RULES OF CIVIL PROCEDURE

I. SCOPE OF RULES

Rule 1. Scope and Purpose.

Rule 1.1. Scope.

(a) Generally. These rules govern the procedure in all civil actions and proceedings in the Tohono O'odham Court.

(b) Limitations. These rules do not specifically cover certain actions such as, but not limited to, complex civil litigation, class actions, derivative actions, medical malpractice; declarations of factual innocence or improper party status; proceedings against surety; and receivers. The court may, on motion or on its own, order that the Arizona Rules of Civil Procedure be referenced in such actions.

Rule 1.2. Purpose. The rules should be construed, administered, and employed by the court and parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

II. COMMENCING AN ACTION; SERVICE AND PROCESS, PLEADINGS, MOTIONS AND ORDERS; DUTIES OF COUNSEL

~~**Rule 1.**~~**Rule 2. Commencement of Action.**

There is one form of action – the civil action. A civil action is commenced by filing a civil complaint with the court. ~~A civil action may also be commenced by filing a petition as may be permitted by a court rule or pursuant to a law of the Nation.~~

~~**Rule 2. Duties of Counsel.**~~

~~**(a) Attorney of Record:** Duties of Counsel. Legal counsel shall not appear in any action or file anything in any action without first appearing as counsel of record through the filing of a Notice of Appearance. In any matter, even if it has proceeded to judgment, there must be a formal substitution or association of counsel before any legal counsel, who is not counsel of record, may appear. Legal counsel of record will be deemed responsible as counsel of record in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution in the case.~~

~~**(b) Withdrawal and Substitution.** No legal counsel will be permitted to withdraw, or be substituted, as legal counsel of record in any pending action except by formal written order of the court, supported by written application setting forth the reasons therefore together with the name, residence, and telephone number of the client, as follows:~~

~~(1) Where such application bears the written approval of the client, it must be accompanied by a proposed written order and may be presented to the court *ex parte*. The withdrawing counsel shall give prompt notice of the entry of such order, together with the name and residence of the client, to all other parties or their legal counsels.~~

~~(2) Where such application does not bear the written approval of the client, it will be made by motion and must be served upon the client and all other parties or their legal counsels. The motion will be accompanied by a certificate of the legal counsel making the motion that:~~

~~(A) the client has been notified in writing of the status of the case, including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanction, or~~

~~(B) the client cannot be located or for any other reason cannot be notified of the pendency of the motion and the status of the case.~~

~~(3) No legal counsel will be permitted to withdraw as legal counsel of record after an action has been set for trial, unless~~

~~(A) there shall be endorsed upon the application therefore either the signature of a substituting legal counsel stating that such counsel is advised of the trial date and will be prepared for trial, or the signature of the client stating the client is advised of the trial date and has made suitable arrangements to be prepared for trial, or~~

~~(B) the court is satisfied for good cause shown that legal counsel should be permitted to withdraw.~~

~~**(c) Responsibility to Court.**~~

~~(1) Each legal counsel shall be responsible for keeping advised of the status of cases in which that legal counsel has appeared, or their positions on the calendars of the court and of any assignments for hearing or argument.~~

~~(2) Upon relocation, each legal counsel shall advise the clerk of court of the counsel's current office address and telephone number.~~

~~**(d) Notice of Settlement.** It shall be the duty of counsel, or any party if unrepresented by counsel, to give the judge assigned the case or matter prompt notice of the settlement of any case or matter set for trial, hearing, or argument before the trial, hearing, argument, or other matter, awaiting court ruling. In the event of any unreasonable delay in the giving of such notice, the court may impose sanctions against counsel or the parties to insure future compliance with this rule.~~

Rule 3. Summonses and Process.

~~**Rule 3.1. Purpose; Contents; Amendments; Replacement; Time Limit.**~~

~~**(a) Purpose.** The purpose of a summons is to command an action from a party.~~

(a) Issuance; Setting of Initial Hearing; Service.

(1) *Pleading Defined.* As used in this rule, Rule 3.1 and 3.2, "pleading" means any of the pleadings authorized by Rule 7 that bring a party into an action – a complaint,

petition, third-party complaint, counterclaim, cross-claim, or post-adjudication petition.

(2) *Issuance and Initial Hearing Date*. On filing a pleading that requires service of a summons, the filing party must present a summons for signature and seal. If the summons is properly completed, the clerk must:

(A) schedule an Initial Hearing date within forty-five (45) days and note the date on the summons; and

(B) sign, seal, and issue the summons to the filing party for service. A summons must be issued for each party to be served.

(3) *Service*. A summons must be served with a conformed copy of the pleading. Service must be completed as required by this rule, Rule 3.1, or 3.2, as applicable.

(b) Contents; Replacement Summons; Amendments. ~~A valid summons shall be in substantial compliance with the form provided in these Rules.~~

(1) *Contents*. A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the legal counsel of the party serving the summons or – if unrepresented – the party's name and address;

(D) state the time within which the defendant must appear and defend;

(E) notify the party to be served that a failure to appear and defend will result in a default judgment against that party for the relief demanded in the pleading;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least three (3) working days in advance of a scheduled court proceeding";

(G) be signed by the clerk; and

(H) bear the court's seal.

~~(b)~~(2) *Amendments; Replacement Summons.* Upon written request, the court may permit a summons to be amended and re-issued as an "amended summons". If a summons is returned without being served, or it has been lost, the party may request in writing that the clerk ~~may upon written request~~ issue a replacement summons in the same form as the original. A replacement summons ~~shall~~ must be issued and served within the time prescribed by Rule 3(e) ~~of these Rules~~ for service of the original summons.

~~**(c) Summons; Issuance.** When the complaint or any other pleading which requires service of a summons is filed, the party filing the pleading shall present a summons already prepared and in compliance with Rule 3.1(b) to the clerk for signature and seal. If in proper form, the clerk shall endorse thereon the day and hour on which it was filed, the case number, and shall sign and seal the summons and issue it to the party for service as authorized by these Rules. A summons, or a copy of the summons if addressed to multiple persons, shall be issued for each person to be served.~~

(c) Fictitiously Named Parties; Return. If a pleading identifies a party by a fictitious name under Rule 10(d), the summons may issue and be directed to a person with the fictitious name. The return of service of process on a person identified by a fictitious name must state the true name of the person who was served.

(d) Types of Service. Service of Process as required by Rule 3.1 or 3.2 may be made by:

(1) *Personal Service*. Service may be made on a party by delivering the documents to the party or party's legal counsel or authorized agent by:
(A) Any person who is not less than eighteen (18) years of age,
(B) Tohono O'odham law enforcement or public safety personnel as may be authorized by the Chairman of the Tohono O'odham Nation, or
(C) Tohono O'odham court officers as may be authorized by the Tohono O'odham Judicial Branch.

(2) *Service by Mail*. Service may be made by United States Postal Service certified first class mail, return receipt, to the party or legal counsel's correct address, or through an alternative mail delivery service that provides proof of delivery. Delivery is presumed five (5) business days after the postage.

(3) *Service by Publication*. Parties may request permission of the Court to serve process by publication pursuant to Rule 3.1(f) if the whereabouts of the party to be served are unknown, the party was unavailable for personal service, or unavailable at the mailing address.

~~(d)~~(e) Time Limit for Service. If a defendant is not served with process ~~the filing party does not make service of the summons and complaint or petition upon a defendant or respondent~~ within 120 days after the ~~filing of the~~ complaint ~~or petition,~~is filed, the court~~, upon~~ – on motion, or ~~up~~on its own ~~initiative~~ after notice to ~~the filing party~~plaintiff~~, shall~~ – - must dismiss the action without prejudice ~~as to~~against that defendant or ~~respondent or~~ ~~direct~~ order that ~~the filing party serve the defendant or respondent~~ service be made within a specified time~~;. provided that~~ But if the plaintiff ~~or petitioner~~ shows good cause for the ~~lack of service~~failure, the court ~~shall~~ must extend the time for service for an appropriate period not to exceed ninety (90) days.

(f) Return; Proof of Service.

(1) *Timing*. If service is not accepted or the plaintiff requests leave of the court to provide service by publication, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to process.

(2) *Proof of Service*.
(A) Personal Service. The serving party must record:
(i) the name of the party upon whom service was made or attempted;
(ii) the date and time service was made or attempted – on each occasion, if attempted more than once;
(iii) the location – on each occasion, if attempted more than once – service was made or attempted, and whether the location is the opposing party's home, workplace, or other residence known to be frequented by the opposing party;
(iv) the name of the individual accepting service and, if not the opposing party, a statement affirming that the individual was of suitable discretion over the age of sixteen (16); and
(v) the name of the individual who made or attempted service.

(B) *Service by Mail*. If mailed by first class mail, the attachment of the return receipt. If sent by an alternate mailing service, documentation of delivery must be attached.

(C) *Service by Publication*. If the summons is served by publication, the return of the person making such service must be made as provided in Rules 3.1(f) and 3.2.

(3) *Validity of Service*. Failure to make proof of service does not affect the validity of service.

(g) Untimely Service. If a party receives a summons less than seven (7) days before any hearing in the matter, the party may notify the court in writing that the party wishes to object or contest the late service, and may request a continuance of the scheduled hearing.

(h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

(i) Refusal to Accept Service. If a person refuses to accept personal service, service is performed if the person is informed of the purpose of the service and offered copies of the papers served.

~~**Rule 3.2. Responsibility to Serve Process; Service with Complaint.**~~

~~The filing party shall ensure that the summons and pleading are served together pursuant to these Rules within the time allowed under Rule 3.1(e) of these Rules.~~

~~**Rule 3.3. Types of Service.**~~

~~Service of Process as required by Rule 3.1 of these Rules may be made by:~~

~~**(a) Personal service.** Service may be made on a party by delivering the documents to the party or party's legal counsel or authorized agent by:~~

~~(1) Any person who is not less than eighteen (18) years of age,~~
~~(2) Tohono O'odham law enforcement or public safety personnel as may be authorized by the Chairman of the Tohono O'odham Nation, or~~
~~(3) Tohono O'odham court officers or court process services as may be authorized by the Tohono O'odham Judicial Branch.~~

~~**(b) Service by Mail.** Service may be made by first class mail, postage prepaid, to the party or legal counsel's correct address. In addition, service may be made by certified or registered mail, return receipt requested, or through an alternative mail delivery service. It shall be presumed that delivery takes place five (5) business days after the notice is posted.~~

~~**(c) Service by Publication.** Parties may request permission of the Court to serve process by publication pursuant to Rule 3.4 if the whereabouts of the party to be served are unknown,~~

~~the party was unavailable for personal service, and/or unavailable at the mailing address.~~

~~Rule 3.4.~~Rule 3.1. Service of Process on the Tohono O'odham Nation.

(a) Serving an Individual. Unless ~~Tohono O'odham law or these Rules provide~~ Rule 3.1(e) or (g) applies, or is otherwise provided by another rule, statute, or court order, service ~~shall be~~is as follows:

(1) delivering a copy of the summons and of the ~~complaint~~ pleading to the individual personally;
(2) leaving a copy of each at the individual's home or usual dwelling place with someone of suitable discretion age sixteen (16) or older who resides there;
(3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process;
(4) leaving a copy of each at the individual's place of business or employment; or
(5) service by mail or publication pursuant to Rule 3(d)(2) or (3)~~of these Rules~~.

(b) Serving a Minor. ~~Service upon a~~A minor age sixteen (16) and older ~~shall be effected pursuant to the~~may be served by delivering a copy of the summons and the pleading to the minor and the minor's parent or legal guardian in the manner set forth in ~~subsection (a) above~~Rule 3.1(a) for serving an individual. ~~upon both the minor and the minor's parent or legal guardian. Service upon a~~A minor under the age of sixteen (16) ~~shall be effected by delivery of the~~ may be served by delivering a copy of the summons and pleading ~~pursuant to the manner set forth in subsection (a) above up~~on the minor's parent or legal guardian in the manner set forth in Rule 3.1(a). If no parent or legal guardian can be found, then ~~up~~on any person having the care and control of such minor, or with whom the minor resides.

(c) Serving an Incompetent Person. ~~Service upon a~~A person who has been declared incompetent or incapacitated to manage his or her own property and for whom a guardian ~~and/~~or conservator has been appointed ~~shall be effected~~ may be served by ~~in the manner set forth in Subsection (a) above upon~~ delivering a copy of the summons and the pleading on the incompetent or incapacitated person and ~~upon that~~ the person's guardian ~~and/~~or conservator in the manner set forth in Rule 3.1(a) for serving an individual.

(d) Serving a Corporation, Partnership, or Association. Unless otherwise provided by Tohono O'odham law, a domestic or foreign corporation, ~~or a~~ partnership, or other unincorporated association that is subject to suit under a common name~~,~~ must be served by delivering a copy of the summons and the pleading to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.~~:~~

~~(1) in the manner prescribed by subsection (a) above for serving an individual; or~~
~~(2) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.~~

(e) Serving the Tohono O'odham Nation and Its Governmental Branches, Districts, Authorities, Enterprises, Officers, or Employees.

(1) *Tohono O'odham Nation*. To serve the Tohono O'odham Nation, a party must deliver a copy of the summons and ~~of~~ the ~~complaint~~ pleading to the Tohono O'odham attorney general.

(2) *Governmental Branch, District, Authority, Enterprise, Officer, or Employee Sued in an Official Capacity*. ~~Service upon a~~A Tohono O'odham governmental Branch, District, Authority, Enterprise, officer or employee in an official capacity ~~shall be effected by~~is served delivering a copy of the summons and the pleading ~~in a manner set forth in subsection (a)~~ to the legal counsel of the Branch, District, Authority, or Enterprise. If the Branch, District, Authority, or Enterprise does not have legal counsel, service ~~shall be effected~~ is made by delivery to the Branch head, District Council Chairperson, or chief executive officer of the Authority or Enterprise.

~~Rule 3.5.~~(f) Service by Publication.

~~(a)~~(1) *When Service by Publication is Available*. Service of process may only be made by publication when the party seeking service files a motion with the ~~C~~court alleging ~~that~~ service by publication is the best means practicable under the circumstances for providing notice that a legal action has been initiated. The motion should provide reasons why service by publication is warranted, such as that the person to be served:

~~(1)~~(A) is one whose current residence and/or address is unknown to the party seeking service,

~~(2)~~(B) was not available to be personally served on two (2) occasions of attempted service,

~~(3)~~(C) was not available at the mailing address and the posted documents were returned to the sender by the United States Postal Service, or alternate mail delivery service; or

~~(4)~~(D) has avoided service of process.

~~(b)~~(2) *Motion; Contents*. A party filing a motion to request authorization to service process by publication ~~shall~~ must provide the reasons why service by publication is warranted and document what attempts to serve process were attempted. If service was not attempted because the whereabouts of the party to be served are unknown, the party ~~shall~~ will document what good faith efforts were made to determine the whereabouts of the party to be served by publication.

~~(c)~~(3) *What Must be Published*. Service of process by publication ~~shall~~ will be made by publishing the summons and a statement of how a copy of the pleading being served may be obtained.

~~(d)~~(4) *Frequency and Location of Publication*.

~~(1)~~(A) The summons and statement ~~shall~~ will be published twice in one month in a newspaper published on the Tohono O'odham Nation if the last known residence of the party to be served was on the Tohono O'odham Nation or if the residence is unknown, but domicile is imputed by ~~law~~ statute to be on the Tohono O'odham Nation; or

~~(2)~~(B) The summons and statement ~~shall~~ will be published at least once a week for

four (4) successive weeks in a newspaper published in the county of the last known residence of the person to be served if such last known residence is not on the Tohono O'odham Nation.

~~(3)~~(C) When the residence of the person to be served is known, the party ~~or officer~~ making service ~~shall~~ will also, on or before the date of the first publication, mail the summons and a copy of the pleading being served, postage pre-paid, to that person at that person's place of residence.

~~(4)~~(D) The service ~~shall~~ will be complete thirty (30) days after the first publication.

(5) *Proof of Service by Publication.* Upon completion of the service of process by publication, the party ~~shall~~ must file a printed copy of the publication and an affidavit indicating the manner and dates of the publication. The affidavit is prima facie evidence of compliance with this rule.

~~**(e)**~~

~~**Rule 3.6. Refusal to Accept Service.**~~

~~If a person refuses to accept personal service, it shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.~~

~~**Rule 3.7. Proof of Service.**~~

~~The serving party must keep a record regarding service of process or other delivery of documents that substantially complies with the form in these Rules. In the event a party alleges lack of service, or a party requests leave of the Court to provide service by publication, files for default judgment, or requests any other action on the basis that the opposing party has failed to reply, the party required to serve process must submit proof that service was attempted or made.~~

~~**(a) Personal Service.** The serving party must record:~~

~~(1) the name of the party upon whom service was made or attempted;~~
~~(2) the date and time service was made or attempted (on each occasion, if attempted more than once);~~
~~(3) the location (on each occasion, if attempted more than once) service was made or attempted, and whether the location is the opposing party's home, workplace, or other residence known to be frequented by the opposing party;~~
~~(4) the name of the individual accepting service and, if not the opposing party, then a statement affirming that the individual was of suitable discretion over the age of sixteen (16); and~~
~~(5) the name of the individual who made or attempted service.~~

~~**(b) Service by Mail.** If mailed by first class mail, the serving party shall provide a copy of the mailing envelope with the name and address of the party upon whom service was made or attempted that is date stamped by the post office to indicate the date mailed. If mailed by registered or certified mail, restricted delivery, with return receipt requested, attachment of the return receipt shall be acceptable evidence of service. If sent by an alternate mailing service that provides documentation of delivery, such documentation shall be attached.~~

~~Rule 3.8.~~Rule 3.2. Service of Process Outside ~~of~~ the Tohono O'odham Nation.

Service upon a person otherwise subject to the jurisdiction of the Tohono O'odham Nation may be made anywhere in the United States; if service is made outside of the Nation, it ~~shall~~ will be made in accordance with these ~~R~~rules**.**

~~Rule 3.9.~~Rule 4. Responsibility to Serve Documents.

(a) Service Generally.

(1) *Scope*. This rule governs service on other parties after service of the summons and complaint, petition, counterclaim, third-party complaint, or post-adjudiciation petition.

(2) *When Required*. Unless these rules provide otherwise, a conformed copy of the following documents must be served on every party by a method stated in Rule 4(c):

(A) an order stating that service is required;

(B) a pleading filed after the original complaint unless the court orders otherwise under Rule 4(d) because there are numerous defendants.

(C) a discovery or disclosure document required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar document.

(3) ~~Each party shall promptly provide a copy to the other party(ies) of any document filed with the court and include a certificate of service as set forth in Subsection (b)(3) below.~~ *If a Party Fails to Appear*. No service ~~need be made~~ is required on ~~parties~~ a party who ~~are~~ is in default for ~~failure~~failing to appear, except as provided in Rule 48. ~~that~~ But a pleading~~s asserting~~ that asserts a new ~~or additional~~ claim~~s~~ for relief against ~~them shall~~ such a party must be served ~~up~~on ~~them~~ that party under Rule 3, 3.1, or 3.2, as applicable~~.in the manner provided for in these Rules~~.

(4) *Seizing Property*. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

~~(a)~~(b) Service; Parties Served; Continuance. If there are several defendants, and some are served with process and others are not, the plaintiff may proceed against those who have been served or move to defer disclosure or other case-related activity until additional

parties are served.

~~(b)~~(c) Service After Appearance; Service After Judgment; How Made.

(1) *Serving Legal Counsel*. If a party is represented by legal counsel, service under this rule must be made on ~~such~~ legal counsel, ~~even if the legal counsel is not certified to practice before the Courts of the Tohono O'odham Nation,~~ unless the court orders, or a specific rule requires, service on the party.

(2) *Service in General*. A ~~paper~~ document is served under this rule by any of the following:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

~~(B)~~(ii) if the person has no office or the office is closed, at the person's home or usual dwelling ~~place~~ with someone of suitable age and discretion ~~discretion~~ age sixteen (16) or older who lives there;

(C) mailing it ~~via~~ by U.S. mail to the person's last known address – in which event service is presumed complete five (5) day after mailing; or

(D) delivering ~~the paper~~it by any other means, including electronic means, if the recipient consents in writing to that method of service or if the court orders service in that manner – in which event service is complete upon transmission.

(3) *Certificate of Service*. The date and manner of service ~~shall~~ must be noted on the last page of the original of the ~~paper served~~document or in a separate certificate~~.~~, in a form substantially as follows:

~~-~~A copy has been or will be mailed/emailed/hand-delivered [select one] on [insert date] to:
[Name of opposing party or legal counsel]
[Address of opposing party or legal counsel]

If the precise manner in which service has actually been made is not noted, it will be conclusively presumed that the paper was served by mail. This ~~conclusive~~ presumption ~~shall only~~will only apply if service in some form has actually been made.

(4) *Service After Judgment*. After the time for appeal from a judgment has expired or a judgment has become final after appeal, a motion, petition, complaint, or other pleading requesting modification, vacation, or enforcement of that judgment must be served in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable.

(d) Serving Numerous Defendants.

(1) *Generally*. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleadings to all parties.

(2) *Notifying Parties*. A copy of every such order must be served on the parties as the court directs.

~~Rule 4.~~(e) Constitutional Challenge to a Statute~~--~~ -- Notice, Certification, and Intervention.

~~(a)~~(1) *Notice by a Party*. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a Tohono O'odham law, rule, regulation, resolution, or ordinance must promptly:

~~(1)~~(A) serve a copy of the pleading, written motion, or other paper raising the constitutional issue on the attorney general of the Tohono O'odham Nation if the parties do not include the Tohono O'odham Nation, one of its agencies, or one of its officers or employees in an official capacity; and

~~(2)~~(B) serve a copy on the Office of the Legislative Attorney.

~~(b)~~(2) *Intervention; Final Decision on the Merits*. Unless the court sets a later time, the attorney general and legislative attorney may intervene within sixty (60) days after service of the pleading, motion, or other document challenging constitutionality is filed. Before the time to intervene expires the court may reject the constitutional challenge, but may not enter a final judgment holding the law or rule unconstitutional.

(3) *No Forfeiture*. A party's failure to file and serve the notice does not forfeit a constitutional claim or defense that is otherwise timely asserted.

~~(c)~~

Rule 4.1. Filing Pleadings and Other Documents.

(a) Filing with the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) Effective Date of Filing.

(1) *Generally*. Except for documents submitted directly to a judge under Rule 4.1(a), a document is deemed filed on the date the clerk receives and accepts it. If a document is filed by fax, it is deemed filed on the date and time the clerk receives it as is shown by the file stamp, unless a required filing fee is not paid or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

(2) *Documents Submitted Directly to a Judge*. If a document is submitted directly to a judge under Rule 4.1(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(3) *Late Filing Because of an Interruption in Service*. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission

or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the documents by fax.

(4) *Incarcerated Parties*. If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to corrections authorities to deposit in the mail.

(c) Service with Filing and Documents Not to Be Filed.

(1) *Filing and Service*. After a complaint's filing, if a document must be filed within a specified time, it must be both filed and served within that time period.

(2) *Documents Not to Be Filed*. The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court:

(A) Subpoenas. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for postjudgment proceedings;

(B) Discovery and Disclosure Documents. Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(C) Proposed Pleadings. Any proposed pleading, unless filing is necessary to preserve the record on appeal;

(D) Prior Filings. Any document that has been previously filed in the action, which may be called to the court's attention by incorporating it by reference;

(E) Authorities Cited in Memoranda. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

(F) Offers of Judgment. Offers of judgment served under Rule 59.

(3) *Attachments to Judge*. Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 4.1(c)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge must also be provided to all other parties.

(4) *Sanctions*. If this rule is violated, the court may order removal of the offending document from the record and any other appropriate sanction.

(d) Proposed Orders; Proposed Judgments.

(1) *Required Format*. A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 4.2. On the signature page, there must be at least two lines of text above the signature.

(2) *Basic Content*. A proposed order or proposed judgment must include a finding of facts section as well as the proposed order.

(3) *Service and Filing*. Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

(4) *Stipulations and Motions; Proposed Forms of Order*.

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Rule 4.2. Form of Documents.

(a) Caption. Documents filed with the court must contain the following information as single spaced text, typed or printed, on the first page of the document:

(1) To the left of the center of the page starting at line 1:

(A) the filing legal counsel's or self-represented litigant's name, address, telephone number, and email address;

(B) if an attorney, the attorney's State Bar attorney identification number; and any State Bar law firm identification number; and

(C) identification of the party being represented by the legal counsel (e.g., plaintiff, defendant, third-party plaintiff);

(2) centered on or below line 6 of the page, the title of the court;

(3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;

(4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;

(5) immediately below the case number, a brief description of the nature of the document; and

(6) below the document description, the judge to whom the case is assigned (if known).

(b) Document Format. Unless the court orders otherwise, all filed documents – other than a document submitted as an exhibit or attachment to a filing – must be prepared as follows:

(1) *Text and Background*. The text of every document must be black on a plain white background. All documents filed must be single-sided and should have line numbers at double-spaced intervals along the left side of the page.

(2) *Type Size and Font*. Every typed document must use at least a 12-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helevetica, Courier, or Calibri. Footnotes must be in at least 12-point type size and must not appear in the space required for the bottom margin.

(3) *Page Size*. Each page of a document must be 8 ½ by 11 inches.

(A) Despite this general requirement, exhibits, attachments to documents, or documents from jurisiictions other than the Tohono O'odham Nation and larger

than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(C) An exhibit, an attachment to a document, or a document from a jurisdiction other than the Tohono O'odham Nation not incompliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.

(D) Margins and Page Numbers. Margins must be set as follows: a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1 1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than ½ inch. Except for the first page, the bottom margin must include a page number.

(E) Handwritten Documents. Handwritten documents are discouraged, but if a document is handwritten, the text must be legibly printed and not include cursive writing or script.

(F) Line Spacing. Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.

(G) Headings and Emphasis. Headings must be underlined, or be in italics or bold type. Underlining, italics, or bold type may also be used for emphasis.

(H) Citations. Case names and citation signals must be in italics or underlined.

(I) Originals. Only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.

(J) Court Forms. Printed court forms may be single-spaced, but those requiring a judge's signature must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging.

(c) Faxed Documents. A party filing a document by fax must also send the original for filing by express mail. If the original is not received within three (3) business days, the filing will be rejected as a deficient filing.

Rule 5. Computing and Extending Time.

(a) Computing Time. The following rules apply in computing any time period specified in these rules, or in any court order or statute:

(1) *Day of the Event Excluded*. Exclude the day of the act, event, or default that begins the period.

(2) *Exclusions if the Deadline is Less than Eleven (11) Days*. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than eleven (11) days.

(3) *Last Day*. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(4) *Next Day*. The "next day" is determined by continuing to count forward when the period is measured after an event, and backward when measured before an event.

(b) Extending Time.

(1) *Generally*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without a motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court may extend the time to act under Rules 51(b)(1), (c), and (d), and 52(c) as those rules allow, or alternatively, may also extend the time to act under those rules for ten (10) days after the entry of the order extending the time, if:

(A) the moving party files the motion within thirty (30) days after the specified time to act expires under these rules or within seven (7) days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within twenty-one (21) days after its entry; and

(C) the court finds that no party would be prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 3(d)(2). When a party may or must act within a specified time after service and service is made under Rule 3(d)(2), no additional time is added other than the five (5) extra days presumed for service under Rule 3(d)(2). The extra service time presumed by Rule 3(d)(2) does not apply to the clerk's distribution of notices – including notice of entry of judgment under Rule 50(c) – minute entries, or other court-generated documents.

(d) Minute Entries and Other Court-Generated Documents. Notices, minute entries, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order states that an act may or must be done within a specified time after the order is entered, the date the order is filed is "the day of the act, event, or default" under Rule 5(a)(1).

Rule 6. Duties of Legal Counsel.

(a) Legal Counsel of Record. Legal counsel may not appear in any action or file anything in any action without first appearing as counsel of record through the filing of a Notice of Appearance. In any matter, even if it has proceeded to judgment, there must be a formal substitution or association of counsel before any legal counsel, who is not counsel of record, may appear. Legal counsel of record will be deemed responsible as counsel of record in all matters before and after judgment until the time for appeal from a judgment has expired, a judgment has become final after appeal, or until there has been a formal withdrawal from or substitution in the case.

(b) Withdrawal and Substitution. No legal counsel will be permitted to withdraw, or be substituted, as counsel of record in any pending action except by formal written order of

the court, supported by a written motion setting forth the reasons withdrawal or substitution should be granted, along with the name, residence, and telephone number of the client, and:

(1) Where the motion bears the written approval of the client, it must be accompanied by a proposed written order and may be presented to the court *ex parte*. The withdrawing counsel must give prompt notice of the entry of such order, together with the name and residence of the client, to all other parties or their legal counsels.

(2) Where the motion does not bear the written approval of the client, it must be served upon the client and all other parties or their legal counsels. The motion must be accompanied by a certificate of the legal counsel making the motion that:

(A) the client has been notified in writing of the status of the case, including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanction, or

(B) the client cannot be located or for any other reason cannot be notified of the pendency of the motion and the status of the case.

(3) No legal counsel will be permitted to withdraw as legal counsel of record after an action has been set for trial, unless

(A) endorsed on the motion is either the signature of a substituting legal counsel stating that such counsel is advised of the trial date and will be prepared for trial, or the signature of the client stating the client is advised of the trial date and has made suitable arrangements to be prepared for trial, or

(B) the court is satisfied for good cause shown that legal counsel should be permitted to withdraw.

(c) Responsibility to Court.

(1) Each legal counsel is responsible for keeping advised of the status of cases in which that legal counsel has appeared, or their positions on the calendars of the court and of any assignments for hearing or argument.

(2) Upon relocation, each legal counsel must advise the clerk of court of the counsel's current office address and telephone number.

(d) Notice of Settlement. It is the duty of legal counsel, or any party if unrepresented by counsel, to give the judge assigned the case or matter prompt notice of the settlement of any case or matter set for trial, hearing, or argument before the trial; or hearing, argument, or other matter, awaiting court ruling. In the event of any unreasonable delay in the giving of such notice, the court may impose sanctions against counsel or the parties to insure future compliance with this rule.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Documents.

Only these pleadings are allowed: a complaint; an answer to a complaint; a petition; a response to a petition; a counterclaim; an answer to a counterclaim designated as a counterclaim; an answer to a crossclaim; a third-party complaint; an answer to a third-party complaint; and, if the court orders one, a reply to an answer.

Rule 7.1. Motions.

(a) Requirements.

(1) *Generally*. An application to the court for an order must be by motion which, unless made during a hearing or trial, must be in writing, state with particularity the grounds for granting the motion, and set forth the relief or order sought.

(2) *Supporting Memorandum*. All motions must be accompanied by a memorandum setting forth the reasons for granting the motion, along with citations to the specific parts or pages of supporting authorities and evidence.

(3) *Responsive and Reply Memoranda*. Unless a specific rule states otherwise, an opposing party must file any responsive memorandum within ten (10) days after the motion and supporting memorandum are served; and, within five (5) days after a responsive memorandum is served, the moving party may file a reply memorandum, which may address only those matters raised in the responsive memorandum.

(4) *Affidavits and Other Evidence*. Affidavits and other evidence submitted in support of any motion or memorandum must be filed with the motion or memorandum unless the court orders otherwise.

(5) *Motions in Open Court*. The court may waive any of these requirements made in open court.

(b) Effect of Noncompliance or Wavier. The court may summarily grant or deny a motion if:

(1) the motion, supporting memorandum, or responsive memorandum does not comply with Rule 7.1(a);

(2) the opposing party does not file a responsive memorandum; or

(3) counsel for any moving or opposing party fails to appear at the time and place designated for oral argument.

(c) Rulings on Motions. The court at any time or place, and on such notice, if any, as the court considers reasonable, may make orders for the advancement, conduct, and hearing of motions.

(d) Oral Argument. The court may limit the length of oral argument. Subject to Rule 49(c)(1), the court may decide motions without oral argument, even if oral argument is requested.

(e) Motions for Reconsideration.

(1) *Generally*. A party seeking reconsideration of a court order or ruling may file a motion for reconsideration.

(2) *Procedure*. All such motions, however denominated, must be submitted without oral argument and without the filing of a responsive or reply memorandum, unless the court orders otherwise. No motion for reconsideration may be granted, however, without the court providing all other parties an opportunity to respond.

(3) *No Effect on Appeal Deadline*. A motion for reconsideration is not a substitute for a motion filed under Rule 46(b), or Rule 52, and will not extend the time within which a notice of appeal must be filed.

(f) Limits on Motions to Strike.

(1) *Generally*. Unless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited, or not authorized, by a specific statute, rule, or court order.

(2) *Procedure*. Unless the motion to strike permitted by Rule 7.1(f)(1) is expressly authorized by rule or statute:

(A) it may not exceed two (2) pages in length, including its supporting memorandum;

(B) any responsive memorandum must be filed within five (5) days after service of the motion and may not exceed two (2) pages in length; and

(C) no reply memorandum may be filed unless the court orders otherwise.

(3) *Objections to Admission of Evidence on Written Motions*.

(A) Objections. Any objections to, and any arguments regarding the admissibility of, evidence offered in support of or in opposition to a motion (other than a summary judgment motion) must be presented in objecting party's responsive or reply memorandum and may not be presented in a separate motion to strike or other separate filing. Rule 49(c)(4) provides the procedure for raising objections to the admissibility of evidence offered in support of, or in opposition to, a summary judgment motion.

(B) Response to Objections. Any response to an objection must be included in the responding party's reply memorandum and may not be presented in a separate responsive memorandum.

(C) Objections to Evidence Offered in a Reply Memorandum. If the evidence at issue is offered for the first time in connection with a reply memorandum, an objecting party may file a separate objection limited to addressing the new evidence within five (5) days after the reply memorandum is served. No responsive memorandum may be filed unless the court orders otherwise.

(g) Agreed Extensions of Time for Filing Memoranda.

(1) *Generally*. Subject to the court's power to reject any such agreement, parties may agree to extend the dates on which response and reply memoranda are due if the extension does not otherwise conflict with other deadlines set by the court or these rules.

(2) *Procedure*. To make an extension effective, the parties must file a notice setting forth the agreed-upon dates on which the response or reply briefs will be due. The notice must set forth in its title the number of extensions agreed to with respect to that filing (e.g., "Notice of First Extension of Time to File Response on Motion to Dismiss").

(3) *Limits*. No extension will be effective without prior court approval if it purports to make the filing of a reply or other final memorandum due fewer than five (5) days before a date for hearing or oral argument previously set by the court, or if the notice

of the extension is filed after the memorandum is due.

(4) *Effective Date*. No order is necessary to obtain an extension under this rule. The extension is effective upon the filing of the notice of extension, unless and until the court enters an order disapproving the time extension.

(h) Good Faith Consultation Certificate. When these rules require that a "good faith consultation certificate" accompany a motion or that the parties otherwise consult in good faith, the movant must attach to the motion a separate statement certifying and demonstrating that the movant has tried in good faith to resolve the issue by conferring with – or attempting to confer with – the party or person against whom the motion is directed. The consultation required by this rule must be in person or by telephone, and not merely by letter or email.

Rule 7.2. Motions in Limine.

(a) Obligation to Confer. Within sufficient time to comply Rule 7.2(b), the parties must confer to identify any disputed evidentiary issue that they anticipate will be the subject of a motion in limine.

(b) Deadline for Filing. Unless a different schedule is ordered by the court, the parties must file all motions in limine for which pretiral rulings are desired no later than thirty (30) days before the date of the trial.

(c) No Replies Permitted. The moving party may not file a reply in support of its motion in limine.

(d) Pretrial Rulings. All motions in limine submitted in accordance with Rule 7.2(b) must be ruled on before trial unless the court determines the particular issue of admissibility is better considered at trial. The court's denial of a motion in limine preserves the moving party's objection to the evidence for purposes of appeal.

(e) Effect of Noncompliance. Motions in limine not filed in accordance with Rule 7.2(b) will be deemed untimely and will not be ruled on before trial unless good cause is shown. The failure to file a motion in limine in compliance with this rule does not operate as a waiver of the right to object to evidence at trial.

Rule 7.3. Orders to Show Cause.

(a) Generally. A court, on application supported by affidavit showing sufficient cause, may issue an order requiring a person to show cause why the party applying for the order should not have the relief it requests in its application. The court must designate a date by which the person must respond, and may set a hearing on the application.

(b) Service. An order to show cause must be served in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable, or, if the person to whom the order is directed has entered an appearance in the action, in accordance with Rule 4(c). Service must be made within the time the court orders.

Rule 7.4. Joint Filings.

(a) Duties. If a rule or order requires parties to jointly prepare and file a document with the court, each party must:

(1) make itself reasonably available to participate in preparing the document;
(2) promptly respond to communications from any other party concerning the document;
(3) cooperate and make a good faith effort to resolve differences about the document's content, format, and the manner in which it will be filed; and
(4) assure that the document is timely filed.

(b) Separate Sections. If a rule or order allows it, each party or side may prepare its own section of a joint filing, but each section must be clearly identified as being separately prepared by that party or side. A party or side may not make changes to another party's or side's section of a draft joint filing.

(c) Separate Filing. If the filing of a joint document becomes impractical because another party fails to comply with its duties under this rule, a party may prepare and file a document on its own behalf. If it does so, the filing's title must indicate that the party is filing it separately from the other party.

(d) Sanctions. A court may sanction any party who violates any of its duties under this rule.

Rule 8. General Rules of Pleading.

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) *Generally*. In responding to a pleading, a party must:
(A) state in short and plain terms its defenses to each claim asserted against it; and
(B) admit or deny the allegations asserted against it by an opposing party.
(2) *Denials – Responding to the Substance*. A denial must fairly respond to the substance of the allegation.
(3) *General and Specific Denials*. A party who intends in good faith to deny all the allegations of a pleading – including the jurisdictional grounds – may do so by a general denial subject to the obligations provided in Rule 11(a). A party who does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
(4) *Denying Part of an Allegation*. A party who intends in good faith to deny only part of an allegation must admit to the part that is true and deny the rest.

(5) *Lacking Knowledge or Information*. A party who lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny*. An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) *Generally*. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction;
(B) arbitration and award;
(C) assumption of risk;
(D) contributory negligence;
(E) duress;
(F) estoppel;
(G) failure of consideration;
(H) fraud;
(I) illegality;
(J) laches;
(K) license;
(L) payment;
(M) release;
(N) res judicata;
(O) statute of frauds;
(P) statute of limitations; and
(Q) waiver.

(2) *Mistaken Designation*. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) *Generally*. Each allegation of a pleading must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense*. A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses*. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

(f) Claims for Damages. In all actions in which a party is pursuing a claim other than for a

sum certain or for a sum which can by computation be made certain, no dollar amount or figure for damages sought may be stated in any pleading allowed under Rule 7.

(g) Civil Cover Sheets.

(1) When filing a civil action, a plaintiff must complete and submit a Civil Cover Sheet in a form approved by the Judicial Branch. The public may obtain this form from the Tohono O'odham Justice Center.

(2) The Civil Cover Sheet must contain:

(i) the plaintiff's correct name and mailing address;
(ii) the plaintiff's birthdate;
(iii) the plaintiff's legal counsel's name and bar number, if applicable;
(iv) the defendant's name(s);
(v) the nature of the civil action or proceeding;
(vi) the main case categories and subcategories designated by the Court Administrator;
(vii) such other information as the Judicial Branch may require.

(h) Verification. A pleading must be verified or supported by an affidavit by the party – or the person acting on the party's behalf who is acquainted with the facts – attesting under oath that, to the best of the party's or person's knowledge the facts set forth in the pleading are true and accurate.

Rule 9. Pleading Special Matters.

(a) Capacity or Authority to Sue; Legal Existence.

(1) *Generally*. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;
(B) a party's authority to sue or be sued in a representative capacity; or
(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues*. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Condition of the Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act was legally done.

(e) Judgment. In pleading a judgment or decision, it suffices to plead the judgment or

decision without showing that the decision maker had jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing a pleading's sufficiency.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(h) Complaint in an Action for Libel or Slander. In an action claiming libel or slander, it suffices to allege generally that a defamatory matter pertained to the plaintiff. It is not necessary for the plaintiff to allege extrinsic facts supporting that allegation. If the defendant controverts the allegation in an answer, the plaintiff must prove it at trial.

Rule 10. Form of Pleadings.

(a) Caption; Names of Parties. Every pleading must have a caption in the form required by Rule 4.2(a), along with the pleading's designation under Rule 7. The title of the complaint must name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation "*et al*."

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence – and each defense other than a denial – must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) Using a Fictitious Name to Identify a Defendant. If the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceedings by any name. If the defendant's true name is discovered, the pleading or proceeding should be amended accordingly.

Rule 11. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person.

(a) Signature.

(1) *Generally*. Every pleading, written motion, and other document filed with the court or served must be signed by at least one legal counsel of record in the legal counsel's name – or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.

(2) *Electronic Signatures*. An electronic signature is not accepted.

(3) *Notary Requirement*. When, under any statute, rule, regulation, or order, a document is required to be supported, evidenced, established, or proved by a sworn written declaration, verification, certificate, oath, or affidavit, the document must be signed

by the person making the declaration, verification, certificate, oath, or affidavit and the signature must be notarized by a qualified notary public.

(4) *Filings by Multiple Parties*. A person filing a document containing more than one place for a signature – such as a stipulation – may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discover; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) ~~*Generally*~~*i*. If a pleading, motion, or other document is signed in violation of this rule, the court – on motion or on its own – may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable legal counsel's fee.

(2) *Consultation*. Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by good faith consultation as provided in Rule 7.1(h); and

(B) if the matter is not satisfactorily resolved by consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 11(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within ten (10) days after the written notice is served, the moving party may file a motion under Rule 11(c)(3).

(3) *Motion for Sanctions*. A motion for sanctions under this rule must:

(A) be made separately from any other motion;

(B) describe the specific conduct that allegedly violates Rule 11(b);

(C) be accompanied by a Rule 7.1(h) good faith consultation certificate; and

(D) attach a copy of the written notice provided to the opposing party under Rule 11(c)(2)(B).

(4) *Assisting Filing by a Self-Represented Person*. A legal practitioner may help draft a pleading, motion, or other document filed by an otherwise self-represented person, and the practitioner need not sign that pleading, motion, or other document. In providing such drafting assistance, the legal practitioner may rely on the otherwise self-represented person's representation of facts, unless the practitioner has reason to believe that such representations are false or materially insufficient, in which case the practitioner must make an independent reasonable inquiry into the facts.

~~Rule 5.~~Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses; Pretrial Hearing. ~~Answers, Responses, and Replies to Complaints, Petitions, Counterclaims and Cross-Claims.~~

(a) ~~Timeline for an Answer or Response to a Complaint or Petition~~Time to File and Serve a Responsive Pleading.

~~**(a)** A defendant who files an answer or response to a complaint or petition shall file it~~

(1) *Generally*. Unless another time is specified by rule or statute, a defendant must file and serve an answer or other responsive pleading to a complaint, petition, counterclaim, or cross-claim:

~~(1)~~(A) within twenty (20) days after being personally serviced ~~of~~ with the summons and complaint~~, upon the defendant,~~ or

(B) within thirty (30) days after the date the summons and complaint is posted if the summons and complaint were served by mail.

~~**(b) Responses to Counterclaims and Cross-Claims.**~~

~~(1) Counterclaims. The plaintiff shall serve and file any reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order directs otherwise.~~

~~(2) Cross-claims. A party served with a pleading stating a cross-claim against that party shall serve and file any answer to the cross-claim within twenty (20) days after being served.~~

(2) *Replies to Responses*. If permitted by rule, statute, or court order, ~~A~~a party may file and serve a reply ~~to a response to a complaint, petition, or cross-claim~~ within five (5) days of service of the response.

(3) *Effect of a Motion*. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within ten (10) days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within ten (10) days after the more definite statement is served.

~~(c)~~(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-mater jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 18.1.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. A party does not waive a defense or objection by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed – but no later than the date on which dispositive motions must be filed – a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside of the Pleadings. If, on a motion under Rule 12(b)(6) or (c), matters outside of the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 49. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within ten (10) days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or
(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within twenty (20) days after the pleading is served.

(g) Joining Motions.

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.
(2) *Limitation on Further Motions*. Except as provided in Rule 12(h)(2) or (3), a party who makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party, but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) *When Some are Waived*. A party waives any defense listed in Rule 12(b)(2) through (5) by:
(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or
(B) failing to either:
(i) make it by motion under this rule; or
(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a person required by Rule 18.2(b), or to state a legal defense to a claim may be raised:
(A) in any pleading allowed or ordered under Rule 7;
(B) by a motion under Rule 12(c); or
(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction*. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Preliminary Hearings. If a party so moves, any defense listed in Rule 12(b)(1) through (7) – whether made in a pleading or by motion – and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 13. Counterclaim and Crossclaim.

(a) Compulsory Counterclaim.

(1) *Generally*. A pleading must state as a counterclaim any claim that – at the time of its service – the pleader has against an opposing party if the claim:
(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and
(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions*. The pleader need not state the claim if:
(A) when the action was commenced, the claim was the subject of another pending action; or
(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against the Tohono O'odham Nation. These rules do not create or expand the right to assert a counterclaim – or to claim a credit – against the Tohono O'odham Nation or one of its officers or agencies.

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Crossclaim Against a Coparty.

(1) *Generally*. A party may state as a crossclaim any claim against a coparty if the claim arises out of the same transaction, occurrence, or event that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the cross-claimant for all or party of a claim asserted in the action against the cross-claimant.

(2) *When Codefendants Must Present Crossclaims*. A defendant's crossclaim against a codefendant must be stated when the defendant files an answer or other response to the complaint or counterclaim, unless an amendment is later allowed under Rule 15(a).

(g) Joining Additional Parties. Rules 18.2 and 18.3 govern the addition of a person as a party to a counterclaim or crossclaim.

(h) Separate Trials; Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 47(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Rule 14. Third-Party Practice.

(a) When a Defending Party May Bring in a Third Party.

(1) *Timing of the Summons and Third-Party Complaint*. A defending party may, as a third-party plaintiff, serve a summons and third-party complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But, the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than ten (10) days after serving its original answer.

(2) *Third-Party Defendant's Claims and Defenses*. The person served with the summons and third-party complaint – the "third-party defendant":

(A) must defend against the third-party plaintiff's claim under Rules 8 and 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(f).

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or

occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant*. The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then defend against the plaintiff's claim under Rules 8 and 12 and assert any counterclaim under Rule 13(a) and may assert any counterclaim under Rule 13(b) or any cross-claim under Rule 13(f).

(4) *Motion to Strike, Sever, or Try Separately*. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty*. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a nonparty as a third party if this rule would allow a defendant to do so.

Rule 15. Amended and Supplemental Pleadings.

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course*. A party may amend its pleadings once as a matter of course:

(A) No later than twenty-one (21) days after serving it if the pleading is one to which no responsive pleading is permitted; or

(B) No later than twenty-one (21) days after a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier.

(2) *Other Amendments*. In all other instances, a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires.

(3) *Effect on Pending Motions*. After the filing of a motion under Rule 12(b), (e), or (f), amending a pleading as a matter of course does not, by itself, make moot the motion as to the adequacy of the pleading's allegations as revised in the amended pleading and does not relieve a party opposing the motion from filing a timely response.

(4) *Proposed Pleading as an Exhibit*. A party moving for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion. The exhibit must show the respects in which the proposed pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.

(5) *Filing and Response*. If a motion for leave to amend is granted, the moving party must file and serve the amended pleading within ten (10) days after the entry of the order granting the motion, unless the court orders otherwise. If the pleading is one to which a responsive pleading is required, an opposing party must answer or otherwise respond to an amended pleading within the time remaining for a response

to the original pleading or within ten (10) days after the amended pleading is served, whichever is later, unless the court orders otherwise.

(b) Amendments During and After Trial.

(1) *Based on an Objection at Trial*. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would unfairly prejudice that party's claim or defense on the merits. The court may grant a continuance to enable the objecting party to respond to the evidence.

(2) *For Issues Tried by Consent*. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if it had been raised in the pleadings. A party may move – at any time, even after judgment – to amend the pleadings to conform to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) *Amendment Adding Claim or Defense*. An amendment relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

(2) *Amendment Changing Party*. An amendment changing the party against whom a claim is asserted relates back if:

(A) Rule 15(c)(1) is satisfied; and

(B) within the applicable limitations period – plus the period provided in Rule 3(e) for the service of the summons and complaint – the party to be brought in by amendment:

(i) has received such notice of the institution of the action that it will not be prejudiced in maintaining a defense on the merits; and

(ii) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(3) *Service*. Service of process in compliance with Rule 3.1(d) or (e) satisfies Rule 15(c)(2)(B)(i) and (ii) with respect to the governmental agency or corporation – or any agency or officer of those entities – to be brought into the action as a defendant.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may permit a party to file a supplemental pleading setting forth any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. A court may permit supplementation even though the original pleading is defective in stating a claim for relief or defense. The court may order the opposing party to answer or otherwise respond to the supplemental pleading within a specified time.

Rule 16. Scheduling and Management of Actions.

In accordance with Rule 1.2, the court must manage a civil action with the following objectives:

(a) expediting a just disposition of the action;

(b) establishing early and continuing control so that the action will not be protracted because of lack of management;

(c) ensuring that discovery is proportional the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit;

(d) discouraging wasteful, expensive, and duplicative pretrial activities;

(e) improving the quality of case resolution through more thorough and timely preparation;

(f) encouraging the appropriate use of alternative methods to resolve disputes;

(g) conserving parties' resources;

(h) managing the court's calendar to eliminate unnecessary trial settings and continuances; and

(i) adhering to applicable standards for timely resolution of civil actions.

Rule 16.1. Initial Hearing.

(a) Purpose. The purpose of the initial hearing is to identify the essential issues in the litigation and to avoid unnecessary, burdensome, or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

(b) Subjects for Consideration. At the Initial Hearing, the court should consider:

(1) the status of the parties and pleadings;
(2) whether a joint report and proposed scheduling order is appropriate;
(3) whether a joint pretrial statement is desirable;
(4) determining whether severance, consolidation, or coordination with other actions is desirable;
(5) scheduling motions to dismiss or other preliminary motions;
(6) scheduling discovery proceedings, and setting discovery limits;
(7) issuing protective orders;
(8) any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;
(9) any agreements reached by the parties or asserting claims of privilege or of protection of trial-preparation materials after production;
(10) scheduling settlement conferences;

(11) determining whether the requirements and timing for disclosure under Rule 23 should be varied;
(12) scheduling expert disclosures and whether sequencing of expert disclosures is warranted;
(13) scheduling dispositive motions;
(14) adopting a uniform numbering system for documents and establishing a document depository;
(15) determining whether electronic service of discovery materials and pleadings is warranted;
(16) determining whether expedited trial proceedings are desired or appropriate;
(17) scheduling further conferences as necessary;
(18) use of technology, videoconferencing and/or teleconferencing;
(19) determining whether the issues can be resolved by summary judgment, summary trial, trial to the court, or some combination of these procedures;
(20) determining whether the matter is ready to proceed to trial and if a pretrial conference is desired or appropriate; and
(21) such other matters as the court or the parties deem appropriate in managing or expediting the action.

Rule 16.2. Pretrial Hearings.

(a) Generally. If the court did not set a trial date at the Initial Hearing, the court must set a Pretrial Hearing for no later than ninety (90) days for the purpose of setting a trial date. If the trial date is not set at the Pretrial Hearing, the court must schedule another Pretrial Hearing no later than ninety (90) from the hearing date until the case is resolved.

(b) Subject Matter. In addition to setting a trial date, the court may discuss at the Pretrial Hearing any subject considered at the Initial Hearing, and:

(1) the status of discovery and any dispositive motions that have been or will be filed;
(2) imposing time limits on trial proceedings; and
(3) other matters that the court deems appropriate.

Rule 16.3. Orders. After any hearing held under Rule 16.1 or 16.2, the court must enter an order reciting the action taken. This order controls the course of the action unless modified by a later court order.

Rule 16.4. Sanctions.

(a) Generally. Except on a showing of good cause, the court – on motion or on its own – must enter such orders as are just, including among others, any of the orders in Arizona Rule 34(b)(1)(A) through (G), if a party or legal counsel:

(1) fails to obey an initial or pretrial order or fails to meet the deadlines set in the order;
(2) fails to appear at the Initial Hearing, Pretrial Hearing, or any other hearing set by the court;
(3) is substantially unprepared to participate or fails to participate in good faith in the

hearings; or

(4) fails to participate in good faith in the preparation of any joint reports or statements ordered by the court.

(b) Award of Expenses. Unless the court finds the conduct substantially justified or that other circumstances make an award of expenses unjust, the court may, in addition to or in place of any other sanction, require the party, the legal counsel representing the party, or both, to pay another party's reasonable expenses, including legal counsel's fees, incurred as a result of the conduct.

(c) Trial Date. The fact that a trial date has not been set does not preclude sanctions under this rule, including the sanction of excluding from evidence untimely disclosed information.

IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers.

(a) Real Party in Interest.

(1) *Designation Generally*. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) a personal representative or executor;
(B) an administrator;
(C) a guardian;
(D) a bailee;
(E) a trustee of an express trust;
(F) a party with whom or in whose name a contract has been made for another's benefit; and
(G) a party authorized by statute.

(2) *Action in the Name of the Nation for Another's Use or Benefit*. When a Tohono O'odham statute so provides, an action for another's use or benefit must be brought in the name of the Tohono O'odham Nation.

(3) *Joinder of the Real Party in Interest*. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Actions by Personal Representatives; Setting Aside Judgment. An executor, administrator, or guardian may commence or maintain any action that the testator or intestate could have commenced or maintained, and an action may be brought against an executor, administrator, or guardian if it could have been brought against the testator or intestate. The judgment in such an action is as conclusive as if it was rendered in favor of or against the testator or intestate. An interested person may apply to set aside the judgment

on the ground that it resulted from fraud or collusion by the executor, administrator, or guardian.

(c) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be identified as a party by the officer's official title rather than by name, if it is sufficient to identify the particular public officer being sued, but the court may require the officer's name to be used or added to identify the officer as the party.

(d) Actions Against a Surety, Assignor, or Endorser. A plaintiff may sue a contractual assignor, endorser, guarantor, surety, or the drawer of a bill that has been accepted without joining the maker, acceptor, or other principal obligor if:

(1) the latter resides outside of the Tohono O'odham Nation;
(2) the latter's residence is unknown and cannot be ascertained through reasonable diligence;
(3) the latter is dead; or
(4) the latter is insolvent.

(e) Minor or Incompetent Person.

(1) *With a Representative*. The following representatives may sue or defend on behalf of a minor or an incompetent person:
(A) a general guardian;
(B) a conservator; or
(C) a similar fiduciary.
(2) *Without a Representative*.
(A) Generally. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or a guardian ad litem. The court may appoint a guardian ad litem if resources for such appointment is available – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action.
(B) Consent. No person may be appointed guardian ad litem unless that person files a written consent to the appointment.
(C) Bond. If a next friend or guardian ad litem brings an action on behalf of a minor, that person may not receive any of the minor's money or property without filing a bond as security in an amount and under such terms as the court approves.
(D) Liability for Costs. Unless the court orders otherwise, a next friend or guardian ad litem may not be held personally liable for costs.
(E) Compensation. The court may award reasonable compensation to a next friend or guardian ad litem for their services, which must be taxed as part of the action's costs.

(f) Partnerships. A partnership may sue and be sued in the name it has adopted or by which it is known.

Rule 18. Joinder

Rule 18.1. Joinder of Claims

(a) Generally. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even through one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a party may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that party, without first obtaining a judgment for the money.

Rule 18.2. Required Joinder of Parties.

(a) Persons Required to Be Joined if Feasible.

(1) *A Person Required to Be Made a Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
(A) in that party's absence, the court cannot accord complete relief among existing parties; or
(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
(i) as a practical matter impair or impede the person's ability to protect the interest; or
(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order*. If a person required to be made a party has not been joined, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue*. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder is Not Feasible. If a person required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:
(A) protective provisions in the judgment;
(B) shaping the relief; or
(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed

for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person required to be joined if feasible who is not joined; and
(2) the reasons for not joining that person.

Rule 18.3. Permissive Joinder of Parties.

(a) Persons Who May Join or Be Joined.

(1) *Plaintiffs*. Persons may join in one action as plaintiffs if:
(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
(B) any question of law or fact common to all plaintiffs will arise in the action.
(2) *Defendants*. Persons may be joined in one action as defendants if:
(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
(B) any question of law or fact common to all defendants will arise in the action.
(3) *Extent of Relief.* Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The court may issue orders – including an order for separate trials – to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Rule 18.4. Improper Joinder and Nonjoinder of Parties; Severance.

Joinder of a party that is not permitted under Rule 18.3(a) is not a ground to dismiss an entire action. At any time – on terms that are just – the court may dismiss an improperly joined party or join any party who may be properly joined under Rule 18.3(a). The court may also sever any claim against a party, and that severed claim may proceed as a separate and independent action.

Rule 19. Interpleader.

(a) Grounds.

(1) *Generally*. Interpleader is a procedure where one holding money or property subject to adverse claims may seek to avoid multiple liability by joining in a single action anyone who asserts or may assert claims to the money or property.

(2) *By a Plaintiff*. A plaintiff may join as a defendant anyone who asserts or may assert a claim to the money or property.

(3) *By a Defendant*. A defendant may seek interpleader through a crossclaim or counterclaim.

(4) *Propriety of Interpleader*. Interpleader is proper even though:

(A) the claims, or the titles on which the claims depend, do not have a common origin or are adverse and independent rather than identical; or

(B) the party requesting interpleader denies liability in whole or in part to any or all of the claimants.

(b) Release from Liability upon Deposit or Delivery. A party requesting interpleader under Rule 19(a) may move the court for an order discharging that party from liability to the claimants. The court may discharge the party upon:

(1) the party's deposit in court of the money claimed; or

(2) the party's delivery of the property as the court directs.

(c) Relation to Other Rules. This rule supplements – and does not limit – the joinder of parties allowed by Rule 18.

Rule 20. Intervention.

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) has an unconditional right to intervene under a statute; or

(2) claims an interest relating to the subject of the action, and is so situated that disposing of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) *Generally*. On timely motion, the court may permit anyone to intervene who:

(A) has a conditional right to intervene under a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency*. On timely motion, the court may permit a Tohono O'odham governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under a statute administered by the officer or agency.

(3) *Delay or Prejudice*. In exercising its discretion over permissive intervention, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Procedure.

(1) *Requirements of Motion*. Anyone moving to intervene must:
(A) serve the motion on the parties as provided in Rule 4(c); and
(B) attach as an exhibit to the motion a copy of the proposed pleading in intervention that sets out the claim or defense for which intervention is sought.

(2) *Filing and Serving Pleading in Intervention*. Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within ten (10) days after entry of the order granting the motion to intervene.

(3) *Response to Pleading in Intervention*. If the pleading in intervention is one to which a party must respond, that party must plead in response to the pleading in intervention within twenty (20) days after it is served. If the pleading in intervention does not require a party to file a responsive pleading, that party may plead in response to the pleading in intervention within twenty (20) days after it is served.

Rule 21. Substitution of Parties.

(a) Death.

(1) *Substitution if the Claim is Not Extinguished*. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. Any party or the decedent's successor or representative may file a motion to substitute. If the motion is not made within ninety (90) days after a statement noting the death is served, the court must dismiss the claims by or against the decedent.

(2) *Statement Noting Death*. A party or the decedent's successor or representative may file a statement noting the death of a party. If filed by a party, the statement must identify the decedent's successor or representative if one exists and is known by the filing party. Anyone filing a statement noting death must serve the statement on the parties a provided in Rule 4(c) and on nonparties in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable.

(3) *Service of Motion to Substitute*. Anyone filing a motion to substitute must serve the motion on the parties as provided in Rule 4(c) and on the decedent's successor or representative – if a nonparty – in the same manner that a summons and pleading are served under Arizona Rule 3, 3.1, or 3.2, as applicable.

(4) *Continuation Among the Remaining Parties*. After a party's death, if the claim survives only for or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(b) Incompetency. If a party becomes incompetent, the court may – on motion or on stipulation of the parties and the incompetent party's representative – permit the action to be continued by or against the party's representative. Anyone filing such a motion must serve the motion on the parties as provided in Rule 4(c) and on the incompetent party's representative – if a nonparty – in the same manner that a summons and pleading are served under Arizona Rule 3, 3.1, or 3.2, as applicable.

(c) Transfer of Interest. If a party's interest is transferred, the action may be continued by or against that party, unless the court – on motion or on stipulation of the parties and the transferee – orders the transferee to be substituted in the action or joined with the original

party. Anyone filing such a motion must serve the motion on the parties as provided in Rule 4(c) and on the transferee – if a nonparty – in the same manner that a summons and pleading are served under Arizona Rule 3, 3.1, or 3.2, as applicable.

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. The public officer's counsel must file a notice of the substitution, and later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

V. DISCLOSURE AND DISCOVERY

Rule 22. General Provisions Governing Discovery.

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

(1) depositions by oral examination or written questions under Rules 27 and 28, respectively;
(2) written interrogatories under Rule 30;
(3) requests for production of documents or things or permission to enter onto land or other property for inspection and other purposes, under Rule 31;
(4) physical and mental examination under Rule 32;
(5) requests for admission under Rule 33; and
(6) subpoenas for production of documentary evidence or for inspection of premises under Rule 43(c).

(b) Discovery Scope and Limits. Unless the court orders otherwise in accordance with these rules, the scope of discovery is as follows:

(1) *Generally.*
(A) Scope. Parties may obtain discovery regarding any nonprivileged matter that is relevant to the party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.
(B) Limits on Discovery. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that the discovery sought:
(i) is unreasonably cumulative or duplicative, or can be obtained from another source that is more convenient, less burdensome, or less expensive;
(ii) seeks information that the party has had ample opportunity to obtain; or
(iii)is outside the scope permitted by Rule 22(b)(1)(A).

(2) *Specific Limits on Discovery of Electronically Stored Information*. A party need not provide discovery or disclosure of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 22(b)(1). The court may specify conditions for the disclosure or discovery.

(3) *Work Product and Witness Statements*.

(A) Documents and Tangible Things Prepared in Anticipation of Litigation or for Trial. Ordinarily, a party may not discover documents and tangible things that another party or its representative (including the other party's legal counsel, consultant, surety, indemnitor, insurer, or agent) prepared in anticipation of litigation or for trial. But, subject to Rule 22(b)(4)(B), a party may discover those materials if:

(i) the materials are otherwise discoverable under Rule 22(b)(1); and

(ii) the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure of Opinion Work Product. If the court orders discovery of materials under Rule 22(b)(3)(A), it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's legal counsel or other representative concerning the litigation.

(C) Discovery of Own Statement. On request and without the showing required under Rule 22(b)(3)(A), any party or other person may obtain his or her own previous statement about the action or its subject matter. If the request is refused, the party or other person may move for a court order, and Rule 34(a)(5) applies to the award of expenses. A statement discoverable under this rule is either:

(i) a written statement that the party or other person signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, video, audio, or other recording – or a transcription of it – that recites substantially verbatim the party's or other person's oral statement.

(4) *Expert Discovery*.

(A) Deposition of an Expert Who May Testify. A party may depose any person who has been disclosed as an expert witness under Rule 23(a)(6).

(B) Expert Employed Only for Trial Preparation. Ordinarily, a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. A party may discover such facts or opinions only:

(i) as provided in Rule 32(d); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) Payment. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery

under Rule 22(b)(4)(A) or (B), including the time the expert spends testifying in a deposition; and

(ii) for discovery under Rule 22(b)(4)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions, including – in the court's discretion – the time the expert reasonably spends preparing for deposition.

(D) Number of Experts Per Issue. Unless the parties agree or the court orders otherwise for good cause, each side is presumptively entitled to call only one retained or specially employed expert to testify on an issue. When there are multiple parties on a side and those parties cannot agree on which expert to call on an issue, the court may designate the expert to be called or, for good cause, allow more than one expert to be called.

(5) *Notice of Nonparty at Fault*. No later than 150 days after filing its answer, a party must serve on all other parties – and should file with the court – a notice disclosing any person: (A) not currently or formerly named as a party in the action; and (B) whom the party alleges was wholly or partly at fault. The notice must disclose the identity and location of the nonparty allegedly at fault, and the facts supporting the allegation of fault. A party who has served a notice of nonparty at fault must supplement or correct its notice if it learns that the notice was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties through the discovery process or in writing. A party must supplement or correct its notice of nonparty at fault under this rule in a timely manner, but in no event more than thirty (30) days after it learns that the notice is materially incomplete or incorrect. The trier of fact may not allocate any percentage of fault to a nonparty who is not disclosed in accordance with this rule except on stipulation of all the parties or on motion showing good cause, reasonable diligence, and lack of unfair prejudice to all other parties.

(6) *Claims of Privilege or Protection of Work-Product Materials*.

(A) Information, Documents, or Electronically Stored Information Withheld. When a party withholds information, a document, or electronically stored information in response to a written discovery request on the claim that it is privileged or subject to protection as work product, the party must promptly identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that – without revealing information that is itself privileged or protected – will enable other parties to assess the claim.

(B) Inadvertent Production. If a party contends that a document or electronically stored information subject to a claim of privilege or of protection as work-product material has been inadvertently produced in discovery, the party making the claim may notify any party who received the document or electronically stored information of the claim and the basis for it. After being notified, a party: (i) must promptly return, sequester, or destroy the specified document or electronically stored information and any copies it has; (ii) must not use or disclose the document or electronically stored information until the claim is resolved; (iii) must take reasonable steps to retrieve the document or electronically stored information if the party disclosed it before being notified; and (iv) may promptly present the

document or electronically stored information to the court under seal for a determination of the claim. The producing party must preserve the document or electronically stored information until the claim is resolved.

(c) Protective Orders.

(1) *Generally*. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending. Subject to Rule 22(c)(4), the court may, for good cause, enter an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the discovery;

(B) specifying terms and conditions, including time and place, for the discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery*. If a motion for a protective order is wholly or partly denied, the court may, on terms that are just, order that any party or person provide or permit discovery.

(3) *Awarding Expenses*. Arizona Rule 37(a)(5) applies to the award of expenses on a motion for a protective order.

(4) *Confidentiality Orders*.

(A) Burden of Proof. Before the court may enter an order that limits a party or person from disclosing information or materials produced in the action to a person who is not a party to the action and before the court may deny an intervenor's request for access to such discovery materials: (i) the party seeking confidentiality must show why a confidentiality order should be entered or continued; and (ii) the party or intervenor opposing confidentiality must show why a confidentiality order should be denied in whole or in part, modified, or vacated. The burden of showing good cause for an order remains with the party seeking confidentiality.

(B) Findings of Fact. When ruling on a motion for a confidentiality order, the court must make findings of fact concerning any relevant factors, including but not limited to: (i) any party's or person's need to maintain the confidentiality of such information or materials; (ii) any nonparty's or intervenor's need to obtain access to such information or materials; and (iii) any possible risk to the public health, safety, or financial welfare to which such information or materials may relate or reveal. No such findings of fact are needed if the parties have stipulated to such an order or if a motion to intervene and to obtain access to materials subject to a confidentiality order is unopposed. A party moving for entry of a confidentiality

order must submit with its motion a proposed order containing proposed findings of fact.

(C) Least Restrictive Means. An order restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality.

(d) Sequence of Discovery. Unless the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice, or for other good cause:

(1) methods of discovery may be used in any sequence; and
(2) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing and Correcting Discovery Responses. A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than thirty (30) days after it learns that the response is materially incomplete or incorrect.

(f) Sanctions. The court may impose an appropriate sanction – including any order under Rule 16.5 – against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

(g) Discovery and Disclosure Motions. Any discovery or disclosure motion must attach a good faith consultation certificate complying with Rule 7.1(h).

Rule 23. Prompt Disclosure of Information.

(a) Duty to Disclose; Disclosure Categories. Within the times set forth in Rule 23(d) or by court order, each party must disclose in writing and serve on all other parties a disclosure statement setting forth:

(1) the factual basis of each of the disclosing party's claims or defenses;
(2) the legal theory on which each of the disclosing party's claims or defenses is based, including – if necessary for a reasonable understanding of the claim or defense – citations to relevant legal authorities;
(3) the name, address, and telephone number of each witness whom the disclosing party expects to call at trial, and a description of the substance – and not merely the subject matter – of the testimony sufficient to fairly inform the other parties of each witness' expected testimony;
(4) the name and address of each person whom the disclosing party believes may have knowledge or information relevant to the subject matter of the action, and a fair description of the nature of the knowledge or information each such person is believed to possess;
(5) the name and address of each person who has given a statement – as defined in Rule 22(b)(3)(C)(i) and (ii) – relevant to the subject matter of the action, and the custodian

of each of those statements;

(6) the name and address of each person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the expert's qualifications, and the name and address of the custodian of copies of any reports prepared by the expert;

(7) a computation and measure of each category of damages alleged by the disclosing party, the documents and testimony on which such computation and measure are based, and the name, address, and telephone number of each witness whom the disclosing party expects to call at trial to testify on damages;

(8) the existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that the disclosing party plans to use at trial, including any material to be used for impeachment;

(9) the existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that may be relevant to the subject matter of the action; and

(10) for any insurance policy, indemnity agreement, or suretyship agreement under which another person may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment: (A) a copy – or if no copy is available, the existence and substance – of the insurance policy, indemnity agreement, or suretyship agreement; (B) a copy – or if no copy is available, the existence and basis – of any disclaimer, limitation, or denial of coverage or reservation of rights under the insurance policy, indemnity agreement, or suretyship agreement; and (C) the remaining dollar limits of coverage under the insurance policy, indemnity agreement, or suretyship agreement. A party need only supplement its disclosure regarding the remaining dollar limits of coverage upon another party's written request made within thirty (30) days before trial. Within ten (10) days after such a request is served, a party must supplement its disclosure of the remaining dollar limits of coverage. For purposes of this rule, an insurance policy means a contract of or agreement for or effecting insurance, or the certificate memorializing it – by whatever name it is called – and includes all clauses, riders, endorsements, and papers attached to, or a part of, it, but does not include an application for insurance. Information concerning an insurance policy, indemnity agreement, or suretyship agreement is not admissible in evidence merely because it is disclosed under this rule.

(b) Disclosure of Hard-Copy Documents and Electronically Stored Information.

(1) *Hard-Copy Documents*. Subject to the limits of Rule 22(b)(1) or other good cause for not doing so, a party must serve with its disclosure a copy of any documents existing in hard copy that it has identified under Rule 23(a)(8), (9), and (10). If a party withholds any such hard-copy document from production, it must in its disclosure identify the document along with the name, telephone number, and address of the document's custodian. A party who produces hard-copy documents for inspection must produce them as they are kept in the usual course of business.

(2) *Electronically Stored Information*.

(A) Duty to Confer. When the existence of electronically stored information is

disclosed or discovered, the parties must promptly confer and attempt to agree on matters relating to its disclosure and production, including:

(i) requirements and limits on the disclosure and production of electronically stored information;

(ii) the form in which the information will be produced; and

(iii) if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

(B) Resolution of Disputes. If the parties are unable to satisfactorily resolve any dispute regarding electronically stored information and seek a resolution from the court, they must present the dispute in a single joint motion. The joint motion must include the parties' positions and the separate certification from all counsel required under Rule 22(g). In resolving any dispute regarding electronically stored information, the court may shift costs, if appropriate.

(C) Production of Electronically Stored Information. Unless the parties agree or the court orders otherwise, within forty (40) days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule 23(a)(8) and (9). Absent good cause, no party need produce the same electronically stored information in more than one form.

(D) Presumptive Form of Production. Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

(E) Limits on Disclosure of Electronically Stored Information. Rule 22(b)(2) applies to the disclosure of electronically stored information.

(c) Purpose; Scope.

(1) *Purpose*. The purpose of the disclosure requirements of this Rule 23 is to ensure that all parties are fairly informed of the facts, legal theories, witnesses, documents, and other information relevant to the action.

(2) *Scope*. A party must include in its disclosures information and data in its possession, custody, and control as well as that which it can ascertain, learn, or acquire by reasonable inquiry and investigation.

(d) Time for Disclosure; Continuing Duty.

(1) *Initial Disclosures*. Unless the parties agree or the court orders otherwise, a party seeking affirmative relief must serve its initial disclosure of information under Rule 23(a) as fully as then reasonably possible no later than forty (40) days after the filing of the first responsive pleading to the complaint, counterclaim, crossclaim, or third-party complaint that sets forth the party's claim for affirmative relief. Unless the parties agree or the court orders otherwise, a party filing a responsive pleading must serve its initial disclosure of information under Rule 23(a) as fully as then reasonably possible no later than forty (40) days after it files its responsive pleading.

(2) *Additional or Amended Disclosures*. The duty of disclosure prescribed in Rule 23(a) is a continuing duty, and each party must serve additional or amended disclosures when new or additional information is discovered or revealed. A party must serve such additional or amended disclosures in a timely manner, but in no event more than thirty (30) days after the information is revealed to or discovered by the disclosing party. If a party obtains or discovers information that it knows or reasonably should know is relevant to a hearing or deposition scheduled to occur in less than thirty (30) days, the party must disclose such information reasonably in advance of the hearing or deposition. If the information is disclosed in a written discovery response or a deposition in a manner that reasonably informs all parties of the information, the information need not be presented in a supplemental disclosure statement. A party seeking to use information that it first disclosed later than the deadline set in a Scheduling Order or Case Management Order – or in the absence of such a deadline, later than sixty (60) days before trial – must obtain leave of court to extend the time for disclosure as provided in Arizona Rule 37(c)(4) or (5).

(e) Signature Under Oath. Each disclosure must be in writing and signed under oath by the disclosing party.

(f) Claims of Privilege or Protection of Work-Product Materials.

(1) *Information Withheld*. When a party withholds information, a document, or electronically stored information from disclosure on a claim that it is privileged or subject to protection as work product, the party must promptly comply with Rule 22(b)(6)(A).

(2) *Inadvertent Production*. If a party contends that a document or electronically stored information subject to a claim of privilege or protection as work-product material has been inadvertently disclosed, the producing and receiving parties must comply with Rule 22(b)(6)(B).

Rule 24. Discovery Before an Action is Filed or Pending an Appeal.

(a) Before an Action Is Filed.

(1) *Petition*. A person who wants to perpetuate testimony – including his or her own – or to obtain discovery to preserve evidence about any matter cognizable in any court within the United States may file a verified petition in this court if the expected adverse party resides in the Tohono O'odham Nation. The petition must be titled in the petitioner's name and must:

(A) show that the petitioner expects to be a party to an action cognizable in any court within the United States but cannot presently bring it or cause it to be brought;

(B) identify the subject matter of the expected action and the petitioner's interest;

(C) show the facts that the petitioner desires to establish by the proposed discovery and the reasons for perpetuating it in advance of the expected action;

(D) identify the name or a description of each person whom the petitioner expects to be an adverse party and the person's address to the extent known;

(E) identify the name and address of each person from whom discovery is sought –

who may but need not be a person identified as an expected adverse party under Rule 24(a)(1)(D) – and the evidence the petitioner expects to obtain from the discovery; and

(F) ask for an order:

(i) directing the clerk to issue a subpoena under Rule 43 at the petitioner's request to obtain testimony or other evidence from each named person in order to preserve the testimony or other evidence;

(ii) under Rule 32 for a physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party; or

(iii) permitting the petitioner's deposition under Rule 27 to preserve his or her testimony.

(2) *Hearing Required*. Unless the petitioner and all expected adverse parties file a stipulation agreeing to the discovery requested in the petition, or unless the court orders otherwise for good cause, the court must hold a hearing on the relief that the petition seeks.

(3) *Notice and Service*. Unless the court orders otherwise for good cause, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing at least twenty (20) days before the hearing date. If an expected adverse party is a minor or incompetent, Rule 17(e) applies. The petition and notice may be served either inside or outside Arizona in the same manner that a summons and pleading are served under Rules 3, 3.1, or 3.2, as applicable. If the petition seeks an order under Arizona Rule 35 for a physical or mental examination, the petition and notice must be served on the expected adverse party whose examination is sought or who has custody or legal control of the person whose examination is sought. In all other instances, if service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise.

(4) *Opposition and Reply*. Unless the court orders otherwise, any expected adverse party may file an opposition to the petition at least five (5) days before the hearing date. The opposition must be served on the petitioner and each other expected adverse party using any of the methods described in Rule 4(c). Unless the court orders otherwise, the petitioner may not file a reply memorandum.

(5) *Order and Effect*.

(A) Order. If satisfied that perpetuating the testimony or preserving other evidence may prevent a failure or delay of justice, the court must enter an order that:

(i) identifies each person who may be served with a subpoena under Rule 43 to obtain testimony or for the inspection of documents or premises and specifies the subject matter of the permitted examination;

(ii) permits the physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party; or

(iii) permits the deposition of the petitioning party.

(B) Effect and Use. Discovery authorized by the court must be conducted, and may be used, as provided in these rules. A reference in these rules to the court where an action is pending means, for this rule's purposes, the court where the petition

for the discovery was filed. A deposition to perpetuate testimony taken under these rules may be used under Rule 29(a) in any later-filed action in the Tohono O'odham court involving the same subject matter. Subpoena recipients have the rights of nonparties under Rule 43 regardless of whether they are identified as an expected adverse party under Rule 24(a)(1)(D).

(C) Appointment of Counsel. If a court authorizes a deposition, but an expected adverse party is not served in the same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable, and is otherwise unrepresented by counsel, the court must appoint an attorney to represent that expected adverse party and to cross-examine the deponent. The petitioner must pay for an appointed attorney's services in an amount fixed by the court.

(b) Pending Appeal.

(1) *Generally*. The court may, if an appeal has been taken or may still be taken, permit a party to conduct discovery under the rules to preserve evidence for use in any later trial court proceedings in that action.

(2) *Motion*. A party who seeks to perpetuate testimony or preserve evidence under the rules may move for leave to conduct discovery. The moving party must provide the same notice and serve the motion in the same manner as if the action was still pending in the trial court. The motion must:

(A) identify the name and address of each person to be deposed or from whom discovery under the rules is sought, and the expected substance of the testimony or other discovery; and

(B) show the reasons for perpetuating the testimony or other discovery.

(3) *Order and Effect*. If satisfied that perpetuating the testimony or preserving the other evidence may prevent a failure or delay of justice, the court may order the requested discovery. Discovery authorized by the court must be conducted, and may be used, as provided in these rules.

Rule 25. Persons Before Whom Depositions May be Taken; Depositions in Foreign Countries; Letters of Request and Commissions.

(a) Deposition in the United States.

(1) *Generally*. Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths by federal law, Tohono O'odham law, or the law of the place of examination;

(B) a person appointed by the court where the action is pending to administer oaths and take testimony; or

(C) any certified reporter designated by the parties under Rule 26.

(2) *Definition of "Officer."* The term "officer" as used in Rules 27, 28, and 29 includes a person appointed by the court under this rule or designated by the parties under Rule 26.

(b) Deposition in a Foreign Country.

(1) *Generally*. A deposition may be taken in a foreign country:
(A) under an applicable treaty or convention;
(B) under a letter of request, whether or not captioned a "letter rogatory";
(C) on notice, before a person authorized to administer oaths by federal law, Tohono O'odham law, or the law of the place of examination; or
(D) before a person commissioned by the court where the action is pending to administer any necessary oath and take testimony.

(2) *Form of a Request, Notice, or Commission*. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(3) *Letter of Request – Admitting Evidence*. Evidence obtained in response to a letter of request need not be excluded because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Letters of Request and Commissions.

(1) *Not Required*. A deposition in a pending action may be taken anywhere upon notice prescribed by these rules without a letter of request, commission, or other like writ.

(2) *Issuing Letter of Request or Commission*. The clerk may issue a letter of request – whether or not captioned a "letter rogatory" – a commission, or both:
(A) on appropriate terms after an application and one full-day's notice to the other parties; and
(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Objections; Waiver*. A party waives any error in the form of a letter of request or commission if it does not file a written objection before the clerk issues the letter of request or commission. The court must rule on any timely filed objection before the clerk may issue a letter of request or commission.

(d) Disqualification. A deposition may not be taken before a person who is:

(1) any party's relative, employee, or attorney;
(2) related to or employed by any party's attorney; or
(3) financially interested in the action.

Rule 26. Modifying Discovery and Disclosure Procedures and Deadlines.

(a) By Written Agreement.

(1) *Generally*. Unless the court orders otherwise, the parties may agree in writing to:
(A) take a deposition before any certified reporter, at any time or place, on any notice, and in any manner specified, in which event it may be used in the same way as any other deposition; and

(B) modify other procedures in these rules governing or limiting discovery or disclosure.

(2) *Court Order*. Unless it interferes with court-ordered deadlines, the time set for a hearing, or the time set for trial, a written agreement under Rule 26(a)(1) is effective without court order.

(b) By Motion. A party may move to modify any procedure governing or limiting discovery or disclosure. The motion must:

(1) set forth the modification sought;
(2) show good cause for the modification; and
(3) comply with Rule 22(g).

Rule 27. Depositions by Oral Examination.

(a) When a Deposition May Be Taken.

(1) *Depositions Permitted*. A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 23(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.

(2) *Depositions by Plaintiff Earlier Than Thirty (30) Days After Serving the Summons and Complaint*. A plaintiff must obtain leave of court to take a deposition earlier than thirty (30) days after serving the summons and complaint on any defendant unless: (A) a defendant has served a deposition notice or otherwise sought discovery under these rules; or (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave the Tohono O'odham Nation and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 27(a)(2), the deposition may not be used against that party.

(3) *Incarcerated Deponents*. Subject to Rule 27(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.

(4) *Compelling Attendance of Deponent*. A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 43. A party noticing the deposition of a party – or an officer, director, or managing agent of a party – need not serve a subpoena under Rule 43.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

(1) *Notice Generally*. Unless all parties agree or the court orders otherwise, a party who

wants to depose a person by oral questions must serve written notice to every other party at least ten (10) days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Materials*. If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 31 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 31 apply to any such request.

(3) *Method of Recording*.

(A) Permitted Methods. Unless all parties agree or the court orders otherwise, testimony must be recorded by a certified reporter and may also be recorded by audio or audiovisual means.

(B) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.

(C) Additional Method. With at least two (2) days prior written notice to the deponent and other parties, any other party may designate another method for recording the testimony in addition to that specified in the original notice. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(D) Notice of Recording by Audiovisual Means. Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s).

(E) Transcription. Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) *By Remote Means*. The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 25(a), 34(a)(2), 43(b)(3), and 43(e), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) *Officer's Duties*.

(A) Before Deposition. Unless the parties agree otherwise under Rule 26, a deposition must be conducted before an officer appointed or designated under Rule 25. The officer must begin the deposition with a statement or notation on the record that includes:

(i) the officer's name, certification number, if any, and business address;
(ii) the date, time, and place of the deposition;
(iii) the deponent's name;
(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 27(b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance, voice, and demeanor must not be distorted through recording techniques.

(C) After the Deposition. At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters.

(6) *Notice or Subpoena Directed to an Entity*. In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This Rule 27(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.

(1) *Examination and Cross-Examination*. The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence, except for Rules 103 and 615. Any party not present within thirty (30) minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer personally – or a person acting in the presence and under the direction of the officer – must record the testimony by the method(s) designated under Rule 27(b)(3).

(2) *Objections*. The officer must note on the record any objection made during the deposition – whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer – or a deponent may refuse to answer – only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 27(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

(3) *Conferences Between Deponent and Counsel*. The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(4) *Participating Through Written Questions*. Instead of participating in the oral

examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanctions; Motion to Terminate or Limit.

(1) *Duration*. Unless the parties agree or the court orders otherwise, a deposition is limited to four (4) hours and must be completed in a single day.

(2) *Sanctions*. The court may impose appropriate sanctions – including any order under Rule 16.5 – against a party or legal counsel who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition, including an unreasonable refusal to agree to extend a deposition beyond four (4) hours.

(3) *Motion to Terminate or Limit*.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order. The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 22(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) Award of Expenses. Rule 34(a)(5) applies to the award of expenses.

(e) Review by the Deponent; Changes.

(1) Review; Statement of Changes. If requested by the deponent or a party before the deposition is completed, the deponent must be allowed thirty (30) days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

(2) Officer's Certificate to Attach Changes. The officer must note in the certificate prescribed by Rule 27(f)(1) whether a review was requested and, if so, must attach any changes the deponent made during the 30-day period.

(f) Officer's Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording.

(1) *Certification and Delivery*. The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly deliver it to the legal counsel who arranged for the transcript or recording.

The legal counsel must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things*.

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition – and any party may inspect and copy them – but if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals – after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked – in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

(3) *Copies of the Transcript or Recording*. Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Judicial Branch. Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service.

Rule 28. Depositions by Written Questions.

(a) When a Deposition May Be Taken.

(1) *Depositions Permitted*. A party may, by written questions, depose: (A) any party; (B) any person disclosed as an expert witness under Rule 22.1(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not, by written questions, depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.

(2) *Service of Written Questions by Plaintiff Earlier Than Thirty (30) Days After Serving the Summons and Complaint*. Unless a defendant has served a deposition notice or otherwise sought discovery under these rules, a plaintiff must obtain leave of court to serve written questions under Rule 28(b) earlier than thirty (30) days after serving the summons and complaint on that defendant.

(3) *Incarcerated Deponents*. Subject to Rule 28(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court

on such terms as the court orders.

(4) *Compelling Attendance of Deponent*. A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 43. A party noticing the deposition of a party – or an officer, director, or managing agent of a party – need not serve a subpoena under Rule 43.

(b) Notice; Service of Questions and Objections; Questions Directed to an Entity.

(1) *Service of Written Questions; Required Notice*. A party who wants to depose a person by written questions must serve them on all parties, with a notice stating, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(2) *Service of Additional Questions*. Unless the parties agree or the court orders otherwise, any additional questions to the deponent must be served on all parties as follows: cross-questions, within fifteen (15) days after being served with the notice and direct questions; redirect questions, within five (5) days after being served with cross-questions; and recross-questions, within five (5) days after being served with redirect questions.

(3) *Service of Objections*. A party who objects to the form of a written question served under Rule 28(b)(1) or (2) must serve the objection in writing on all parties within the time allowed for serving the succeeding cross-, redirect, or recross-questions, or, if to a recross-question, within five (5) days after service of the recross-questions.

(4) *Questions Directed to an Entity*. In accordance with Rule 27(b)(6), a party may depose by written questions a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity.

(c) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer designated in the notice a copy of the notice and copies of all the questions and objections served under Rule 28(b). The officer must promptly proceed in the manner provided in Rule 27(b), (c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;
(2) prepare and certify the deposition; and
(3) deliver it to the party who noticed the deposition, attaching a copy of the notice, the questions, and the objections.

Rule 29. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) *In the Same or Similar Action*. At a hearing or trial, all or part of a deposition taken in the action – or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest – may be used against a party if:

(A) the deposition testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;
(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and
(C) the party, its representative, or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) *In a Different Action*. At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) *Deponent's Availability at Trial*. Subject to Rule 29(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent's availability to testify at trial. Use of a deposition at trial does not limit, in any way, any party's right to call the deponent to testify in person.

(4) *Using Part of a Deposition*. If a party offers in evidence only part of a deposition, the court may require that party to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) *Substituted Party*. Substituting a party under Rule 21 does not affect the right to use a previously taken deposition.

(b) Objections to Admissibility. Subject to Rules 25(b) and (c), and 29(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form. On any party's request, deposition testimony offered in a trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court orders otherwise for good cause. If the testimony is unavailable in audio or audiovisual form, the court may require a single presenter to read the designated parts of the deposition testimony at trial.

(d) Preservation and Waiver of Objections.

(1) *To the Notice*. A party objecting to an error or irregularity in a deposition notice must promptly serve the objection in writing on the party giving the notice.

(2) *To the Officer's Qualification*. A party objecting to the qualification of the officer before whom a deposition is to be taken must make such objection:
(A) before the deposition begins; or
(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) To the Taking of the Deposition.
(A) To Competence, Relevance, or Materiality. A party objecting to a deponent's competence – or to the competence, relevance, or materiality of testimony – must make the objection before or during the deposition if the ground for the objection could have been corrected at that time.
(B) To an Error or Irregularity at an Oral Deposition. A party objecting to the manner of taking the deposition, the form of a question or answer, the oath or affirmation,

a party's conduct, or other matters that could be corrected at that time must timely make the objection during the deposition.

(C) To a Written Question. A party objecting to the form of a written question under Rule 28 must serve the objection under Rule 28(b)(3).

(D) To the Officer's Completion and Return of Deposition. A party objecting to how the officer (A) transcribed the testimony, or (B) prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the deposition, must file a motion to suppress promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Rule 30. Interrogatories to Parties.

(a) Generally.

(1) *Definition*. Interrogatories are written questions served by a party on another party.

(2) *Number*. Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than forty (40) written interrogatories, including all discrete subparts. An Arizona uniform interrogatory and its subparts count as one interrogatory. Any discrete subpart to a non-uniform interrogatory shall be considered as a separate interrogatory.

(3) *Scope*. An interrogatory may ask about any matter allowed under Rule 22(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a party's contention about facts or the application of law to facts, but the court may, on motion, order that such a contention interrogatory need not be answered until a later time.

(4) *Arizona Uniform Interrogatories*. Arizona Rule 84, Forms 4, 5, and 6, contain uniform interrogatories that a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory – such as by requesting a response only as to particular persons, events, or issues – without converting it into a nonuniform interrogatory.

(b) Answers and Objections.

(1) *Time to Respond*. Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within thirty (30) days after being served with the interrogatories. But a defendant may serve its answers and any objections within sixty (60) days after service – or execution of a waiver of service – of the summons and complaint on that defendant.

(2) *Answers Under Oath*. Subject to Rule 30(b)(3), an answering party must answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party – including a public or private entity – must furnish the information available to it. It must also reproduce the text of an interrogatory immediately above its answer to that interrogatory.

(3) *Objections*. The grounds for objecting to an interrogatory must be stated with

specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.

(4) *Signature*. The party who answers the interrogatories must sign them under oath. If the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath. Legal counsel who objects to any interrogatories must sign the objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of determining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Rule 31. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes.

(a) Generally. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations –stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) *Number*. Unless the parties agree or the court orders otherwise, a party may not serve requests for more than ten (10) items or distinct categories of items on any other party.

(2) *Contents of the Request*. The request:

(A) must describe with reasonable particularity each item or distinct category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(3) *Responses and Objections*.

(A) Time to Respond. Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within thirty (30) days after being served. But a defendant may serve its responses and any objections within sixty (60) days after service of the summons and complaint on that defendant.

(B) Responding to Each Item. For each item or distinct category of items, the response must either state that inspection and related activities will be permitted as requested or state the grounds for objecting with specificity, including the reasons.

(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection. A party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form – or if no form was specified in the request – the party must state the form or forms it intends to use, which must be native form or another reasonably usable form that will enable the requesting party to have the same ability to access, search, and display the information as the responding party.

(E) Producing the Documents or Electronically Stored Information. Unless the parties agree or the court orders otherwise, these procedures apply to producing documents or electronically stored information:

(i) a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) if a request does not specify a form for producing electronically stored information, a party must produce it in native form or in another reasonably usable form that will enable the requesting party to have the same ability to access, search, and display the information as the responding party; and

(iii) absent good cause, a party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 43, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

Rule 32. Physical and Mental Examinations.

(a) Examination on Order.

(1) *Generally*. The court where the action is pending may order a party whose physical or mental condition is in controversy to submit to a physical or mental examination by a physician or psychologist. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) *Motion and Notice; Contents of the Order*. An order under Rule 32(a)(1):

(A) may be entered only on motion for good cause and on notice to all parties and the person to be examined;

(B) must specify the time, place, manner, conditions, and scope of the examination; and

(C) must specify the person or persons who will perform the examination.

(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.

(1) *Notice*. When the parties agree that an examination is appropriate but do not agree on the examiner, the party seeking the examination may proceed by giving reasonable – and not fewer than thirty (30) days – written notice to all other parties. The notice must:

(A) identify the party or person to be examined;

(B) specify the time, place, and scope of the examination; and

(C) identify the examiner(s).

(2) *Motion Objecting to Examiner*. After being served with a proper notice under Rule 32(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a physician or psychologist other than the one specified in the notice.

(3) *Failure to Appear*. Unless the party has filed a motion under Rule 22(c), the party must appear – or produce the person in the party's custody or legal control – for the noticed examination. If the party fails to do so, the court where the action is pending may, on motion, make such orders concerning the failure as are just, including those under Rule 34(f).

(c) Attendance of Representative; Recording.

(1) *Attendance of Representative*. Unless his or her presence may adversely affect the examination's outcome, the person to be examined has the right to have a representative present during the examination.

(2) *Recording.*

(A) Audio Recording. The person to be examined may audio-record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio-record any mental examination.

(B) Video Recording. On order for good cause – or on agreement of the parties and the person to be examined – an examination may be video-recorded.

(C) Copy of Recording. A copy of a recording made of an examination must be provided to any party upon request.

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

(1) *Contents*. The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(2) *Request by the Party or Person Examined*. The party who is examined – or who produces the person examined – may request the examiner's report, like reports of the same condition, and written or recorded notes from the examination. If such a request is made, the party who moved for or noticed the examination must, within twenty (20) days of the examination or request – whichever is later – deliver to the requestor copies of:

(A) the examiner's report;

(B) like reports of all earlier examinations of the same condition; and

(C) all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing them with the copies.

(3) *Request by the Examining Party*. After delivering the materials required by Rule 32(d)(2), the party who moved for or noticed the examination is entitled, on its request, to receive from the party who was examined – or who produced the person examined – like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege*. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have – in that action or any other action involving the same controversy – concerning testimony by any other person who has examined or who later examines the same condition.

(5) *Failure to Deliver a Report as Ordered*. On motion, the court may order – on terms that are just – that a party deliver a report of an examination. If the report is not delivered as ordered, the court may exclude the examiner's testimony at trial.

(6) *Scope*. This Rule 32(d) applies to examinations conducted by agreement of the parties, unless the agreement states otherwise. This rule does not preclude a party from obtaining an examiner's report, or deposing an examiner, under other rules.

Rule 33. Requests for Admission.

(a) Scope and Procedure.

(1) *Scope*. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 22(b) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document*. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Number*. Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than twenty-five (25) requests for admission.

(4) *Time to Respond; Effect of Not Responding*. A matter is admitted unless, within thirty

(30) days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. But a defendant may serve its answers and any objections within sixty (60) days after service of the summons and complaint on that defendant. A shorter or longer time for responding may be agreed to by the parties or ordered by the court.

(5) *Answer*. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(6) *Objections*. The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(7) *Motion Regarding the Sufficiency of an Answer or Objection*. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. If the court finds that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 34(e) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16, the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Rule 34. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions.

(a) Motion for Order Compelling Disclosure or Discovery.

(1) *Generally*. A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.1(h).

(2) *Appropriate Court*. A motion for an order to a party or nonparty must be made in the court where the action is pending.

(3) *Specific Motions*.

(A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 23, any other party may move to compel disclosure and for appropriate sanctions.

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

(i) a deponent fails to answer a question asked under Rule 27 or 28;
(ii) a corporation or other entity fails to make a designation under Rule 27(b)(6) or 28(b)(4);
(iii) a party fails to answer an interrogatory served under Rule 30;
(iv) a party fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 31; or
(v) a person fails to produce materials requested in a subpoena served under Rule 43.

(C) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order to compel an answer.

(4) *Evasive or Incomplete Disclosure, Answer, or Response*. For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders*.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted – or if the disclosure or requested discovery is provided after the motion was filed – the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, the party or legal counsel advising that conduct, or both, to pay the movant's reasonable expenses incurred in making the motion, including legal practitioner's fees. But the court may not order this payment if:
(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
(iii) other circumstances make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 22(c) and may, after giving an opportunity to be heard, require the movant, the legal counsel filing the motion, or both, to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including legal practitioner's fees. But the court may not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 22(c) and may – after giving an opportunity to be heard – apportion the reasonable expenses, including legal practitioner's fees, for the motion.

(b) Sanctions for Failure to Comply with a Court Order.

(1) *For Not Obeying a Discovery Order*. If a party or a party's officer, director, or managing agent – or a witness designated under Rule 27(b)(6) or 28(b)(4) – fails to obey an order to provide or permit discovery, including an order under Rule 32 or 34(a), the court where the action is pending may enter further just orders. They may include the following:
(i) directing that the matters described in the order or other designated facts be

taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment, in whole or in part, against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(2) *For Not Producing a Person for Examination*. If a party fails to comply with an order under Rule 32(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 34(b)(1)(i) through (vi), unless the disobedient party shows that it cannot produce the other person.

(3) *Payment of Expenses*. Instead of or in addition to the orders above, the court may order the disobedient party, the attorney advising that party, or both, to pay the reasonable expenses, including legal practitioner's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.

(1) *Failure to Timely Disclose*. Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 23 may not, unless such failure is harmless, use the information, witness, or document as evidence at trial, at a hearing, or with respect to a motion.

(2) *Inaccurate or Incomplete Disclosure*. On motion, the court may order a party or attorney who makes a disclosure under Rule 23 that the party or legal counsel knew or should have known was inaccurate or incomplete to reimburse the opposing party for the reasonable cost, including legal practitioner's fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.

(3) *Other Available Sanctions*. In addition to or instead of the sanctions under Rule 34(c)(1) and (2), the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including legal practitioner's fees, caused by the failure; and

(B) may impose other appropriate sanctions, including any of the orders listed in Rule 34(b)(1)(A) through (F).

(4) *Use of Information, Witness, or Document Disclosed After Court Order Deadline or Later Than Sixty (60) Days Before Trial*. A party seeking to use information, a witness, or a document that it first disclosed later than the deadline set in a court order, or – in the absence of such a deadline – sixty (60) days before trial, must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(A) the information, witness, or document would be allowed under the standards of Rule 34(c)(1); and

(B) the party disclosed the information, witness, or document as soon as practicable

after its discovery.

(5) *Use of Information, Witness, or Document Disclosed During Trial*. A party seeking to use information, a witness, or a document that it first disclosed during trial must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(A) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

(B) the party disclosed the information, witness, or document immediately upon its discovery.

(d) Failure to Timely Disclose Unfavorable Information. If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 23, the court may impose serious sanctions, up to and including dismissal of the action – or rendering of a default judgment – in whole or in part.

(e) Expenses on Failure to Admit. If a party fails to admit what is requested under Rule 33 and if the requesting party later proves the matter true – including the genuineness of a document – the requesting party may move that the non-admitting party pay the reasonable expenses, including legal practitioner's fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 33(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) there was other good reason for the failure to admit.

(f) Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.

(1) *Generally*.

(A) Motion; Grounds for Sanctions. The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent – or a person designated under Rule 27(b)(6) or 28(b)(4) – fails, after being served with proper notice, to appear for his or her deposition; or

(ii) a party – after being properly served with interrogatories under Rule 30 or requests for production under Rule 31 – fails to serve its answers, objections, or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule 7.1(h).

(2) *Unacceptable Excuse for Failing to Act*. A failure described in Rule 34(f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 22(c).

(3) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 34(b)(1)(A) through (F). Instead of or in addition to these sanctions, the court may require the party failing to act, the legal counsel advising that party, or both, to pay

the reasonable expenses – including legal practitioner's fees – caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(g) Failure to Preserve Electronically Stored Information.

(1) *Duty to Preserve*.

(A) Generally. A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action's commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

(B) Reasonable Anticipation. A person reasonably anticipates an action's commencement if:

(i) it knows or reasonably should know that it is likely to be a defendant in a specific action; or

(ii) it seriously contemplates commencing an action or takes specific steps to do so.

(C) Reasonable Steps to Preserve.

(i) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(ii) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) *Remedies and Sanctions*. If electronically stored information that should have been preserved is lost because a party – either before or after an action's commencement – failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order under Rule 22(b)(2). If the information cannot be restored or replaced through additional discovery, the court:

(A) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(B) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(i) presume that the lost information was unfavorable to the party; or

(ii) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

VI. TRIALS

Rule 35. Setting Civil Actions for Trial; Continuances; Scheduling Conflicts.

(a) Trial Setting. Civil actions are set for trial under Rule 16. Preference is given to short causes and actions that are entitled to priority by statute, rule, or court order. Subject to Rule 57(a)(2), the court must give the parties notice of the trial date no later than thirty (30) days before the first day of trial.

(b) Continuances.

(1) *Generally*. If a court has set an action for trial on a specified date, it may not continue the trial unless:
(A) good cause exists to do so, supported by affidavit or other evidence;
(B) the parties consent; or
(C) a continuance is required by operation of law.

(2) *Motion and Certification*. A party seeking a continuance of a trial must file a motion setting forth the basis for the request and any supporting evidence. The party must attach a separate statement certifying that the requested continuance is not being sought solely for the purpose of delay and will serve the interests of justice.

(3) *Witness Unavailability or Absence*.
(A) Generally. If the ground to continue is the witness's unavailability or absence, the moving party must submit an affidavit stating or showing:
(i) the witness's name and address – if known;
(ii) the witness's expected testimony;
(iii) the expected testimony's materiality;
(iv) the reason for the witness's unavailability or absence;
(v) the party's diligence in procuring such testimony and efforts to make the witness available; and
(vi) the testimony cannot be obtained from any other source.
(B) Denial of a Motion to Continue. The court may deny a motion to continue if, among other grounds, it finds that the expected testimony would be inadmissible if presented at trial or if all non-moving parties agree that the movant's description of the witness's expected testimony is accurate and would be admissible if presented at trial. If the non-moving parties so agree, the movant's description of the witness's expected testimony may be read to the court at trial in place of the witness's live testimony. Such testimony may be controverted as if the witness were personally present.

(c) Scheduling Conflicts Between Courts.

(1) *Notice to Courts and Counsel*. Upon learning of a scheduling conflict between a trial in the Tohono O'odham Court and another trial or hearing in a tribal, state, or federal court, counsel must promptly notify the affected judges and legal counsel.

(2) *Resolving a Conflict*. Upon being notified of a scheduling conflict, the respective judges should confer with each other and counsel to resolve the conflict. No court actions have priority in scheduling. A court may consider the following factors in resolving the conflict:
(A) whether the other action is a criminal matter, and, if so, whether continuance of

that matter will deprive a defendant of a speedy trial;
(B) each action's relative length, urgency, or importance;
(C) whether either action involves out-of-town witnesses, parties, or counsel;
(D) the actions' respective filing dates;
(E) which action was first set for trial;
(F) any priority granted by rule or statute; and
(G) any other pertinent factor.

(3) *Inter-division Conflicts*. Conflicts in scheduling between court divisions may be governed by general order.

Rule 36. Trial Procedures.

(a) Objectives. The court should adopt trial procedures as necessary or appropriate to facilitate a just, speedy, and efficient resolution of the action. To achieve this objective, the court may:

(1) impose time limits and allocate trial time;
(2) sequence the presentation of claims, evidence, and arguments;
(3) allow advance scheduling of witnesses and other evidence;
(4) order pretrial admission of exhibits or other evidence;
(5) allow electronic presentation of evidence; and
(6) adopt other means of managing or expediting trial.

(b) Order of Trial. A trial should proceed in the following order, unless the court orders otherwise for good cause:

(1) *Opening Statements*. Each party may make a concise opening statement regarding the facts that it proposes to establish by evidence at trial. Any party may decline to make an opening statement. Opening statements should proceed in the following order:
(A) the plaintiff;
(B) the defendant, unless deferred until after the close of the plaintiff's presentation of evidence; and
(C) other parties, unless deferred until after the close of the plaintiff's and defendant's presentations of evidence, in the order the court directs.

(2) *Evidence*. Unless the court orders otherwise, the parties should introduce evidence in the following order:
(A) plaintiff;
(B) defendant;
(C) other parties, if any, in the order the court directs;
(D) plaintiff's rebuttal evidence;
(E) defendant's rebuttal evidence in support of the defendant's counterclaim(s), if any; and
(F) rebuttal evidence from other parties or with respect to crossclaims or third-party claims, as the court permits and in the order it directs.

(3) *Closing Arguments*. The party with the burden of proof on the whole case under the pleadings should make the first and last argument in closing. If the remaining parties

have different claims or defenses and are represented by different counsel, the court should prescribe the order in which they will make their respective closing arguments.

(c) Omitted Testimony. At any time before closing arguments begin and if justice requires, the court may allow a party to introduce omitted testimony on such terms as the court orders.

(d) Memoranda. Post-trial memoranda may not be filed, except:

(1) in support of or in opposition to a motion under Rule 46(b), 51, or 52; or
(2) as ordered by the court.

(e) Excluding Minors from Trial. When trying an action or proceeding of a scandalous or obscene nature, the court may exclude minors from the courtroom if their presence – as parties or witnesses – is not necessary.

Rule 37. Dismissal of Actions.

(a) Voluntary Dismissal.

(1) *By the Plaintiff.*

(A) On Notice or Order on Stipulation. Subject to rule and any applicable statute, the plaintiff may dismiss an action:

(i) by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) by order based on a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or order states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed an action in any court based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Other Court Order; Effect.* Except as provided in Rule 37(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this Rule 37(a)(2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this Rule 37(b) and any dismissal not under this rule – except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 18.2 – operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 37(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or
(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and
(2) may stay the proceedings until the plaintiff has complied.

Rule 38. Consolidation; Separate Trials.

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;
(2) consolidate the actions; or
(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

Rule 39. Change of Judge.

(a) Change of Judge as of Right.

(1) *Purpose*. In any civil action each party may request one change of judge as of right.
(2) *Form of Notice and Service*. A party seeking a change of judge as a matter of right must file a written notice. The notice must be served on all other parties, the chief judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 4(c). The notice must not specify the grounds for the change of judge, but must contain:
   (A) the name of the judge to be changed;
   (B) a statement that:
      (i) the filing is timely under Rule 39(a)(3), and
      (ii) the party has not previously been granted a change of judge as a matter of right in the action.
(3) *Time Limits*. A party is precluded from obtaining a change of judge as a matter of right unless it files a timely notice. A notice or motion is timely if filed no later than ten (10) days:
   (A) before the initial hearing; or
   (B) after receipt of notice that a new judge is assigned the case.

(4) *Actions Remanded from the Appellate Court*. In an action remanded from an appellate court, the right to a change of judge is renewed:
(A) if the appellate decision requires a new trial; and
(B) the party seeking a change of judge has not previously exercised its right to a change of judge in the action.

(5) *Procedures on Notice*.
(A) On Proper Notice. If a notice is timely filed, the judge named in the notice should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge. If the named judge is the chief judge, then a designee may reassign the case.
(B) On Improper Notice. If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the action.

(b) Change of Judge for Cause.

(1) *Purpose*. In addition to Rule 39(a), a party may request a change of judge assigned to a case for cause.

(2) *Form of Motion; Grounds*. A party wishing to change a judge for cause must file a verified motion for change of judge for cause containing the following information and grounds:
(A) the name of the judge to be changed;
(B) that the filing is timely under Rule 39(b)(4), and
(C) specific facts to establish cause, including bias, hostility, ill-will, prejudice or interest that would prevent a fair and impartial trial or hearing.

(3) *Filing and Service*. The verified motion must be filed and copies served on the parties, the chief judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 4(c).

(4) *Timeliness*. A party must file the motion seeking a change of judge for cause within ten (10) days after discovering that grounds exist for a change of judge. Case events or actions taken before that discovery do not waive a party's right to a change of judge for cause.

(5) *Hearing and Assignment*. The chief judge or a designee if the chief judge is the noticed judge may hold a hearing within five (5) days to determine the issues raised in the motion, or may decide the issues based on the motion.

(6) *Further Actions*. On filing of the motion for cause, the named judge should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable harm from occurring before the request is decided and the action transferred.

(7) *Preponderance of the Evidence*. The chief judge must decide the issues by the preponderance of the evidence: the sufficiency of any "cause to believe" must be determined by an objective standard, not by reference to the party's subjective belief.
(A) Disqualification. If grounds for disqualification are found, the chief judge must promptly reassign the action.
(B) No Disqualification. If the court determines that the party who filed the motion is not entitled to a change of judge, the named judge may proceed with the action.

(c) Punishment for Contempt Prohibited for the Filing of Change of Judge. No judge or court may punish for contempt anyone making, filing, or presenting the notice or motion for change of judge under Rule 39(a) or (b).

Rule 40. Taking Testimony.

(a) Definition of Witness. A "witness" is a person whose testimony under oath or affirmation is offered as evidence for any purpose, whether by oral examination, deposition, or affidavit.

(b) Affirmation Instead of Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Interpreter. The parties may agree upon an interpreter of their choosing and the party or parties pay the interpreter's reasonable compensation. The compensation may be taxed as costs.

(d) Limits on Examining Witness. Unless allowed by the court, only one legal counsel for each party may examine a witness.

(e) In Open Court. At trial, witness testimony must take place in open court, unless a statute, these rules, or the Arizona Rules of Evidence provide otherwise. For good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(f) Evidence on a Motion. If a motion relies on facts outside the record, the court may decide the matter on affidavits or on oral or deposition testimony.

(g) Preserving Recording of Court Proceedings. The official verbatim recording of any court proceeding is an official record of the court. The original recording must be kept by the person who recorded it, a court-designated custodian, or the clerk in a place designated by the court.

Rule 41. Proving an Official Record.

(a) Authenticating an Official Record – Generally.

(1) *Domestic Record*. A record – or an entry in it – may be authenticated as an official record if it is kept within the United States, any tribe, state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States and it is:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record – or by the officer's deputy – and accompanied by a certificate that the officer has custody. The certificate must be made under seal, or its equivalent:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the

district or political subdivision where the record is kept.

(2) *Foreign Record*.

(A) Generally. A record – or an entry in it – may be authenticated as a foreign official record if:

(i) it is an official publication of the record; or

(ii) the record – or a copy – is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) Final Certification of Genuineness. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) Other Means of Proof. If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the contents of the record to be proved by an attested summary with or without a final certification.

(b) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry on a specified topic is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 41(a)(1). For foreign records, the statement must comply with Rule 41(a)(2)(C)(ii).

(c) Other Proof. A party may authenticate an official record – or an entry or lack of an entry in it – by any other method authorized by law.

(d) Means of Proving Appointment of Guardian, Personal Representative, Administrator, or Conservator. The appointment and qualifications of a guardian, personal representative, administrator, or conservator may be proved by the letters or orders issued as prescribed by law, or a certificate of the clerk under official seal that the letters or orders issued.

Rule 42. Determining Foreign Law.

A party who intends to raise an issue about a foreign country's law must give reasonable written notice, filed with the court. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Arizona Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

~~Rule 6.~~Rule 43. Subpoenas.

~~**Rule 6.1. Purpose of Subpoena.**~~

~~Subpoenas may be issued in matters pending before the Tohono O'odham court to command each person to whom it is directed to do the following at a specified time and place:~~

~~**(a)** attend and give testimony at a hearing, trial, or deposition on the Tohono O'odham Nation;~~

~~**(b)** produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; and/or~~

~~**(c)** permit the inspection of premises.~~

~~**Rule 6.2.**~~**(a) General Requirements; Subpoenas to the Nation; Issuance.**

(1) *General Requirements*. Every subpoena must:

(A) state the name of the Tohono O'odham court from which it issued;

(B) state the title of the action and its civil action number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and testify at a deposition, hearing, or trial;

(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or

(iii) permit the inspection of premises; and

(D) be substantially in the form set forth in Arizona Rule 84, Form 9.

~~**(a)** A party requesting a subpoena shall provide a form for the signature of the court clerk in substantial compliance with the forms provided in these Rules. Prior to submitting the subpoena for signature, the party shall have filled in all applicable information, such as the title of the action, the name of the court in which it is pending, the case number; the name and address of the person to whom the subpoena is directed; what action is requested of the person; and the date the action is required.~~

~~**(b) Service of Subpoenas Directed to the Tohono O'odham Nation.** Service of subpoenas directed to the Tohono O'odham Nation, a Tohono O'odham governmental branch, district, authority, enterprise, officer or employee in an official capacity shall be effected by serving the legal counsel of the branch, district, authority, or enterprise. If the branch, district, authority, or enterprise does not have legal counsel, service shall be effected by delivery to the branch head, district council chairperson, or chief executive officer of the authority or enterprise.~~

(2) *Issuance by Clerk*. ~~The court clerk shall sign the subpoena and return it to the requesting party.~~ The clerk must issued a signed but otherwise blank subpoena to a party requesting it. That party must complete the subpoena before service.

~~**(c)**~~

~~**Rule 6.3.**~~**(b) Subpoenas for ~~Attendance of Witnesses at~~ Deposition, Hearing, or Trial ~~or Deposition~~; Duties; Objections.**

~~(a)~~(1) *Combining or Separating a Command to Produce or to Permit Inspection*. A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be ~~joined with a~~ included in a subpoena commanding ~~to~~ attendance ~~and give testimony~~ at a deposition, hearing, or trial, ~~or deposition,~~ or may be set out in a separate subpoena.

(2) *Command to Attend a Deposition – Notice of Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

~~**(b)** Appearance at Deposition. Unless excused from doing so by the party or attorney serving a subpoena, by court order, or by any other provision of these Rules, a person who is properly served with a subpoena is required to attend and give testimony at the date, time, and place specified in the subpoena.~~

~~(c)~~(3) *Objections; Appearance Required*. Objections to a subpoena commanding ~~a person to attend and give testimony at a~~ attendance at a deposition, hearing or trial ~~shall~~ may be made by timely motion in accordance to Rule 43(e)(2)~~Rule 6.5(c) of these Rules~~. Unless excused from doing so by the party or legal counsel serving a subpoena, by a court order, or by any other provision of this Rule 43, a person who is properly served with a subpoena ~~is required to~~must attend ~~and give testimony~~testify at the date, time, and place specified in the subpoena.

~~**(d)(a) Combining or Separating a Command to Produce or to Permit Inspection.** A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.~~

~~Rule 6.4.~~(c) Subpoena for Production of Documentary Evidence or for Inspection of Premises; Duties ~~in Responding to Subpoena~~; Objections; Production to Other Parties.

(1) ~~Specifying the Form for~~ *Electronically Stored Information*.

(A) Specifying the Form for Electronically Stored Information. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) Form for Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause,

considering the limitations of Rule 22(b)(1) and (b)(2). The court may specify conditions for the discovery.

~~**(a)**~~(2) *Appearance Not Required*. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person ~~to attend and give testimony~~attendance at a hearing, trial or deposition.

~~**(b)**~~(3) ~~Production of~~ *Documents*. A person responding to a subpoena to produce documents ~~shall~~ must produce them as they are kept in the usual course of business, or ~~shall~~ organize and label them to correspond with the categories in the demand.

~~**(c) Production to Other Parties.** Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information, and tangible things that are obtained in response to a subpoena shall be made available to all other parties.~~

~~**(d)**~~(4) ~~Out of Court~~ *Objections*.

~~(1)~~(A) Form and Time for Objection.

~~(A)~~(i) A person commanded to produce documents, electronically stored information, or tangible items, or to permit the inspection ~~of premises~~, may serve ~~upon the party or attorney serving the subpoena~~ a written objection to producing, inspecting, copying, testing, or sampling any or all of the ~~designated~~ materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense. The objection ~~shall set forth~~must state the basis for the objection, and ~~shall~~ must include the name, address, and telephone number of the person, or the person's ~~attorney~~legal counsel, serving the objection.

~~(B)~~(ii) The objection ~~shall~~ must be served ~~up~~on the party or ~~attorney~~ legal counsel serving the subpoena before the time specified for compliance or within fourteen (14) days after the subpoena is served, whichever is earlier.

~~(C)~~(iii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time and place specified in the subpoena, unless excused as proved in Rule 43(b)(3). ~~An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time, and place specified in the subpoena.~~

~~(2)~~(B) Procedure After Objecting ~~an Objection Is Made~~.

~~(A)~~(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the court. ~~If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the~~

~~objection, except pursuant to an order of the issuing court.~~

~~(B)~~(ii) The party serving the subpoena may move ~~for an order~~ under Rule 34(a) to compel compliance with the subpoena. The motion must comply with Rule 34(a)(1), and must be served ~~the motion~~ on the subpoenaed person and all other parties under Rule 4(c).

~~(C)~~(iii) Any order to compel issued by the court ~~shall~~ must protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

~~Rule 6.5.~~(C) Claiming Privilege or Protection~~; Protection of Persons Subject to Subpoenas; Motion to Quash or Modify~~.

~~(a) Privileged or Protected Information.~~

~~(1) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.~~

(i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly comply with Rule 22(b)(6)(A).~~If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.~~

(ii) If information produced in response to a subpoena is subject to a claim of privilege or of protection as work-product material, the person making the claim and the receiving parties must comply with Rule 22(b)(6)(A) or, if applicable, Rule 22(b)(6)(B).

~~(2)~~

(5) *Production to Other Parties*. Unless otherwise stipulated by the parties or ordered by the court, a party receiving documents, electronically stored information, or tangible things in response to a subpoena must promptly make such materials available to all other parties for inspection and copying, along with any other disclosures required by Rule 23.

(d) Service.

(1) *Generally*. The party requesting a subpoena must serve the subpoena on the

subpoenaed person and a copy of the subpoena and any proof of service to every other party in accordance with Rule 4(c).

(2) *Service Within the Tohono O'odham Nation*. A subpoena may be served anywhere within the Tohono O'odham Nation.

(3) *Proof of Service*. Proof of service may not be filed except as allowed by Rule 4.1(c)(2)(A). Any such filing must include the server's certificate stating the date and manner of service and the names of the persons served.

(4) *Service to the Tohono O'odham Nation*. Subpoenas to the Nation or a governmental branch, district, authority, enterprise, officer, or employee in an official capacity must be served on legal counsel of the branch, district, authority, or enterprise. If the branch, district, authority, or enterprise does not have legal counsel, the subpoena must be served on the branch head, district council chairperson, or chief executive officer of the authority or enterprise.

~~(b)~~(e) ~~Protection of Persons~~ Protecting a Person Subject to a Subpoena~~s~~; Motion to Quash or Modify.

(1) *Avoiding Undue Burden or Expense; Sanctions*. A party or ~~an attorney~~legal counsel responsible for ~~the service of~~serving a subpoena ~~shall~~ must take reasonable steps to avoid imposing undue burden or expense on a person subject to ~~that~~ the subpoena. The issuing court must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonably legal practitioner's fees – on a party or attorney who fails to comply.

~~(2) The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.~~

~~(c)~~(2) ~~Order to~~ *Quash*ing *or Modify*ing *a Subpoena.*

~~(1)~~(A) When Required. On ~~the~~ timely ~~filing of a~~ motion, ~~to quash or modify a subpoena,~~ the court ~~shall~~ must quash or modify ~~the~~ a subpoena if it:

~~(A)~~(i) ~~it~~ fails to allow a reasonable time ~~for compliance~~to comply;

~~(B)~~(ii) ~~it~~ requires disclosure of privileged or other protected matter, if no exception or waiver applies;

~~(C)~~(iii) ~~it~~ subjects a person to undue burden; or

~~(D)~~(iv) ~~the~~ person or entity to whom the subpoena is directed is immune from service or enforcement of the subpoena.

~~(2)~~(B) When Permitted. On the timely filing of a motion to quash or modify a subpoena, ~~and to protect a person subject to or affected by a subpoena,~~ the court may quash or modify the subpoena if:

~~(A)~~(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

~~(B)~~(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

~~(C)~~ ~~or~~

~~(D)~~(iv) justice so requires.

(v)

~~(d)~~(C) Specifying Conditions as an Alternative. In the circumstances described in ~~this Rule 6.5~~Rule 43(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limits set forth in Rule 22c), as the court deems appropriate:

~~(1)~~(i) if the party or ~~attorney~~ legal counsel serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

~~(2)~~(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or ~~attorney~~ legal counsel serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

~~(e)~~(D) Time for Motion. A motion to quash or modify a subpoena must be filed before the time specified for compliance or within fourteen (14) days after the subpoena is served, whichever is earlier.

~~(f)~~(E) Service of Motion. Any motion to quash or modify a subpoena ~~shall~~ will be served on the party or ~~the attorney~~ legal counsel serving the subpoena ~~in accordance with these Rules~~. The party or ~~attorney~~ legal counsel who served the subpoena ~~shall~~ must serve a copy of any such motion on all other parties.

~~**Rule 6.6. Service of Subpoenas**~~

~~**(a)** The party requesting a subpoena is responsible for serving the subpoena.~~

~~**(b)** Serving a subpoena requires delivering a copy to the named person or to the person or entity's legal counsel as required by Rule 6.2(b).~~

~~**(c)** A subpoena may be served at any place within or without the confines of the Nation by any person who is not a party and is not less than eighteen years of age, or by mail, as set forth in Subsection (d), below.~~

~~**(d)** Service of the subpoena by mail may be made by first class mail, postage prepaid. It shall be presumed that delivery takes place five (5) business days after the notice is placed in a United States Postal Service mailbox. In addition, service may be made by certified or registered mail, return receipt requested, or through an alternative mail delivery service, such as UPS or FedEx.~~

~~**(e)** The requesting party shall provide a list of all persons being subpoenaed to the other party(ies).~~

~~**(f)** Proving service, when necessary, requires filing with the court clerk a statement showing the date and manner of service and of the names of the persons served in substantial compliance with the forms provided in these Rules. The statement must be signed by the person who served or mailed the subpoena.~~

~~**Rule 6.7. Failure to Obey Subpoena.**~~

~~(a)~~**(f) Contempt.** The court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena or any order related to it. ~~The court may issue an order to show cause why the said person should not be held in contempt of court and schedule a hearing regarding the order to show cause or, if sufficient cause in the case justifies a bench warrant when a person fails to appear at a court hearing or trial, issue a bench warrant for the person's arrest and direct that the order and warrant be served upon the person. Willful evasion of service of a subpoena shall be considered failure to obey a subpoena.~~

~~**(b) Failure to Produce Evidence**. If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.~~

Rule 44. Interstate Depositions and Discovery.

(a) Definitions. In this rule:

(1) "foreign jurisdiction" means a jurisdiction other than the Tohono O'odham Nation;
(2) "foreign subpoena" means a subpoena issued under a foreign court's authority;
(3) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States; and
(4) "subpoena" means a document issued under court authority requiring a person to:
(A) attend and testify at a deposition;
(B) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or
(C) permit the inspection of premises.

(b) Issuing Subpoena.

(1) Presenting the Foreign Subpoena. To obtain a subpoena under Rule 44, a party must present a foreign subpoena to the clerk. The foreign subpoena should include the following phrase below the case number: "For the Issuance of a Tohono O'odham Subpoena Under T.O. Civ. P. 44." A request for a Rule 44 subpoena does not constitute an appearance in a Tohono O'odham court.
(2) *Clerk's Duties*. On receiving a foreign subpoena under Rule 44(b)(1), the clerk must promptly issue a signed but otherwise blank subpoena to the party requesting it, and that party must complete the subpoena before service.
(3) *Content of Subpoena*. A subpoena under Rule 44(b)(2) must:
(A) state the name of the issuing Tohono O'odham court;
(B) bear the caption and case number of the out-of-state case to which it relates, identifying (before the case number) the foreign jurisdiction and court where the case is pending;
(C) accurately incorporate the discovery requested in the foreign subpoena;
(D) contain or be accompanied by the names, addresses, telephone numbers, and email addresses of all counsel of record in the proceeding to which the subpoena

relates and of any party not represented by counsel;

(E) be in the form required by Rule 43(a)(1); and

(F) comply with Rule 43's other requirements.

(c) Service. A subpoena issued as provided in Rule 44(b) must be served in compliance with Rule 44(d).

(d) Deposition, Production, and Inspection. Rule 43 applies to subpoenas issued under Rule 44(b). Discovery taken under this rule must be conducted consistent with, and subject to applicable limits in, the Tohono O'odham Rules of Civil Procedure, except as follows:

(1) Rules 27(a)(1) ("Depositions Permitted"), 27(a)(2) ("Depositions by Plaintiff Earlier Than Thirty (30) Days After Serving the Summons and Complaint"), 27(a)(4) ("Compelling Attendance of Deponent"), and 27(d)(1) ("Duration") do not apply; and

(2) Rule 27(c)(2) ("Objections") applies, but counsel participating in the foreign action may object in the manner required to preserve objections in the jurisdiction where the action is pending, if those requirements differ from Rule 27(c)(2)'s requirements.

(e) Objections; Motion to Quash or Modify; Seeking Protective Order.

(1) *Objections*. Rule 43 governs the time and manner for objecting to subpoenas issued under this rule. Objections to a subpoena commanding attendance at a deposition must be made by timely motion under Rule 43(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, a court order, or any other provision of Rule 43 or 44, a person who is properly served with a deposition subpoena must attend and testify at the date, time, and place specified in the subpoena.

(2) *Motions to Quash, Modify, Compel, or for Protective Order*. Motions to compel, or for a protective order, or to quash or modify a subpoena issued under this rule:

(A) must comply with Rule 43 and other applicable Tohono O'odham rules and statutes;

(B) must be filed as a separate civil action bearing the same caption as appears on the subpoena. The following phrase must appear below the case number of the newly filed action: "Motion or Application Related to a Subpoena Issued Under T.O. R. Civ. P. 44." Any later motion or application relating to the same subpoena must be filed in the same action.

Rule 45. Objecting to a Ruling or Order.

A formal exception to a ruling or order is unnecessary to preserve a claim of error. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or that it objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to object when the ruling or order is made.

Rule 46. Findings and Conclusion by the Court; Judgment on Partial Findings.

(a) Findings and Conclusions.

(1) *Generally*. If requested before trial, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion, minute entry or memorandum of decision filed by the court. Judgment must be entered under Arizona Rule 58.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunction, the court must state the findings and conclusions that support its action as provided in Rule 46(a)(1).

(3) *For a Motion*. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or Rule 49 or, unless these rules provide otherwise, on any other motion.

(4) *Questioning the Evidentiary Support*. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(5) *Setting Aside the Findings*. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses.

(b) Amended or Additional Findings. On a party's motion filed no later than fifteen (15) days after the entry of judgment, the court may amend its findings – or make additional findings – and may amend the judgment accordingly. This deadline may not be extended by stipulation or court order, except as allowed by Rule 5(b)(2). The motion may accompany a motion for a new trial under Arizona Rule 59.

(c) Judgment on Partial Findings. If a party has been fully heard on an issue during trial and the court finds against the party on that issue, the court may enter judgment against that party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law if requested as required by Rule 46(a).

(d) Submission on Agreed Statement of Facts. The parties may submit a matter in controversy to the court on an agreed statement of facts, signed by them and filed with the clerk. The court must render its decision based on the agreed statement unless it finds the statement to be insufficient.

VII. JUDGMENT

Rule 47. Judgment; Costs; Attorney's Fees; Form of Proposed Judgments.

(a) Judgment and Decision Defined. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings or a record of earlier proceedings. For purposes of this rule, a "decision" is a written order, ruling, or minute entry that adjudicates at least one claim or defense.

(b) Judgment on Multiple Claims or Involving Multiple Parties. If an action presents more than one claim for relief – whether as a claim, counterclaim, crossclaim, or third-party

claim – or if multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 47(b). If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Judgment as to All Claims and Parties. A judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 47(c).

(d) Demand for Judgment; Relief to be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(e) Entry of Judgment After Party's Death. Judgment may be entered on a verdict or decision after a party's death on an issue of fact rendered while the party was alive.

(f) Request for Costs. If a party seeking costs does not seek an award of legal practitioner's fees under Rule 47(g), a request for costs must be filed within the time set forth below:

(1) *Rule 47(c) Judgments*. If a decision adjudicates all claims and liabilities of all the parties and judgments is to be entered under Rule 47(c), any request for cost must be filed within twenty (20) days after the decision is filed, or by such other date as the court may order.

(2) *Decisions Subject to Rule 47(b) – Adjudicating All Claims and Liabilities of Any Party*. If a decision adjudicates all claims and liabilities of any party:

(A) If that party or another party moves for entry of judgment under Rule 47(b), or includes Rule 47(b) language in a proposed form of judgment, a prevailing party seeking costs must file a verified request for an award of costs within twenty (20) days after service of the motion or proposed form of judgment seeking Rule 47(b) treatment, or by such other date as the court may order.

(B) If the court declines to enter judgment under Rule 47(b), or no party seeks entry of judgment under Rule 47(b), a prevailing party seeking costs must file a verified request for costs no later than twenty (20) days after any decision is filed that adjudicates all remaining claims in the action, or twenty (20) days after the action's dismissal, whichever occurs first.

(3) *Decisions Subject to Rule 47(b) – Adjudicating Fewer Than All Claims and Liabilities of a Party*. If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a prevailing party seeking costs must file a verified request for costs no later than twenty (20) days after any decision is filed that adjudicates all remaining claims in the action, or twenty (20) days after the action's dismissal, whichever occurs first.

(4) *Response and Reply*. A party opposing a request for costs must file a response within

five (5) days after the request is served. Any reply must be filed within five (5) days after the response is served.

(g) Legal Practitioner Fees.

(1) *Generally.* A claim for legal practitioner fees must be made in the pleadings, or in an Rule 12 motion filed before the movant's responsive pleading.

(2) *Time for Filing Motion – Rule 47(c) Judgments.* If a decision adjudicates all claims and liabilities of all the parties and judgment is to be entered under Rule 47(c), any motion for legal practitioner's fees must be filed within twenty (20) days after the decision is filed, or by such other date as the court may order.

(3) *Time for Filing Motion – Decisions Subject to Rule 47(b).*

(A) Adjudicating All Claims and Liabilities of Any Party. If a decision adjudicates all claims and liabilities of any party:

(i) If that party or another party moves for entry of judgment under Rule 47(b), or includes Rule 47(b) language in a proposed form of judgment, a motion for fees must be filed within twenty (20) days after service of the motion or proposed form of judgment seeking Rule 47(b) treatment, or by such other date as the court may order.

(ii) If the court declines to enter judgment under Rule 47(b), or no party seeks entry of judgment under Rule 47(b), a motion for fees must be filed no later than twenty (20) days after any decision is filed that adjudicates all remaining claims in the action, or twenty (20) days after the actions's dismissal, whichever occurs first.

(B) Adjudicating Fewer than All Claims and Liabilities of a Party. If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a motion for fees must be filed no later than twenty (20) days after any decision is filed that adjudicates all remaining claims in the action, or twenty (20) days after the action's dismissal, whichever occurs first.

(4) *Motion and Proceedings.* Unless a statute or court order provides otherwise, a motion for legal practitioner's fees must be supported by affidavit and is governed by Rule 7.1. The movant's affidavit must disclose the terms of any fee agreement for the services for which the claim is made.

(h) Proposed Forms of Judgment.

(1) *Including Costs and Fees in Judgment.* Except as otherwise allowed by this rule:

(A) Claims for legal practitioner's fees and costs must be resolved before any judgment may be entered under Rule 47(b) or (c); and

(B) Any award of legal practitioner's fees or costs must be included in the judgment.

(2) *Form of Judgment.* When a judgment is required to include fees or costs:

(A) If fees are requested, the form of judgment must wither state the specific sum of legal practitioner's fees awarded by the court, or must include a blank in the form of judgment to allow the court to include an amount for any legal practitioner's fees.

(B) If costs are requested, the form of judgment must either state the specific sum of costs awarded by the court, or must include a blank in the form of judgment to

allow the court to include an amount for costs.

(C) If the court enters a judgment under Rule 47(b) or (c) without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 51(d).

(i) Scope; Jurisdiction.

(1) *Scope.* Rules 47(f) and (g) do not apply to claims for fees and expenses that may be awarded as sanctions under a statute or rule, or if the substantive law requires fees to be proved at trial as an element of damages.

(2) *Jurisdiction.* If a judgment certified under Rule 47(b) adjudicates fewer than all of the claims and liabilities of any party, the court retains jurisdiction:

(A) to award costs with respect to that judgment, if a request for costs is timely filed under Rule 47(f); and

(B) to award legal practitioner's fees with respect to that judgment, if a motion for fees is timely filed under Rule 47(g).

Rule 48. Default; Default Judgment.

(a) Entering a Default.

(1) *Generally.* If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, default may be obtained under the procedures set forth in this rule.

(2) *Application for Default.* A party seeking entry of default must file a written application that;

(A) identifies the party against whom default is sought;

(B) states that the party has failed to plead or otherwise defend within the time allowed by these rules;

(C) provides a current mailing address for the party claimed to be in default or, if none is none, so state;

(D) identifies any legal counsel known to represent the party claimed to be in default in the action in which default is sought or in a related matter, or state that no such legal counsel is known;

(E) if applicable, states that the party requesting the entry of default does not know the whereabouts of a party claimed to be in default, or the identify and address of a legal counsel known to represent the party in the action or related action; and

(F) attaches a copy of the Rule 3(f) proof of service, establishing the date and manner of service on the party claimed to be in default.

(3) *Notice.* For any default to be entered under Rule 48(a)(1), notice must be provided as follows:

(A) To the Party. If the party requesting the entry of default knows the whereabouts of the party claimed to be in default, a copy of the application for entry of default must be mailed to the party claimed to be in default, even if the party is represented by legal counsel who has entered an appearance in the action.

(B) To the Legal Counsel for a Represented Party. If the party requesting the entry

for default knows that the party claimed to be in default is represented by a legal practitioner in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that legal practitioner, whether or not that legal practitioner has formally appeared in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of a legal practitioner representing the party claimed to be in default.

(C) Time of Notice. Any required notice under Rule 48(a)(3)(A) or (B) must be mailed on the date that the application is filed, or as soon a practicable after its filing.

(D) To Other Parties. An application for entry of default must be served on all other parties who have appeared in the action, as provided by Rule 4(c).

(4) *A Default's Effective Date.* The filing of the application for default constitutes the entry of default. A default is effective ten (10) days after the application for entry of default is filed.

(5) *Effect of Responsive Pleading.* A default will not become effective if the party claimed to be in default pleads or otherwise defends as provided in these rules within ten (10) days after the application for entry of default is filed.

(b) Default Judgment.

(1) *Default Judgment by Motion Without a Hearing.*

(A) Generally. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the court – on the plaintiff's motion, with an affidavit showing the amount due and without a hearing—may enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(B) Fee Award – Specific Amount Stated. A default judgment entered under Rule 48(b)(1) may include an award of reasonable legal practitioner's fees if the claim states a specific sum of legal practitioner's fees that will be sought if judgment is rended by default, and;

(i) the amount of the award is supported by affidavit;
(ii) the award is allowed by law; and
(iii)the award does not exceed the amount demanded in the claim.

(C) Fee Award – No Specific Amount Stated. If the claim requests an award of legal practitioner's fees, but does not specify the amount of fees that will be sought if judgment is rendered by default, a default judgment entered under Rule 48(b)(1) may include an award of reasonable legal practitioner's fees only if:

(i) an affidavit establishes the reasonable amount of the fee award;
(ii) the defendant has not entered an appearance in the action; and
(iii)the award is allowed by law.

(2) *Default Judgment by Hearing.*

(A) Generally. If Rule 48(b)(1) does not apply, the party must apply to the court for a default judgment.

(B) Default Against a Minor or an Incompetent Person. A default judgment may be entered against a minor or incompetent person only if the person is represented by a general guardian, conservator, or other like fiduciary who has appeared.

(C) Notice. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application for default judgment at least three (3) days before the hearing. The notice must include the date, time, and place of the hearing.

(D) Hearings and Referrals. The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

(i) conduct an accounting;

(ii) determine the amount of damages;

(iii) establish the truth of any allegation by evidence; or

(iv) investigate any other matter.

(3) *Conformity with the Demand*. A judgment by default must not be different in kind from, or exceed in amount, that requested in a pleading's demand for judgment.

(c) Setting Aside a Default or a Final Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 52(c).

(d) Judgment Against the Nation. A default judgment may be entered against the Nation or one of its officers or agencies only if, after a hearing, the claimant establishes a claim or right to relief by evidence that satisfied the court.

(e) Plaintiff's Counterclaimants, and Cross-claimants. The provisions of Rule 48 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a crossclaim or counterclaim.

Rule 49. Summary Judgment.

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion.

(1) *Claimant.* A claimant may move for summary judgment only after:

(A) the date when a responsive pleading is due from the party against whom summary judgment is sought; or

(B) the filing of a Rule 12(b)(6) motion to dismiss or a summary judgment motion by the party against whom summary judgment is sought.

(2) *Other Parties.* Any other party may move for summary judgment at any time after the action is commenced.

(3) *Filing Deadline*. A summary judgment motion may not be filed later than the dispositive motion deadline set by the court, or absent such a deadline, ninety (90) days before the date set for trial.

(c) Procedures.

(1) *Hearings*. On timely request by any party, the court must set oral argument, unless it determines that the motion should be denied or the motion is uncontested. The court may set oral argument even if not requested.

(2) *Opposition and Reply*. An opposing party must file its response and any supporting materials within thirty (30) days after the motion is served. The moving party must serve any reply memorandum and supporting materials fifteen (15) days after the response is served.

(3) *Supporting and Opposing Statements of Fact*.

(A) Moving Party's Statement. The moving party must set forth, in a statement separate from the supporting memorandum, the specific facts relied on in support of the motion. The facts must be stated in concise, numbered paragraphs. The statement must cite the specific part of the record where support for each fact may be found.

(B) Opposing Party's Statement. An opposing party must file a statement in the form prescribed by Rule 49(c)(3)(A), specifying:

(i) the numbered paragraphs in the moving party's statement that are disputed; and

(ii) those facts that establish a genuine dispute or otherwise preclude summary judgment in favor of the moving party.

(C) Joint Statement. In addition or as an alternative to submitting separate statements under Rule 49(c)(3)(A) and (B), the moving and opposing parties may file a joint statement in the form prescribed by this rule, setting forth those facts that are undisputed. The joint statement may provide that any stipulation of fact is not binding for any purpose other than the summary judgment motion.

(4) *Objections to Evidence*. Rule 7.1(f)(3) governs objections to the admissibility of evidence on summary judgment motions, but an objection may be included in a party's response to another party's separate statement of facts in place of, or in addition to, including it in the party's responsive memorandum. Any objection presented in the party's response to the separate statement of facts must be stated concisely.

(5) *Affidavits*. An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If an affidavit refers to a document or part of a document, a properly authenticated copy must be attached to or served with the affidavit.

(6) *Other Materials*. Affidavits may be supplemented or opposed by deposition excerpts, interrogatory responses, admissions, additional affidavits, or other materials that would be admissible in evidence.

(d) When Facts are Unavailable to the Opposing Party; Request for Rule 49(d) Relief; Expedited Hearing.

(1) *Requirements*. If an opposing party cannot present evidence essential to justify its opposition, it may file a request for relief and expedited hearing. The request must be titled: "Request for Rule 49(d) Relief and for Expedited Hearing." The request

must be accompanied by:

(A) a supporting affidavit establishing specific and adequate grounds for the request and addressing, if applicable, the following:

(i) the particular evidence beyond the party's control;

(ii) the location of the evidence;

(iii) what the party believes the evidence will reveal;

(iv) the methods to be used to obtain it;

(v) an estimate of the amount of time the additional discovery will require; and

(B) a good faith consultation certificate complying with Rule 7.1(h).

(2) *Effect*. Unless the court orders otherwise, a request for relief under Rule 49(d)(1) does not by itself extend the date for an opposing party to file its responsive memorandum and separate statement of facts under Rule 49(c).

(3) *Responses to Request*. Unless the court orders otherwise, the party moving for summary judgment is not required to respond to a Rule 49(d) request for relief. If such a party elects to file a response, it must be filed no later than two (2) days before any hearing scheduled to consider the requested relief.

(4) *Expedited Hearing*. The court must hold an expedited hearing, in person or by telephone, within seven (7) days after a request is filed in compliance with Rule 49(d)(1). If the court's calendar does not allow a hearing within seven (7) days, the court should set a hearing date at the earliest available time allowed by the court's calendar.

(5) *Relief*. When a request is filed in compliance with Rule 49(d)(1), the court may, after holding a hearing;

(A) defer considering the summary judgment motion and allow time to obtain affidavits or to take discovery before a response to the motion is required;

(B) deny the requested relief and require a response to the summary judgment motion by a date certain; or

(C) issue any other appropriate order.

(e) Failing to Properly Oppose a Motion. When a summary judgment motion is made and supported as provided in this rule, an opposing party may not rely merely on allegations or denials of its own pleadings. The opposing party must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate shall be entered against that party.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmoving party;

(2) grant summary judgment on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Declining to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, or if judgment is not rendered on the whole case under Rule 49(f), the court may enter an order identifying any material fact – including an item of damages

or other relief – that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit Submitted in Bad Faith. If a Rule 49 affidavit is submitted in bad faith or solely for delay, the court – after notice and a reasonable time to respond – may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, incurred as a result, or may impose other appropriate sanctions.

Rule 50. Entering Judgment.

(a) Form of Judgment; Objections to Form.

(1) *Proposed Forms of Judgment*. Proposed forms of judgment must be served on all parties and must comply with Rule 4.1(d) and 47(h).

(2) *Objections to Form*.

(A) A judgment may not be entered until five (5) days after the proposed form of judgment is served, unless:

(i) the opposing party endorses on the judgment is approval of the judgment's form; or

(ii) the court waives or shortens the 5-day notice requirement for good cause; or

(iii)the judgment is against a party in default.

(B) An opposing party not in default may file an objection to the proposed form of judgment within five (5) days after it is served. If an objection is made:

(i) the party submitting the proposed form of judgment may reply within five (5) days after the objection is served; and

(ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

(1) *Written Document*. All judgments must be in writing and signed by a judge.

(2) *Time and Manner of Entry*. A judgment is not effective before entry, but a court may direct the entry of a judgment nunc pro tunc in such circumstances and on such notice as justice requires, stating the reasons on the record. A judgment, including a judgment in the form of a minute entry, is entered when the clerk files it.

(c) Notice of Entry of Judgment.

(1) *Manner of Notice*.

(A) By the Clerk. Immediately upon the entry of a judgment, or the entry of a minute entry constituting a judgment, the clerk must:

(i) distribute notice in the form required by Rule 50(c)(2), either electronically, by U.S. mail, or legal practitioner drop box, to every party not in default for failing to appear; and

(ii) make a record of the distribution.

(B) By Any Party. In addition to the clerk's notice under Rule 50(c)(1)(A), any party may serve notice of entry of judgment in the manner provided in Rule 4(c).

(2) *Form of Notice*. Notice of entry of judgment must be in the following form:
(A) a written notice of the entry of judgment;
(B) a minute entry; or
(C) a conformed copy of the file-stamped judgment.

(3) *Lack of Notice*. Lack of notice of the entry of judgment by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party from the failure to appeal within the allowed time, except as may be provided by the Tohono O'odham Rules of Appellate Procedure.

Rule 51. New Trial; Altering or Amending a Judgment.

(a) Generally.

(1) *Grounds for a New Trial*. The court may, on motion, grant a new trial on all or some of the issues – and to any party – on any of the following grounds materially affecting that party's rights:
(A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
(B) misconduct of the prevailing party;
(C) accident or surprise that could not reasonably have been prevented;
(D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
(E) excessive or insufficient damages;
(F) error in the admission or rejection of evidence; or other errors of law at the trial or during the action;
(G) the judgment is the result of passion or prejudice; or
(H) the decision, findings of act, or judgment is not supported by the evidence or is contrary to law.

(2) *Further Action After a Trial*. After a trial, the court may, on motion for a new trial, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion; Response and Reply.

(1) *Motion*. A motion for a new trial, along with any supporting affidavits, must be filed no later than fifteen (15) days after the entry of judgment. This deadline may not be extended by stipulation or court order, except as allowed by Rule 5(b)(2). The motion may be amended at any time before the court rules on it.

(2) *Response and Reply*. Rule 7.1(a) governs responses and replies to a motion for new trial.

(c) New Trial for Reasons Not in the Motion. No later than fifteen (15) days after entry of judgment – which time may not be extended except as allowed by Rule 5(b)(2) – the court may order a new trial. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(d) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than fifteen (15) days after entry of judgment. This deadline may not be extended by stipulation or court order, except as allowed by Rule 5(b)(2).

(e) Scope of New Trial. A new trial, if granted, must be limited to the question or questions found to be in error, if separable. If a new trial is ordered solely because the damages or excessive or inadequate and if the issue of damages is separable from all other issues in the action, the decision may be set aside only on damages, and must stand in all other respects.

(f) Motion on Ground of Excessive or Inadequate Damages.

(1) *Conditional Grant of New Trial*. When a motion for a new trial is based on the ground that the awarded damages are either excessive or insufficient, the court may grant the new trial conditionally if, within the time set by the court, the party adversely affected by the reduction or increase in damages files a statement accepting the amount of damages as designated by the court.

(2) *Effect on Appeal*. If a statement of acceptance is filed by the party adversely affected by reduction or increase of damages, and the other party later files an appeal, the party filing such statement may cross-appeal and, at its election, seek review of the trial court's ruling that the awarded damages are either excessive or insufficient. If the court's ruling on damages is affirmed, the party's prior acceptance will remain in effect, unless the appeal's final disposition requires otherwise.

(g) Motion for New Trial After Service by Publication.

(1) *Generally*. When judgment has been rendered on service by publication, and the defendant has not appeared, the court may grant a new trial if the defendant – within one year after entry of judgment – files an application establishing good cause for a new trial.

(2) *Bond Required to Stay Execution*. Execution of judgment should not be stayed unless the defendant posts a bond in double the amount of the judgment or the value of the property that is the subject of the judgment. The bond must be conditioned on the defendant's prosecution of the application for new trial and on satisfaction of the judgment in full should the court deny the application.

(h) Number of New Trials. No more than two (2) new trials may be granted to a party in the same action.

(i) Order Must Specify Grounds. Any order granting a new trial or altering or amending a judgment must specify with particularity the ground or grounds for the court's order.

Rule 52. Relief from Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. A court must correct a clerical mistake or a mistake arising from oversight or omission if one if found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with notice. But after an appeal has been filed and while it is pending in the appellate

court, such mistake may be corrected only with the appellate court's leave. After a mistake in the judgment is corrected, execution must conform to the corrected judgment.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 51(b)(1);
(3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;
(4) The judgment is void;
(5) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) Any other reason justifying relief.

(c) Timing and Effect of the Motion.

(1) *Timing*. A motion under Rule 52(b) must be made within a reasonable time – and for reasons (1), (2), and (3), no more than six (6) months after the entry of the judgment or order or date of the proceeding, whichever is later. This deadline may not be extended by stipulation or court order, except as allowed by Rule 5(b)(2).
(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
(2) grant relief to a defendant served by publication as provided in Rule 51(g); or
(3) set aside a judgment for fraud on the court.

(e) Reversed Judgment of Foreign Jurisdiction. If a judgment was rendered on a foreign judgment from another jurisdiction and the court of such jurisdiction reverses or sets aside the foreign judgment, this court must set aside, vacate, and annul its judgment.

Rule 53. Harmless Error.

Unless justice requires otherwise, an error in admitting or excluding evidence – or any other error by the court or a party – is not grounds for granting a new trial, or for vacating, modifying, or otherwise disturbing a judgment or other. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 54. Stay of Proceedings to Enforce a Judgment.

(a) No Automatic Stay. Except as provided in the Tohono O'odham Rules of Appellate Procedure or as otherwise ordered by the court, an interlocutory or final judgment – including in an action for an injunction or a receivership – is not stayed after being entered, even if an appeal is taken.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending disposition of any of the following motions:

(1) under Rule 46(b), to amend the findings or for additional findings;
(2) under Rule 51, for a new trial or to alter or amend a judgment;
(3) under Rule 52(a) and (b), for relief from a judgment or order; or
(4) when justice so requires in other instances until such time as the court may fix.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on such terms for bond, security, or otherwise that preserve the opposing party's rights.

(d) Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.

(1) *Judgment Directing Execution of Instrument*. If a party appeals a judgment or order directing the execution of a conveyance or other instrument, the judgment or order may not be stayed unless and until the conveyance or other instrument is executed and deposited with the clerk pending the outcome of the appeal.
(2) *Judgment Directing Sale of Perishable Property and Distribution of Proceeds*. A judgment or order directing the sale of perishable property may not be stayed pending appeal, but the proceeds of the sale must be deposited with the clerk pending the outcome of the appeal.

(e) Stay of a Judgment Against the Nation or Its Agencies, Political Subdivisions, or Entities.

(1) *Money Judgments*. If a money judgment is entered against the Tohono O'odham Nation or one of its agencies, political subdivisions, or entities, the judgment is automatically stayed upon the filing of an appeal.
(2) *Nonmoney Judgments*. If a judgment other than a money judgment is entered against the Nation or one of its agencies, political subdivisions, or entities, the judgment is not automatically stayed upon the filing of an appeal. If a court grants a stay of such a judgment, it may not require a bond, obligation, or other security.

(f) Stay of Judgment Entered Under Arizona Rule 47(b). A court may stay the enforcement of a final judgment entered under Rule 47(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(g) Stay of a Judgment in Rem. If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until fifteen (15) days after its entry, and no execution or other process may issue on the judgment during that time.

Rule 55. Judge's Inability to Proceed.

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed with the hearing or trial upon certifying familiarity with the record and determining that the action may be completed without prejudice to the parties. In a hearing or trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor judge also may recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES; SPECIAL PROCEEDINGS

Rule 56. Seizing a Person or Property.

At the commencement of and throughout an action, every remedy authorized by law is available for the seizure of a person or property to secure satisfaction of a potential judgment. The remedies are available regardless of whether the remedy is ancillary to the action or requires an independent action.

Rule 56.1. Civil Arrest Warrant.

(a) Nonsubstantive Nature of Rule; Illustrative Uses. This rule does not create a substantive basis for the power of arrest. Rather, it sets forth the procedure for a court to exercise its inherent power to command the attendance in court of persons who obey a prior order to appear in a civil action. The procedure described in this rule can be used, for example, if a witness ignores a subpoena, a juror disobeys an order to report for jury duty, a judgment debtor fails to appear for supplemental proceedings, a person disobeys an order to appear for a deposition, or a person is in contempt of an order to report to jail as directed.

(b) Defined. A "civil arrest warrant" is a court order in a noncriminal matter, directed to any peace officer on the Tohono O'odham Nation, to arrest the individual named in the order and to bring such person before the issuing court.

(c) When Issued. The court may, on motion or on its own, issue a civil arrest warrant if it finds that the person against whom the warrant is directed has failed to appear:

(1) after the court ordered the person to appear at a specific time and location, and after the person received actual notice of such order, including a warning that failure to appear might result in the issuance of a civil arrest warrant; or
(2) after the person was served personally with a subpoena to appear in person, at a specific time and location, which contained a warning that failure to appear might result in the issuance of a civil arrest warrant.

(d) Content of Warrant.

(1) *Identification of the Person to be Arrested*. The warrant must contain the name of the person to be arrested and a description by which such person can be identified with reasonable certainty.

(2) *Command to Appear*. The warrant must command that the person named be brought before the issuing court.

(3) *Bond*. The warrant may set forth a bond in a reasonable amount to guarantee the appearance of the arrested person, or will direct that the arrested person be held without bond until the person is seen by a judge.

(e) Time and Manner of Execution. A civil arrest warrant is executed by the arrest of the person named in it. The arrested person must be brought before a judge within thirty-six (36) hours after the warrant is executed.

(f) Court's Duty After Execution of Warrant. The judge must advise the arrested person of the nature of the proceedings, release the arrested person on the least onerous terms and conditions that reasonably guarantee the required appearance, and set the date of the next court appearance.

(g) Bond Forfeiture. The procedure for the forfeiture of bonds in criminal actions applies.

Rule 56.2. Garnishment.

(a) Definitions. In this rule:

(1) "creditor" means a person or party to whom a money judgment has been awarded, other than a judgment for child support;

(2) "debtor" means the person or party against whom a money judgment has been awarded; and

(3) "garnishee" means the garnishee of the debtor.

(b) Application for Garnishment.

(1) *Generally*. A creditor seeking garnishment of a judgment must file an application signed under oath and contain a statement that "All statements contained herein are true and correct to the best of my knowledge and belief."

(2) *Contents*. The application must contain the following information:

(A) the name and last known mailing address of the parties;

(B) whether the creditor was a party to a lawsuit to whom a judgment was awarded;

(C) the date the order was entered;

(D) whether the judgment is final with no pending appeal, or is not final;

(E) whether any subsequent orders vacating, modifying, or reversing the judgment have been entered;

(F) the amount of the outstanding balance;

(G) the name and address of the garnishee or the garnishee's authorized agent; and

(H) why the creditor believes the debtor to be employed by the garnishee.

(3) *Certified Copy of Judgment*. A copy of the judgment to be enforced must be attached to the application. The copy 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) Preliminary Garnishment Order. Upon finding the application complete, the court will issue a preliminary garnishment order to the garnishee.

(1) *Contents*. The order will contain:
(A) the name and address of the garnishee;
(B) the name and address of the creditor and any legal counsel;
(C) the name and mailing address of the debtor; and
(D) an order for the garnishee to:
(i) stop payment to the debtor or for the debtor's benefit any nonexempt earnings until further order of the court; and
(ii) file an answer within ten (10) business days of service of the order.

(2) *Service*.
(A) On Garnishee. No later than five (5) days after the court issues the preliminary garnishment order, the creditor must serve the garnishee within with a copy of the application, two (2) copies of the preliminary garnishment order; and two (2) copies of the Notice to Debtor and Request for Hearing form. Service must be made on same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable.
(B) On Debtor. No later than three (3) days after serving the garnishee, the creditor must serve the debtor a copy of the application, the preliminary garnishment order, and the Notice to Debtor and Request for Hearing Form. Service must be made on same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable.

(3) *Continuing Effect of Preliminary Garnishment Order*. If no timely answer or objection is filed, the preliminary order remains in effect until modified or terminated by a subsequent order.

(d) Answer by Garnishee. No later than ten (10) days of service of the order, the garnishee must file with the court a certified answer signed by an authorized representative of the garnishee.

(1) *Contents of Answer*. The answer must contain the following:
(A) whether the debtor was employed by the garnishee on the date the order was served;
(B) whether the garnishee anticipates owing earnings to the debtor within sixty (60) days after the date the order was served;
(C) if the garnishee is unable identify the debtor 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;

(D) the dates of the debtor's next two pay periods occurring after the date the order was served;
(E) the amount of earnings and disposable earnings payable to the debtor on the next two pay periods;
(F) the pay period of the debtor, whether weekly, biweekly, semimonthly, monthly, or other specified period;
(G) the outstanding judgment now due and owing as stated in the order;
(H) 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;
(I) the name, address, and telephone number of the applicant; and
(J) the date and manner of service the garnishee will use to serve a copy of the certification on the debtor and applicant.

(2) *Service of Answer and Notice to Debtor and Request for Hearing*. Upon filing the answer, the garnishee must mail or hand-deliver a copy of the answer to the applicant and debtor. The garnishee must mail or hand-deliver a copy of the Notice to Debtor and Request for Hearing form to the debtor. Service must be made on same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable, or, if the debtor has entered an appearance in the action, in accordance with Rule 4(c).

(e) Objection and Request for Hearing. No later than ten (10) days after receipt of the application, preliminary garnishment order, or answer, any party may file a written objection stating the grounds for the objection, and request a hearing. Upon a finding of good cause, the court may accept a late filing. Service must be made on same manner that a summons and pleading are served under Rule 3, 3.1, or 3.2, as applicable, or, if the party has entered an appearance in the action, in accordance with Rule 4(c).

(f) Garnishment Hearing.

(1) *Setting of Hearing and Notice*. The court will set a hearing within fifteen (15) days of the filing of a request for hearing and notify the parties of the date and time no later than five (5) business days before the hearing.
(2) *Burden and Standard of Proof.* The debtor must prove by clear and convincing evidence that relief should be granted.
(3) *Considerations*. The court must consider:
(A) whether the application and preliminary garnishment order is valid against the debtor;
(B) when the preliminary garnishment order was served;
(C) the amount of the outstanding balance due on the judgment when the order was served;
(D) whether the debtor was employed by the garnishee when the preliminary garnishment order was served; and
(E) whether the garnishee owed the debtor nonexempt earnings when the preliminary garnishment order was served or would be owed within sixty (60) days after service of the order.

(g) Garnishment Order.

(1) *Absence of Objection*. If no timely objection is filed, and the court finds the garnishee owed nonexempt earning to the debtor when the garnishment order was served or that non-exempt earnings would be owed within sixty (60) days, the court will order that:

(A) the garnishee pay the creditor the withheld nonexempt earnings;

(B) the garnishment is a continuing lien against the debtor's future nonexempt earnings until the judgment is paid in full;

(C) on the tenth day of each month following the first payment from the garnishee the creditor file and serve a written report on the garnishee and debtor under 4 T.O.C. Ch. 3 Sec. 3413;

(D) the garnishee file a notice of the remittance of garnishmed funds with the court after each remittance; and

(E) the creditor must file for satisfaction of the judgment and request for release of the garnishment order immediately after the judgment is satisfied, and serve a copy on the garnishee and debtor in accordance with Rule 4(c).

(2) *Determination Upon Objection*.

(A) Affirmative Determination. If the court finds that all of Rule 56.2(f)(3)(A) through (E) applicable, the court will order that:

(i) the garnishee pay the debtor the withheld nonexempt earnings;

(ii) the garnishment is a continuing lien against the debtor's future nonexempt earnings until the judgment is paid in full;

(iii) on the tenth day of each month following the first payment from the garnishee the creditor file and serve a written report on the garnishee and debtor under 4 T.O.C. Ch. 3 Sec. 3413;

(iv) the garnishee file a notice of the remittance of garnished funds with the court after each remittance; and

(v) the creditor must file for satisfaction of the judgment and request for release of the garnishment order immediately after the judgment is satisfied, and serve a copy on the garnishee and debtor in accordance with Rule 4(c).

(B) *Discharge; Dismissal*. If the court finds that not all of Rule 56.2(f)(3)(A) through (E) applies to the garnishee, the court will order the garnishee discharged from the garnishment. If the court finds clear and convincing evidence under Rule 56.2(f)(3) that relief should be granted to the debtor, the court may dismiss the case.

(C) *Leave to Amend*. The court may, upon the creditor's request and for good cause shown, give leave for the creditor to amend the application.

(h) Contempt. The court may, upon motion by any party or on its own, set a hearing for why an creditor should not be sanctioned for contempt for failing to comply with duties under Rule 56.2. If the court determines that a failure to comply is not the result of mistake, inadvertence, or excusable neglect, the court may hold the creditor in contempt and award the petitioner or affected party:

(1) compensation for actual losses, if any, caused by the failure to comply;

(2) reasonable legal practitioner's fees, if the affected party was represented at a hearing;

(3) court costs;

(4) an additional amount not less than $100, nor more than $1000.

Rule 57. Injunctions and Restraining Orders.

(a) Preliminary Injunction or Temporary Restraining Order.

(1) *Notice*. Except as provided in Rule 57(b), the court may issue a preliminary injunction or a temporary restraining order only with notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits*.

(A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may advance the trial on the merits and consolidate it with the hearing on the motion.

(B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.

(C) Even if consolidation is not ordered, and subject to any party's right to a jury trial, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(3) *Motion to Dissolve or Modify*. After an answer is filed, a party may file a motion to dissolve or modify a preliminary injunction with notice to the opposing party. Unless the motion is unopposed, the court must hold a hearing and allow the parties to present evidence. If the court determines that there are insufficient grounds for the injunction, or that it is overbroad, the court may dissolve or modify the preliminary injunction.

(b) Temporary Restraining Order Without Notice.

(1) *Issue Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will likely result to the movant before the adverse party can be heard in opposition, or that prior notice will likely cause the adverse party to take action resulting in such injury, loss, or damage; and

(B) the movant certifies in writing any efforts made to give notice or the reasons why it should not be required.

(2) *Contents*. Every temporary restraining order issued without notice must:

(A) state the date and hour it was issued;

(B) describe the injury and state why it is irreparable;

(C) state why the order was issued without notice; and

(D) be promptly filed in the clerk's office and entered in the record.

(3) *Expiration*. A temporary restraining order issued without notice expires at the time after entry – not to exceed ten (10) days – that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for the extension must be entered in the record.

(4) *Expediting the Preliminary Injunction Hearing*. If an order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the

same character. At the hearing, the party who obtained the order must proceed with the motion. If the party does not, the court must dissolve the order.

(5) *Motion to Dissolve*. On 2-days' notice to the party obtaining an order without notice – or on shorter notice set by the court – the adverse party may move to dissolve or modify the order. The court must hear and decide any such motion as promptly as justice requires.

(c) Contents and Scope of Injunction or Restraining Order.

(1) *Contents*. Every order granting an injunction and every restraining order must:
(A) state the reasons why it was issued;
(B) state its terms specifically; and
(C) describe in reasonable detail – and not by referring to the complaint or other document – the act or acts restrained or required.

(2) *Persons Bound*. An order binds only the following who receive actual notice of it by personal service or otherwise:
(A) the parties;
(B) the parties' officers, agents, servants, employees, and attorneys; and
(C) other persons who are in active concert or participation with anyone described in Rule 57(c)(2)(A) or (B).

(d) Venue of Requested Injunction or Order to Stay an Action or Stay Execution of a Judgment. A motion or application seeking an injunction or order to stay an action, or to stay execution of judgment, must be filed in the court where the action is pending or the judgment was rendered.

(e) Procedure for Obtaining Sanctions; Order to Show Cause.

(1) *Generally*. The court may issue sanctions for civil contempt, or for criminal contempt as allowed by law, against a party or person who violates an injunction.

(2) *Application; Affidavit*. A party alleging that any party or person has violated an injunction may file an application for an order to show cause. A supporting affidavit describing the acts that violate the injunction must accompany the application.

(3) *Order to Show Cause*. The court may issue an order to show cause based on the application and supporting affidavit. The order to show cause:
(A) may set a date for any written response to the application; and
(B) before sanctions are ordered, must require the party or person alleged to have violated the injunction to appear and respond at the time and place ordered by the court.

(4) *Service*. No later than ten (10) days before any hearing, the party or person charged with contempt must be personally served with the order to show cause and a copy of the affidavit in the manner provided for service of a summons or pleading under Rule 3, 3.1, or 3.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 4(c).

(5) *Hearing*. At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 40(f). The court need not hold an evidentiary hearing unless there is a genuine dispute of material fact, but a person or party

charged with criminal contempt may be entitled to a jury trial as provided by law.

(6) *Sanctions – Generally*. If at the order to show cause hearing, the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal contempt. Sanctions may including imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as the court otherwise orders.

(7) *Sanctions for Failing to Appear*. The following additional sanctions may be ordered for a party or person failing to appear at the order to show cause hearing:

(A) the court may issue a civil arrest warrant and, if the party or person is arrested, the court must set a reasonable bail to secure the party's or person's appearance at any future hearing; and

(B) if the party or person charged with contempt is a corporation, the court may attach and sequester assets of the corporation pending further court order.

Rule 58. Deposit into Court.

(a) By Leave of Court. If any part of the relief sought in an action is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – upon providing notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) By Court Order. The court may order that money or any other deliverable property to be deposited with the court if it is the subject of the action, if a party admits to control or possession of the money or property, and if that party holds it as trustee for another party or if it belongs to or is due to another party. The court also may order that the money or property be delivered to the party claiming it on conditions that the court finds just.

(c) Clerk's Duties. If any money or other property is deposited with the court, the clerk must deposit it in a safe or in a bank, subject to the court's control. If money is deposited, the court may order the clerk to deposit it with the Nation's treasurer, who will receive and hold it subject to further court order. The clerk must file a statement in the action identifying each item the court received and its disposition.

Rule 59. Offer of Judgment.

(a) Time for Making; Procedure. Any party may serve on any other party an offer to allow judgment to be entered in the action. An offer of judgment must be made more than thirty (30) days before trial begins.

(b) Contents of Offer.

(1) *Money Judgment*. An offer that includes a money judgment must specifically state

the sum of money to be awarded, inclusive of all damages, taxable court costs, interest, and attorney's fees, if any, sought in the action.

(2) *Legal Practitioner's Fees*. If specifically stated, legal practitioner's fees may be excluded from an offer. If an offer that excludes legal practitioner's fees is accepted and legal practitioner's fees are allowed by statute, contract, or otherwise, either party may seek an award of legal practitioner's fees.

(3) *Apportionment*. The offer need not be apportioned by claim.

(c) Acceptance of Offer; Entry of Judgment. To accept an offer, the offeree must serve written notice – during the effective time period – that the offer is accepted. After either party files the offer and proof of acceptance, the court must enter judgment in accordance with Rule 49(b).

(d) Rejection of Offer; Waiver of Objections.

(1) *Rejection of Offer*. An unaccepted offer is considered rejected. Evidence of an unaccepted offer is not admissible except in a proceeding to determine sanctions under this rule.

(2) *Objections to Offer*. An offeree who objects to the validity of an offer must – within ten (10) days after the offer is served – serve on the offeror written notice of the objections. The failure to serve timely objections waives the right to object to the offer's validity in any proceeding to determine sanctions under this rule.

(e) Multiple Offerors. Multiple parties may make a joint unapportioned offer of judgment to a single offeree.

(f) Multiple Offerees.

(1) *Unapportioned Offers*. Unapportioned offers may not be made to multiple offerees.

(2) *Apportioned Offers*. One or more parties may make an apportioned offer to multiple offerees conditioned on acceptance by all of the offerees. Each offeree may serve a separate written notice of acceptance of the offer. If fewer than all offerees accept. The offeror may enforce any of the acceptances if:

(A) the offer discloses that the offeror may exercise this option; and

(B) the offeror serves written notice of final acceptance no later than ten (10) days after the offer expires.

The sanctions provided in this rule apply to each offeree who did not accept the apportioned offer.

(g) Sanctions.

(1) *Amount*. A party who rejects an offer, but does not obtain a more favorable judgment, must pay as a sanction:

(A) the offeror's reasonable expert witness fees and double the taxable costs incurred after the offer date; and

(B) prejudgment interest on unliquidated claims accruing from the offer date.

(2) *Taxable Costs and Attorney's Fees*. To determine if a judgment that includes an award of taxable costs or attorney's fees is more favorable than the offer, the court must consider only those taxable costs and attorney's fees that were reasonably incurred as of the offer date.

(h) Effective Period of Offers; Later Offers; Offers on Damages.

(1) *Effective Date*. An offer of judgment must remain effective for thirty (30) days after it is served, except:
(A) an offer made within sixty (60) days after service of the summons and complaint must remain effective for sixty (60) days after the offer is served;
(B) an offer made within 45 days of trial must remain effective for fifteen (15) days after it is served; and
(2) *Later Offers*. A rejected offer does not preclude a later offer.
(3) *Offers on Damages*. When one party's liability to another has been determined, but the extent of liability remains to be determined by further proceedings, any party may make an offer of judgment. It must be served within a reasonable time – but at least ten (10) days – before the date set for a hearing to determine the extent of liability.

Rule 60. Execution.

(a) Generally. A money judgment is enforced by a writ of execution, unless the court orders otherwise. A party may execute on a judgment – and seek relief in proceedings supplementary to and in aid of judgment or execution – as provided in these rules, statutory remedies, and other applicable law.

(b) Special Writ. If a judgment is for personal property and the court finds that the property has special value to the prevailing party, the court may award the prevailing party a special writ for the seizure and delivery of the specific property, in addition to any other relief provided in these rules and other applicable law.

(c) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest, whose interest appears from the record, may obtain discovery from any person – including the judgment debtor – as provided in these rules and other applicable law.

Rule 61. Enforcing a Judgment for a Specific Act.

(a) A Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done – at the disobedient party's expense – by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within the Tohono O'odham Nation, the court – instead of ordering a conveyance – may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistance. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) Contempt. The court also may hold the disobedient party in contempt.

Rule 62. Enforcing Relief for or Against a Nonparty.

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.