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Arizona Revised Statutes Annotated Currentness

Title 12. Courts and Civil Proceedings

[Ⓜ] Chapter 1. Courts of Record [Ⓜ] Article 2. The Superior Court (Refs & Annos)

→ § 12-136. Indian tribal courts; involuntary commitment orders; recognition

A. Notwithstanding any law to the contrary, an involuntary commitment order of an Arizona tribal court filed with the clerk of the superior court shall be recognized and is enforceable by any court of record in this state, subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the court. The Arizona supreme court may adopt rules regarding recognition of tribal court involuntary commitment orders. The state, through the attorney general, shall be given notice of the filing at the time the commitment order is filed and shall have five days from receipt of the written notice of the filing of the order to appear as a party and respond. A patient committed to a state mental health treatment facility under this section shall be subject to the jurisdiction of the state.

B. Decisions regarding discharge or release of a patient committed pursuant to subsection A shall be made by the facility providing involuntary treatment. Ten days prior to discharge or release, the state mental health treatment facility shall notify the tribal court which issued the involuntary commitment order of the facility's intention to discharge or release a patient. Any necessary outpatient follow-up and transportation of the patient to the jurisdiction of the tribal court, within the time set forth in the notice, shall be provided for in an intergovernmental agreement between the tribe and the department of health services.

CREDIT(S)

Added by Laws 1992, Ch. 260, § 1.

LAW REVIEW AND JOURNAL COMMENTARIES

Arizona Indian Law. Gabriel S. Galanda, 39 Ariz.Att'y 24 (January 2003).

LIBRARY REFERENCES

Indians ⇔ 32(7).

Mental Health ⇔ 47, 59.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

C.J.S. Mechanics' Liens §§ 82 to 83.

RESEARCH REFERENCES

Treatises and Practice Aids

5 Arizona Practice App. E, Selected Arizona Rules And Statutes Relating To Juvenile Matters.

A. R. S. § 12-136, AZ ST § 12-136

Current through the end of the Forty-Eighth Legislature, Second Regular Session (2008), and also includes election results from the November 4, 2008 general election

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Arizona Revised Statutes Annotated Currentness

Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & Annos)

→ **Rule 1. Applicability**

These rules govern the procedure for recognition and enforcement by the superior court of an involuntary commitment order of the court of any federally recognized Indian tribe within the State of Arizona, as authorized by A.R.S. § 12-136. Determinations regarding recognition of the tribal court commitment order pursuant to these rules have no effect upon the independent authority of the tribal court order. Whenever reference is made to the proposed patient in these rules, it means the person who is the subject of the tribal court commitment order.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

LIBRARY REFERENCES

Indians ⇔ 32(7).

Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

17B A. R. S. Tribal Court Invol. Commitment Orders, Rule 1, AZ ST TRIBAL CT COMMIT ORDERS Rule 1

Current with amendments received through 10/15/08

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Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & Annos)

→ **Rule 2. Filing Procedure and Fees**

(a) Documents to be Filed. A copy of the tribal court order, authenticated in accordance with the procedures of the tribal court, may be filed in the office of the clerk of the superior court in a county in which the tribal court has jurisdiction within 30 days of its entry in the tribal court. The order shall be accompanied by a signed and notarized statement from the appropriate tribal court officer stating that no subsequent orders vacating, modifying or reversing the order filed have been entered by the tribal court and that the order has not been stayed pending appeal. The clerk shall treat the tribal court order in the same manner as an order of involuntary commitment issued by the superior court of this state.

(b) Notice of Filing. The person filing the order shall promptly serve a notice of filing substantially similar to Form I of these rules and a copy of the tribal court commitment order on the proposed patient or the patient's guardian or representative and the Attorney General of the State of Arizona. Proof of service shall be filed with the clerk of the superior court.

(c) Fees. There shall not be a fee for filing a tribal court order under this rule.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

17B A. R. S. Tribal Court Invol. Commitment Orders, Rule 2, AZ ST TRIBAL CT COMMIT ORDERS Rule 2

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Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & Annos)

→ **Rule 3. Responses**

Any responses to the enforcement of the tribal court order shall be filed within 5 days of receipt of the notice of filing the order. If a response is filed within this time period, the enforcement proceeding under this rule shall have the same priority as a civil commitment proceeding originating in the superior court. The superior court may, in its discretion, set a time period for replies and/or set the matter for hearing.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

17B A. R. S. Tribal Court Invol. Commitment Orders, Rule 3, AZ ST TRIBAL CT COMMIT ORDERS Rule 3

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Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs
& Annos)

→ **Rule 4. Appointment of Counsel**

If a response is filed, the court may, in its discretion, or at the request of the proposed patient, appoint counsel to represent the proposed patient at any enforcement proceedings.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

17B A. R. S. Tribal Court Invol. Commitment Orders, Rule 4, AZ ST TRIBAL CT COMMIT
ORDERS Rule 4

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Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & Annos)

→ **Rule 5. Enforcement of Tribal Court Commitment Order**

(a) Certification by the Clerk of Court. If no responses are timely filed, the next court day after the expiration of the time period to respond the clerk shall, on a form substantially similar to Form II of these rules, issue a certification that no responses were timely filed, and the tribal court order shall be enforceable in the same manner as if issued by the superior court.

(b) Standard of Review Following Response. The superior court shall not assess the validity of the tribal court order, but shall only assess its consistency with A.R.S. § 12-136 and these rules. A tribal court commitment order which contains all of the findings indicated in these rules shall be enforced subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the superior court. The superior court judge shall attempt to resolve any issues raised regarding a tribal court order by contacting the tribal court judge who issued the order. If enforcement of an order is denied due to incomplete findings or unresolved issues regarding those findings, the superior court judge shall specifically state the reasons for the denial.

(c) Findings Required in the Tribal Court Order. The tribal court order shall be enforceable if it contains the following findings:

1. The legal and factual basis of the tribal court jurisdiction over the civil commitment proceedings and over the proposed patient.
2. The proposed patient received notice of the civil commitment proceeding and the allegations regarding the patient's mental condition and had the opportunity to be heard with the assistance of a person recognized by the tribal court as competent to represent the proposed patient.
3. Based upon the diagnosis by a licensed physician, the proposed patient suffers from a mental disorder as defined by Arizona law which renders the proposed patient a danger to self, a danger to others, persistently or acutely disabled and/or gravely disabled.
4. The treatment ordered is the least restrictive treatment which meets the needs of the proposed patient, and the proposed patient is unable or unwilling voluntarily to receive this treatment.

(d) Other Information Required in the Tribal Court Order. To aid in enforcement and sending required notices, the tribal court order shall include the following information:

1. The title, address and county of the tribal court entering the order of involuntary commitment.
2. The date the tribal court order was entered.
3. The name, address and location of the proposed patient.
4. The names and addresses of any attorneys, guardians or other persons with legal standing to represent the proposed patient and a brief statement of their authority and relationship.
5. The tribal official authorized to receive service under these rules and the address at which service may be made.

(e) Commitment Period. The period of commitment shall not be enforceable for a longer period of time or in a manner different than permitted by Arizona law and shall commence on the date the tribal court order was entered.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

LIBRARY REFERENCES

Indians \Leftrightarrow 32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

17B A. R. S. Tribal Court Invol. Commitment Orders, Rule 5, AZ ST TRIBAL CT COMMIT
ORDERS Rule 5
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Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & Annos)

→ **Rule 6. Rehearing and Review**

(a) Rehearing. In the event enforcement of a tribal court order is denied, any affected person may move for a rehearing within 20 days after the denial. Any supplemental or revised tribal court orders shall be attached to the motion. A copy of such motion shall be served upon all parties to the original proceeding. A response to the motion may be filed within 5 days of receipt of notice of the motion for rehearing.

(b) Review and Administration Following Commitment. All proceedings following the commitment of the proposed patient shall be governed by Arizona law. Any documents filed with the court regarding the proposed patient shall be served upon the tribal official designated for receipt of service in the tribal court order.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

17B A. R. S. Tribal Court Invol. Commitment Orders, Rule 6, AZ ST TRIBAL CT COMMIT ORDERS Rule 6

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Arizona Revised Statutes Annotated Currentness
Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & An-
nos)
→ Form I. Notice of Filing

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

_____ COUNTY

In re: Involuntary Commitment) No. _____
of (Patient's Name))
) NOTICE OF FILING
) OF TRIBAL COURT
) INVOLUNTARY
) COMMITMENT
) ORDER

YOU ARE HEREBY NOTIFIED that the Order of Involuntary Commitment issued by the
_____ Tribal Court on _____, 19__, under which (patient's
name) has been ordered to undergo treatment, was filed with the Clerk of the Court for
_____ County on _____, 19__, Cause No.
_____.

YOU ARE FURTHER NOTIFIED that you have 5 days from receipt of this notice to respond in writ-
ing to the Clerk of the Court for _____ County. If no response is filed within this
time period pursuant to A.R.S. § 12-136 and Rule 3, Rules of Procedure for Enforcement of Tribal
Court Involuntary Commitment Orders, the Order of Involuntary Commitment issued by the Tribal
Court shall be recognized and shall be enforceable in the same manner as if issued by the Superior
Court.

A copy of the tribal court order is attached hereto.

Name

Address

Instructions: When the notice is complete it must be filed with the clerk of the court and served on the Attorney General for the State of Arizona and the patient. It shall be served in the manner set forth in Rule 4.1, Ariz.R.Civ.P.

CREDIT(S)

Added Jan. 26, 1994, effective June 1, 1994.

17B A. R. S. Tribal Court Invol. Commitment Orders, Form 1, AZ ST TRIBAL CT COMMIT ORDERS Form 1

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Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders (Refs & An-
nos)

→ **Form II. Certification**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

_____ COUNTY

In re: Involuntary Commitment) No. _____

of (Patient's Name))

) CERTIFICATION RE:

) ENFORCEMENT OF

) TRIBAL COURT

) INVOLUNTARY

) COMMITMENT

) ORDER

Pursuant to A.R.S. § 12-136 and the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders, I hereby certify that the statements contained herein are an accurate representation of the contents of the record of the above captioned matter.

An Order of Involuntary Commitment was issued by the _____ Tribal Court on _____, 19__, under which (patient's name) was ordered to undergo treatment. The Order was filed herein on _____, 19__.

_____ The record reflects that the Notice of Filing was personally served on (patient's name) on _____, 19__, and at least 5 court days have since elapsed.

OR

_____ The record reflects that the Notice of Filing was sent by certified mail to (patient's name) on _____, 19____, it was received on _____, 19____, and at least 5 court days have elapsed since its receipt.

AND

_____ The record reflects that the Notice of Filing was personally served on the Attorney General for the State of Arizona on _____, 19____, and at least 5 court days have since elapsed.

OR

_____ The record reflects that the Notice of Filing was sent by certified mail to the Attorney General for the State of Arizona on _____, 19____, it was received on _____, 19____, and at least 5 days have elapsed since its receipt.

No responses have been filed.

Given under my hand and the Seal of the Court on this date, _____, 19____.

Clerk of the Superior Court

By:

CREDIT(S)

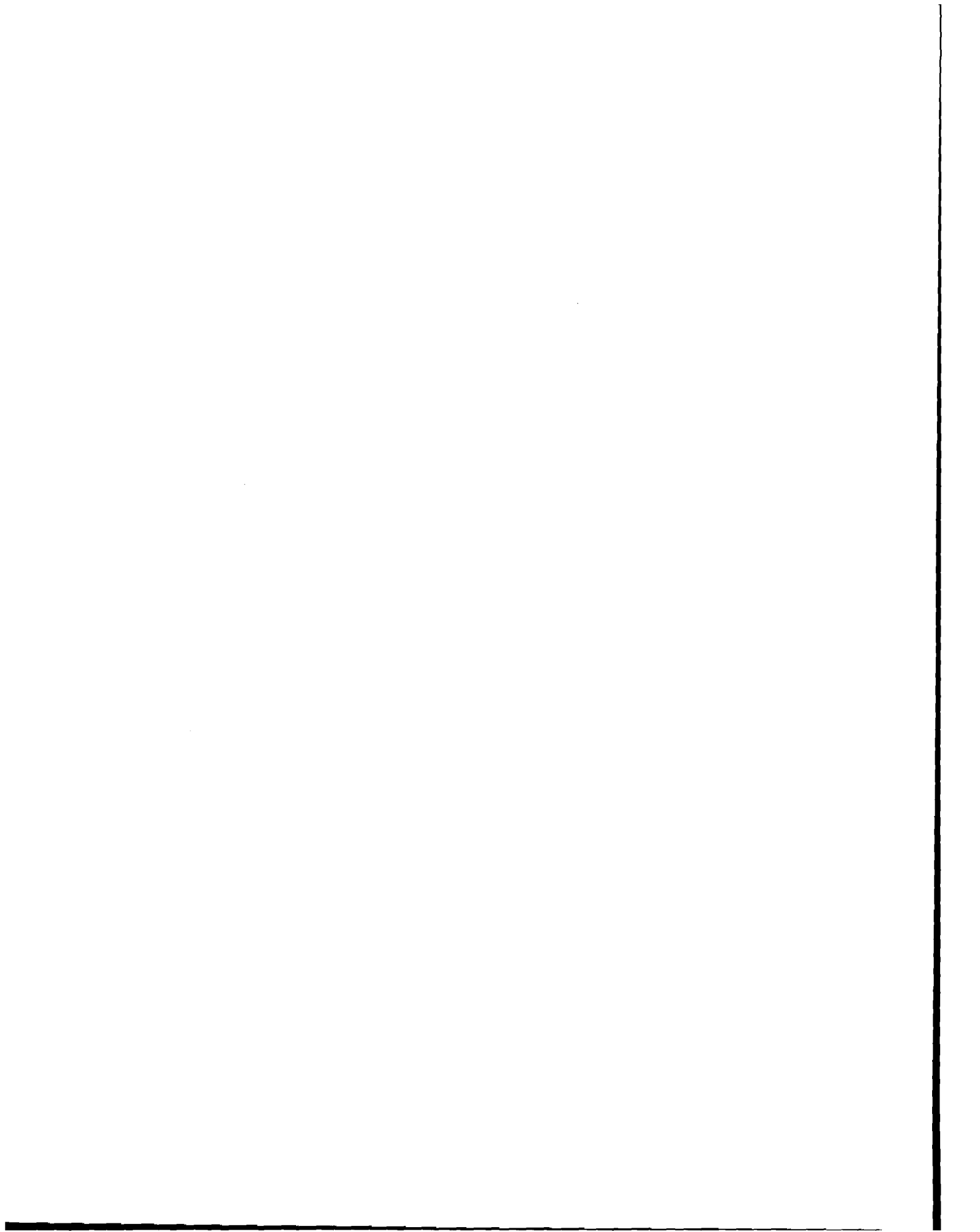
Added Jan. 26, 1994, effective June 1, 1994.

17B A. R. S. Tribal Court Invol. Commitment Orders, Form 2, AZ ST TRIBAL CT COMMIT ORDERS Form 2

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Arizona Revised Statutes Annotated Currentness

Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)

→ **Rule 1. Applicability**

These rules shall govern the procedures for recognition and enforcement by the superior courts of the State of Arizona of trial court civil judgments of any federally recognized Indian tribe. Determinations regarding recognition and enforcement of a tribal judgment pursuant to these rules shall have no effect upon the independent authority of that tribal judgment. To the extent that they are not inconsistent with these rules, the Arizona Rules of Civil Procedure shall apply.

These rules do not apply to tribal judgments for which federal law requires that states grant full faith and credit recognition or for which state law mandates different treatment.

Nothing in these rules shall be deemed or construed to expand or limit the jurisdiction either of the State of Arizona or any Indian tribe.

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 Ariz.St.L.J. 695 (2000).

LIBRARY REFERENCES

Indians ☞ 32(7).

Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 1, AZ ST TRIBAL CT CIV JUDGMENTS
Rule 1

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Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)

→ **Rule 2. Definitions**

As used throughout these rules:

(a) "Tribal court" means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including courts of Indian Offenses organized pursuant to Title 25, Part 11 of the Code of Federal Regulations.

(b) "Tribal judgment" means any final written judgment, decree or order of a tribal court duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 Ariz.St.L.J. 695 (2000).

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 2, AZ ST TRIBAL CT CIV JUDGMENTS Rule 2

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Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)

→ **Rule 3. Filing Procedures**

(a) Documents to be Filed. A copy of any tribal judgment may be filed in the office of the clerk of the superior court in any county of this state.

(b) Notice of Filing. The person filing the tribal judgment shall make and file with the clerk of the superior court an affidavit setting forth the name and last known address of the party seeking enforcement and the responding party. Promptly upon the filing of the tribal judgment and the affidavit, the enforcing party shall serve upon the responding party a notice of filing of the tribal judgment, together with a copy of the judgment, in accordance with Rule 4.1, Arizona Rules of Civil Procedure, or shall mail by certified mail, return receipt requested, the notice of filing and a copy of the judgment to the responding party at the last known address. If the responding party is the State of Arizona, or any of its officers, employees, departments, agencies, boards, or commissions, the notice of filing shall be mailed to the Attorney General's Office. The enforcing party shall file proof of service or mailing with the clerk. The notice of filing shall include the name and address of the enforcing party and the enforcing party's attorney, if any, and shall include the text of Rules 4 and 5(a) and (b).

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 Ariz.St.L.J. 695 (2000).

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 3, AZ ST TRIBAL CT CIV JUDGMENTS Rule 3

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Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)

→ Rule 4. Responses

Any objection to the enforcement of a tribal judgment shall be filed within twenty (20) days of service or of receipt of the mailing of the notice of filing the judgment, or within twenty-five (25) days of the date of mailing, whichever last occurs. If an objection is filed within this time period, the superior court may, in its discretion, set a time period for replies and/or set the matter for hearing.

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 Ariz.St.L.J. 695 (2000).

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 4, AZ ST TRIBAL CT CIV JUDGMENTS Rule 4

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Arizona Revised Statutes Annotated Currentness

Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)

→ **Rule 5. Recognition of Tribal Judgments**

(a) Enforcement of Tribal Judgment. A tribal judgment, unless objected to in accordance with Rule 4, shall be recognized and enforced by the courts of this state to the same extent and shall have the same effect as any judgment, order, or decree of a court of this state.

(b) Certification by Clerk of Court. If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed, and the tribal judgment shall be enforceable in the same manner as if issued by the superior court.

(c) Mandatory Considerations Following Objection. A tribal judgment shall not be recognized and enforced if the objecting party demonstrates to the court at least one of the following:

1. The trial court did not have personal or subject matter jurisdiction.
2. The defendant was not afforded due process.

(d) Discretionary Considerations Following Objection. The superior court may, in its discretion, recognize and enforce or decline to recognize and enforce a tribal judgment on equitable grounds, including:

1. The tribal judgment was obtained by extrinsic fraud.
2. The tribal judgment conflicts with another final judgment that is entitled to recognition.
3. The tribal judgment is inconsistent with the parties' contractual choice of forum.
4. Recognition of the tribal judgment or the cause of action upon which it is based is against fundamental public policy of the United States or the State of Arizona.

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

COMMENTS

[Rule 5(a)] See *Leon v. Numkena*, 142 Ariz. 307, 689 P.2d 566 (App. 1984). See also, *Lofts v. Superior Court*, 140 Ariz. 407, 410, 682 P.2d 412, 415 (1984), and *Firedoor Corp. of America v. Tibshraeny Bros. Construction, Inc.*, 126 Ariz. 392, 616 P.2d 67

(App. 1980).

[Rule 5(c)(2)] The due process requirement stated in this rule does not require that a tribe utilize judicial procedures identical to those used in state courts. However, tribal court proceedings must afford the parties the basic tenets of due process established by the federal and state constitutions. *See Wilson v. Marchington*, 127 F.3d 805, 811 (9th Cir. 1997).

[Rule 5(d)(1)] *See Restatement (Third) of Foreign Relations Law of the United States*, § 482 comment *e* (1986).

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 *Ariz.St.L.J.* 695 (2000).

LIBRARY REFERENCES

Indians ⇔ 32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 5, AZ ST TRIBAL CT CIV JUDGMENTS
Rule 5

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Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)

→ **Rule 6. Stay**

If the objecting party demonstrates to the superior court that an appeal from the tribal judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the tribal judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 Ariz.St.L.J. 695 (2000).

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 6, AZ ST TRIBAL CT CIV JUDGMENTS Rule 6

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Rules of Procedure for the Recognition of Tribal Court Civil Judgments (Refs & Annos)
→ **Rule 7. Contacting Courts**

The superior court shall, after notice to the parties, attempt to resolve any issues raised regarding a tribal judgment under Rule 3 or Rule 5 of these rules, by contacting the tribal court judge who issued the judgment.

CREDIT(S)

Added May 31, 2000, eff. Dec. 1, 2000.

LAW REVIEW AND JOURNAL COMMENTARIES

Indian tribal law under the Federal Tort Claims Act. Katherine C. Pearson, 32 Ariz.St.L.J. 695 (2000).

17B A. R. S. Tribal Ct. Civ. Judgment Rules, Rule 7, AZ ST TRIBAL CT CIV JUDGMENTS
Rule 7

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