of Payment.**~~

- (1) *Voluntary Wage Assignment.* The court may order a parent to arrange with his or her employer to have the child support amount deducted per paycheck to meet the parent's child support obligation. ~~Failure to comply with the order may result in contempt of court.~~
- (2) *Proof of Payment.* If for good cause the payroll deduction for child support is not forwarded to the Tohono O'odham Judicial Branch so that the judicial accounting department ~~is unable to~~cannot verify that child support payments ~~are being~~were made, the parent ordered to pay child support ~~shall~~must, every six months, provide to the judicial accounting and the other parent or party proof of the parent's payment of child support.
- (3) Address Update. Both parties must notify the court of any change of address.

(d) Garnishment. The court will provide in the order that garnishment of a parent's wages may be a means for child support payment, and may order garnishment as the means for

the parent to meet the parent's child support obligation. If wages are garnished in the order, the court will serve the order on the garnished parent's employer under the Tohono O'odham Civil Rules of Procedure. The parties must notify the court in writing of any change of address or employment within five (5) business days of the change.

~~Rule 2.20. Child Support Modification; Termination of Support.~~

~~Child support may only be modified upon a written motion or petition by a parent or other legal guardian or custodian of a child. Unless a date certain has been set in a court order for termination of support, a parent, guardian, or other custodian of a child must petition the court for cessation of support.~~

~~Rule 2.21.~~Rule 2.15. Child Support Schedule.

~~The following schedule shall be referenced~~ Parties will reference this schedule in determining any child support award.

COMBINED ADJ. GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN
500	69	116	141	180
600	83	136	171	212
700	96	158	198	224
800	108	178	225	272
900	121	198	222	304
1000	134	218	276	332
1100	147	238	303	364
1200	159	258	320	392
1300	172	278	357	420
1400	184	298	381	448
1500	197	316	408	480
1600	209	336	432	508
1700	222	356	459	536
1800	234	374	483	564
1900	246	394	507	588
2000	258	412	534	616
2100	271	432	558	644
2200	283	450	582	672
2300	295	468	606	700
2400	307	488	633	724
2500	319	506	657	752
2600	331	524	681	780

2700	343	542	705	804
2800	355	562	729	832
2900	367	580	756	860
3000	379	598	780	884
3100	391	618	804	912
3200	403	634	828	936
3300	415	652	852	964
3400	427	670	876	985
3500	439	690	900	1016
3600	451	708	924	1040
3700	463	726	948	1064
3800	475	744	972	1092
3900	487	762	996	1116
4000	498	798	1020	1140
4250	522	814	1068	1192
4500	557	864	1126	1269
4750	581	904	1164	1312
5000	616	958	1201	1354
5250	640	989	1239	1396
5500	660	1020	1277	1440
5750	680	1050	1315	1482
6000	700	1080	1352	1525
6250	715	1104	1390	1567
6500	730	1128	1428	1610
6750	735	1152	1466	1652
7000	750	1176	1504	1695
7250	760	1200	1542	1737
7500	770	1224	1580	1780
8000	790	1256	1620	1826

Rule 3. Termination of Support.

Unless the court has set a date certain for termination of child support, a parent, guardian, or other custodian of a child must petition the court for cessation of support upon full satisfaction of a child support order and include evidence that all past due support and any interest and fees have been paid in full.

Rule 4. Post-Decree/Post-Judgment Proceedings.

Rule 4.1. Modification or Enforcement of Prior Orders; General Provisions.

(a) A party seeking to modify or enforce a prior child support or custody order issued by a Tohono O’odham court must file a verified petition with the clerk of the court in which the order was granted, and pay the required filing fee. All petitions to enforce or modify must be sworn under oath. The petition must indicate, at minimum, the nature of the

proceeding and the specific relief sought and the reasons why the court should grant the relief.

(b) A party may petition to modify and enforce a prior child support or custody order in the same pleading.

Rule 4.2. Garnishment.

(a) **Petition for Garnishment; Contents and Service.** A petition for garnishment, whether filed as its own action or as part of a petition to modify, must be served on the person to be garnished under the Tohono O’odham Rules of Civil Procedure, and the petition must include:

- (1) the name, address, and social security number of the person to be garnished;
- (2) the tribal enrollment numbers of both the parent to be garnished and the petitioner, if applicable and known to the petitioner;
- (3) the birthdates of both parents;
- (4) a certified copy of the child support order, with all modifications;
- (5) a statement that the judgment is final and that no appeal is pending;
- (6) the amount of arrearages, if any;
- (7) payment history; and
- (8) the name and address of the employer of the person to be garnished.

(b) **Response.** The parent to be garnished may file a response. The parent must file a response if contesting any allegation in the petition, or raising the following:

- (1) the amount of disposable earnings;
- (2) the existence of multiple child support proceedings; or
- (3) that the parent is a tribal elder or vulnerable adult.

(c) **Service on Employer.** When a voluntary wage assignment or garnishment of wages is ordered service will be as follows:

- (1) *Voluntary Wage Assignment.* The petitioner will deliver the voluntary wage assignment to the employer.
- (2) *Garnishment.* The Court will serve an order of garnishment on the employer.

(d) **Employer Certification.** Within ten (10) business days of being served with garnishment, the employer must file with the court a certification signed by an authorized representative of the employer containing:

- (1) whether the garnished parent was employed by the employer on the date the order was served;
- (2) whether the employer anticipates owing earnings to the employee within sixty (60) days after the date the order was served;
- (3) if the employer is unable identify the garnished person as an employee after making a good faith effort to do so, a brief statement of the effort made and the reason for the inability to identify;
- (4) the dates of the employee’s next two pay periods occurring after the date the order

- was served;
- (5) the amount of earnings and disposable earnings payable to the employee on the next two pay periods;
 - (6) the pay period of the employee, whether weekly, biweekly, semimonthly, monthly, or other specified period;
 - (7) the outstanding judgment now due and owing as stated in the order;
 - (8) whether the employee is subject another garnishment, and if so, a description of that garnishment and to whom it is owed, including the name, address, and telephone number;
 - (9) the name, address, and telephone number of the recipient; and
 - (10) the date and manner of service the employer will use to serve a copy of the certification on the employee and other parent.

(e) Stay of Garnishment. Any party may file a motion to stay the garnishment order. The motion must be signed and notarized, state specific grounds, and provide supporting evidence to establish:

- (1) lack of personal or subject matter jurisdiction;
- (2) applicability of one or more of the withholding restrictions in 4 T.O.C. Ch. 3, Art. VI; or
- (3) a mistake of fact:
 - (A) Error in the amount of current child support or arrears owing, or
 - (B) The identity of the alleged non-custodial parent.

Rule 5. Precedence of Children’s Court Child in Need of Care Cases.

(a) Civil Court Stay Upon Notification. The Civil Court will stay any pending or prior child custody or support matter upon notification from the Children’s Court that a Child in Need of Care matter is pending in the Children’s Court.

(b) Lift of Stay; Adoption of Children’s Court Order. When the Civil Court receives the final order from the Children’s Court regarding custody and support, the Civil Court will lift the stay and adopt the Children’s Court order as the Civil Court order.

(c) Post-Adjudication Petitions. Any post-adjudication petition to modify an order adopted by the Civil Court under this Rule must be filed in the Civil Court.

Rule 6. Wills.

As of November 1, 2011, the Court’s policy of accepting wills is rescinded. Wills currently housed with the Judicial Branch are merely held for safekeeping. It is the responsibility of the personal representative, family member, or other appropriate person to file a proper pleading with the court to initiate a probate.