

COLORADO RIVER INDIAN TRIBAL COURT

LOCAL RULES OF CHILD SUPPORT AND PATERNITY PROCEDURE "LRCSP"

I. SCOPE, DEFINITIONS AND CONSTRUCTION

LRCSP 1

(a) **Child Support and Paternity, Purpose of LRCSP.** These Rules apply to all natural children, whether born in or out of wedlock, and to all adopted children, whether arising out of a proceeding for dissolution, legal separation, paternity, or other independent action, except that if a parent ordered to pay child support has an adjusted gross income at or below federal poverty guidelines, the child support schedule will not apply to the Court's determination of the appropriate amount of child support to be ordered. These Rules follow the Income Shares Model. The model was developed by the Child Support Guidelines Project of the National Center for State Courts and modified by the Tribal Court to specially suit its needs, including the following.

(1) **Establish Standards.** The LRCSP establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay.

(2) **Uniformity.** The LRCSP make child support awards consistent for persons in similar circumstances.

(3) **Guidance.** The LRCSP give parents and the Court guidance in establishing a child support order and promote settlements; and

(4) **Define the Applicable Law.** The LRCP define the Tribal law that the Judges of the Tribal Court shall apply, which pursuant to these Rules and under the authority of L&O 110 is compatible with Arizona law (A.R.S. § 25-320) and federal law (42 United States Code § 651 et seq., 45 Code of Federal Regulations § 302.56), and any amendment thereto.

(5) **Child Support, Basic Method of Calculation.** The total child support amount shall approximate the amount that would have been spent on the child(ren), if the parents and child(ren) were living together. Each parent contributes his/her proportionate share of the total child support amount. The child support award should permit the children a standard of living that as closely as possible approximates the one they would have had if the family remained together. However, because the model that underlies the LRCSP is based on maintaining an intact family, adjustments shall be considered as necessary to take into account a parent's contributions to a second primary residence.

(6) **Child Support, Priority.** The child support obligation has priority over all other financial obligations; the existence of non-support-related financial obligations is generally not a reason for deviating from the LRCSP.

(7) **Child Support, Relation to Spousal Maintenance.** The fact that a custodial parent receives child support does not mean that he or she may not also be entitled to spousal maintenance. If the court is establishing both child support and spousal maintenance, the court shall determine the appropriate amount of spousal maintenance first.

(8) **Child Support, Duty.** A parent's legal duty is to support his or her natural or adopted children. Support of "other children" as defined in LRCSP 6 (a) may result in an adjustment pursuant to LRCSP 6 (b). The "support" of other persons such as stepchildren or parents is deemed voluntary and is not a reason for an adjustment per LRCSP 6 (b).

(9) **Child Support, Duration of Order.** Duration of support is governed by A.R.S. § 25-320, applied under L&O 110.

(10) **Child Support, Annual Payment Amortized per Month.** Any adjustments to the child support amount shall be annualized so that each month's support obligation is increased or decreased, in an equal amount, instead of the obligation for particular months being abated, increased, or decreased.

ANNOTATIONS

LRCSP 2

Definitions and Construction.

(1) **"Adjusted Gross Income"** as used in the LRCSP does not have the same meaning as when used for tax purposes and calculated per LRCSP 6 .

(2) **"Combined Adjusted Gross Income"** as used in the LRCSP does not have the same meaning as when used for tax purposes and calculated per LRCSP 7.

(3) **"Gross Income"** as used in the LRCSP does not have the same meaning as when used for tax purposes and calculated per LRCSP 5.

(4) **"Ordinary and necessary expenses"** as used in the LRCSP does not include amounts determined by the court to be inappropriate for determining gross income for purposes of child support.

(5) "Second Primary Residence" refers to the maintenance of a separate residence for each parent. It does not refer to vacation homes for either parent and it does not include expenses related to subsequent families or other dependents. Since this adjustment affects the available financial resources in both residences, the court should exercise caution at low income levels to ensure that the basic needs of the child(ren) are met.

(6) "Title IV-D Cases" are actions and cases involving persons or families receiving Aid to Families with Dependent Children ("AFDC"), certain cases involving the Arizona Health Care Cost Containment System ("AHCCCS"), Medical Assistance Only ("MAO") Program,, and those cases involving non-public assistance individuals who have made application to the Arizona Department of Economic Security ("DES") for any or all child support services. These categories of cases are collectively referred to a "IV-D" cases.

ANNOTATIONS

II. INCOME, PRESUMED AMOUNT CHILD SUPPORT OBLIGATION

LRCSP 3

Child Support, Order, Presumed Amount. In any action to establish or modify child custody, and in any action to establish or modification of child support, whether temporary or permanent, local, ICWA (Indian Child Welfare Act) or URESA (Uniform Reciprocal Enforcement of Support Act), the amount resulting from application of the LRCSP shall be the amount of child support ordered. However, if application of the LRCSP would be inappropriate or unjust in a particular case, the court may deviate therefrom per LRCSP 15.

ANNOTATIONS

Worksheet and Instructions, pp. 246-261

LRCSP 4

Child Support, Multiple Children, Divided Custody. When each parent is awarded custody of at least one of the parties' children, each parent is obligated to pay support to the other parent. However, the amount of support to be paid by the parent having the greater support obligation shall be reduced by the amount of support owed to that parent by the other parent.

EXAMPLE: Combined Adjusted Gross Income is \$3000 per month. Father's gross income is \$1000 per month (33.3%) and he has custody of one child. Mother's gross income is \$2000 per month (66.6%) and she has custody of two children.

Prepare a Parent's Worksheet to determine support for children in the mother's household. Locate the Combined Adjusted Gross Income figure of \$3000 on the Schedule. Select the support figure in the column for the number of children in this household, \$672. The father's share is 33% of \$672, or \$224.

Prepare a Parent's Worksheet to determine support for the child in the father's household. Locate the Combined Adjusted Gross Income figure of \$3000. Select the support figure in the column for the one child in this household, \$434. The mother's share is 66.6% of \$434, or \$289.

The mother is obligated to pay the father \$289 for child support. This amount is reduced by the \$224 obligation owed by the father to the mother. Thus, the mother shall pay \$65 per month.

ANNOTATIONS

LRGSP 5

Child Support, Gross Income, Determination

(a) Gross income includes income from any source, and may include, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal maintenance. Cash value shall be assigned to in-kind or other non-cash benefits. Seasonal income, overtime income, or fluctuating income shall be averaged. When income from a full-time job is consistent with income during the marriage, income earned as the result of overtime hours or a second job may be disregarded.

(b) Gross income does not include benefits received from means-tested public assistance programs including, but not limited to, aid to families with dependent children, supplemental security income, food stamps, general assistance, or sums received as child support.

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income.

(d) Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

(e) If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity. Pursuant to A.R.S. § 25-320(G), applied under the authority of L&O 110, income of at least minimum wage shall be attributed to a parent ordered to pay child support. If income is attributed to the parent receiving child support, appropriate child care expenses shall also be attributed.

(f) Income of a parent's new spouse is not treated as income of that parent under the LRCSP.

(g) The court shall not take into account the impact of the disposition of marital property, except as provided in A.R.S. § 25-320(A)(6) ("...excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy, and other property held in common.") applied under the authority of L&O 110, or to the extent that such property generates income to a parent.

(h) The payment of income taxes has been considered in the Schedule.

ANNOTATIONS

LRCSP 6

Child Support, Gross Income, Adjustments

(a) The amount of court-ordered spousal maintenance actually paid and the amount of court-ordered child support of other children actually paid, shall be deducted from the gross income of the payor. "Other children" means natural or adopted children who are not the subject of this particular child support determination.

(b) As authorized in LRCSP 1 (b), support of natural or adopted children not covered by a court order may be considered as an adjustment factor. Any adjustment will be made to gross income and the amount of any adjustment will be determined by a simplified application of the LRCSP to determine the basic amount of support that would be ordered for the other children in question.

ANNOTATIONS

LRCSP 7

Child Support, Adjusted Gross Income, Determination. Adjusted Gross Income is gross income minus the adjustments provided in LRCSP 6. The Adjusted Gross Income for each parent shall be established. These amounts shall be added together. The sum is the Combined Adjusted Gross Income.

ANNOTATIONS

LRCSP 8

Child Support, Obligation, Basic Amount Determination. Locate the Combined Adjusted Gross Income figure on the Schedule of Basic Child Support Obligations, and select the column for the number of children involved. This number is the Basic Child Support Obligation.

ANNOTATIONS

LRCSP 9

Child Support, Obligation, Total Determination. To determine the Total Child Support Obligation, the court:

(a) **MUST** add to the Basic Child Support Obligation the costs of the children's medical insurance coverage, if any, which will be paid as ordered pursuant to LRCSP 14,

(b) **MAY** add to the Basic Child Support Obligation amounts for any of the following:

(1) **Child Care Costs:** Child care expenses appropriate to the parents' financial abilities and to the lifestyle of the children had the family remained intact.

(2) **Education Expenses:** Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child, when such expenses are incurred by agreement of both parents or ordered by the Court.

(3) Older Child Adjustment: The average expenditures for children over age twelve exceed the average expenditures for all children by approximately ten percent. Therefore, the court may increase child support for an older child by an amount up to ten percent of the support shown on the Schedule. If the court chooses to make an adjustment, the following method of calculation shall be used.

EXAMPLE: Award for one child, age 13, is \$300. The court could award up to \$30 extra for a total of \$330. If not all children subject to the order are over age 12, the increase will be prorated as follows: Assume the award for three children is \$300. If one of the three children is over age 12, assign 1/3 of the total support award to the older child (\$100) and increase that portion of the award by 10%, to \$110. The total award would then be \$310. NOTE: This proration method is limited to this § and should not be followed in § 20.

(4) Extraordinary Child Adjustment: The LRCSP are designed to fit the needs of most children. The court may increase the Basic Child Support Obligation to provide for the special needs of gifted or handicapped children.

ANNOTATIONS

LRCSP 10

Child Support, Determining Each Parent's Proportionate Share of Obligation. The Total Child Support Obligation shall be divided between the parents in proportion to their Adjusted Gross Incomes. The obligation of each parent is computed by multiplying each parent's share of their Combined Adjusted Gross Income by the Total Child Support Obligation.

ANNOTATIONS

III. CHILD SUPPORT AWARD

LRCSP 11

Child Support, Award, Determination. The court shall order the noncustodial parent to pay child support in an amount equal to his or her proportionate share of the Total Child Support Obligation. The custodial parent shall be presumed to spend his or her share on the children. Imputed income of a custodial parent may become the source of deviation downward of a noncustodial parent's obligation, but may not exceed such obligation to create a liability of the custodial parent.

EXAMPLE: One child, age 15, Combined Adjusted Gross Income is \$1,000. The father's Adjusted Gross Income is \$600. Divide the father's Adjusted Gross Income by the Combined Adjusted Income. The result is the father's share of the Combined Adjusted Gross Income. (\$600 divided by \$1000 - 60%) So, the father's share is 60%; the mother's share is 40%.

On the Schedule, the Basic Child Support Obligation for a Combined Adjusted Gross Income of \$1000 for One Child is \$178. To this the judge adds \$12 because the child is over twelve years of age (approximately 7% in this example). The Total Child Support Obligation is \$190.

The father's share is 60% of \$190, or \$114. The mother's share is 40% of \$190, or \$76. Custody is awarded to the mother. The father shall pay the child support amount of \$114 per month. The value of the mother's contribution is \$76, and she spends it directly on the child.

ANNOTATIONS

LRCSP 12

Child Support, Visitation Expense. The court may allocate visitation expenses. In doing so, the court shall consider the means of the parents and may consider how their conduct (such as a change of residence) has affected the costs of visitation.

ANNOTATIONS

LRCSP 13

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

ANNOTATIONS

LRCSP 14

Child Support, Medical Insurance. An order for child support shall assign responsibility for providing medical insurance for the children who are the subject of the support award, unless the child is eligible for Indian Health Services. Where ordered, the court shall also specify the percentage of uninsured medical expenses for the children that each parent shall pay. The Proportionment should reflect each parent's respective ability to pay.

ANNOTATIONS

IV. DEVIATION

LRCSP 15

Child Support, Deviation from LRCSP

(a) **Deviation by Court Order.** The court may deviate from the LRCSP, i.e., order support in an amount different from that which is provided pursuant thereto, after considering all relevant factors, including those set forth in A.R.S. § 25-320, applied under the authority of L&O 110, only if all of the following five criteria are met:

- (1) Application of the LRCSP is inappropriate or unjust in the particular case,
- (2) Deviation is in the best interest of the child,
- (3) The court makes written findings regarding 1 and 2 above,
- (4) The court shows what the award would have been without the deviation, and
- (5) The court shows what the award is after deviating.

(b) **Deviation by Agreement of Parties.** The court may deviate from the LRCSP based upon an agreement of the parties only if all of the following criteria are met:

- (1) The agreement is in writing,
- (2) All parties have signed the agreement with knowledge of the amount of support that would have been ordered by the LRCSP but for the agreement,
- (3) All parties have signed the agreement free of duress and coercion, and
- (4) The court Complies with the requirements of LRCSP 15
(a).

ANNOTATIONS

LRCSP 16

Child Support, Impact of Physical Custody Arrangements. In recognition of individual physical custody arrangements, the court may make an adjustment after considering:

- (a) The percentage of time each parent has physical custody of the children,
- (b) The extent, if any, to which the physical custody arrangements significantly reduce the expenses of the parent receiving support,
- (c) The extent, if any, to which physical custody arrangements significantly increase the expenses of the parent paying support, and
- (d) The historical practice of the parties if this information is available.

An adjustment may be made to allocate additional dollars to the parent paying support only after the basic needs of the children are met in the primary care home. Findings to support any adjustment shall be made by the court or shall be included in the written agreement of the parties. When adjusting on the basis of physical custody arrangements, the court may specify all or part of certain expenses for the children and order that they be paid by the parent paying support. If the time spent with each parent is essentially equal, and the expenses for the children are equally shared, the total child support amount shall be divided equally between the two households and the parent owing the greater amount shall be ordered to pay what is necessary to achieve that equal share in the other parent s household.

ANNOTATIONS

LRCSP 17

Child Support, Findings of Judge. The court shall make findings in the record as to: gross income, adjusted gross income, basic child support obligation, total child support obligation, each parent's proportionate share of the child support obligation, and the child support award and reasons for deviation, if any. The findings may be made by incorporating a worksheet containing this information into the file.

ANNOTATIONS

Forms of Order: pp. 243-244 (With Divorce and Property Division) and pp. 262 (Child Support without Divorce or Property Division)

V. MODIFICATION

LRCSP 18

Child Support, Exchange of Information. The court shall order that every twenty-four months the parties exchange financial information such as tax returns, spousal affidavit, and earning statements. Unless the court has ordered otherwise, at the time the parties exchange financial information, they shall also exchange residential addresses and the names and addresses of their employers.

ANNOTATIONS

LRCSP 19

Modification of Child Support.

(a) **Child Support, Modification, Standard Procedure.** Per A.R.S. § 12-2453 applied under the authority of L&O 110, either parent may ask the court to modify a child support order upon a showing of a substantial and continuing change of circumstance.

(b) **Child Support, Modification, Simplified Procedure, Default Modification.** Either parent may request the court to modify a child support order if application of the LRCSP results in an award that varies 15 percent or more from the existing amount. Such variation will be considered prima facie evidence of substantial and continuing change of circumstances.

(1) Any such request for modification of child support must be accompanied by a completed and sworn "Parent's Worksheet for Child Support Amount," and documentation supporting the incomes if different from the court's most recent findings regarding income of the parents. If the party requesting the modification is unable to provide documentation supporting the supporting the other party's income, he/she shall check the box indicating the income amount is attributed/estimated and state the basis for the amount listed.

(2) A copy of the request for modification of child support and the "Parent's Worksheet for Child Support Amount," including supporting documentation, showing that the proposed child support amount would vary 15 percent or more from the existing child support order shall be served on the other parent per LRCSP 28.

(3) The parent receiving service has 20 days in which to request a hearing on the proposed modification. If Service of Process is made by an alternative method of service provided in the LRCSP 28, the parent receiving service has 30 days in which to request a hearing on the proposed modification.

(4) Upon proof of service and if no hearing is requested within the time allowed, the court will review the request and enter an appropriate order or set the matter for hearing. If either party requests a hearing within the time allowed, the court shall conduct such hearing. No order shall be modified without a hearing if one is requested.

(5) The notice provision of TRCP 55, does not apply to this simplified modification procedure. Any petition to modify Child support pursuant to this subsection must be made using a form approved by the Tribal Court.

ANNOTATIONS

LRCSP 20

Child Support, Cessation of Support for One Child, Effect. If support for more than one child was ordered under the LRCSP and thereafter the duty to support one of the children stops, the award is not automatically reduced by that child's share. To obtain a modification to the support award, a request must be made in writing to the court to recalculate the support obligation pursuant to the LRCSP. The procedure specified in LRCSP 19 may be used for this purpose.

EXAMPLE: The award for an income of \$1,500 with four children is \$559. One child dies. In determining the new child support amount, do not deduct one-fourth of the award for a new award of \$419.25. Instead, refer to the Schedule for three children, whereunder the award is \$496. (NOTE: This method varies from the one used in § 9.b.3.)

ANNOTATIONS

LRCSP 21

Child Support, Income of a Child. Income earned or money received by a child from sources other than child support shall not relieve a parent of the support obligation established by the LRCSP.

ANNOTATIONS

LRCSP 22

Child Support, Credit for Benefit. Benefits, such as social security disability or insurance, received by a child as a result of contributions made by the parent paying support shall be credited as follows:

(a) Only the benefits received by the parent are included as part of that parent's gross income.

(b) If the amount of the child's benefit for a given month is equal to or greater than the parent's child support obligation,

then the parent's obligation is satisfied. Any benefit received by the child for a given month in excess of the child support obligation is not treated as an arrearage payment nor as a future payment.

(c) If the amount of the child's benefit for a given month is less than the parent's child support obligation, the parent must pay the difference.

ANNOTATIONS

LRCSP 23

Child Support, Federal Tax Exemptions and Credit. In any case in which the current child support obligation is at least \$1,200 per year, there should be an allocation of the federal tax exemptions applicable to the minor children which as closely as possible approximates the percentages of support being provided by each of the parents. The allocation of the exemptions shall be conditioned upon payment by December 31 of the total court-ordered child support obligation for the current calendar year and any court-ordered arrearage payments due during that calendar year for which the exemption is to be claimed. If these conditions have been met, the obligee shall execute the necessary Internal Revenue Service forms to transfer the exemptions. If the obligor has paid the current support, but has not paid the court-ordered arrearage payments, the obligor shall not be entitled to claim the exemption. The LRCSP do not contemplate any adjustment for the child care tax credit, nor do they provide for a transfer or assignment of Tribal or State tax exemptions or deductions.

EXAMPLE: Non-custodial parent's percentage of gross income is approximately 67% and custodial parent's percentage is approximately 33%. All payments are current.

* If there are three children, the non-custodial parent would be entitled to claim two and the custodial parent would claim one.

* If there is only one child, the non-custodial parent would be entitled to claim the child two out of every three years, and the custodial parent would claim the child one out of every three years.

For purposes of LRCSP 23 only, an obligor shall be credited as having paid child support that has been deducted on or before December 31 pursuant to an order of assignment if the amount has been received by the court or clearinghouse by January 15 of the following year.

ANNOTATIONS

VI. TITLE IV-D ACTIONS

LRCSP 24

(a) **Title IV-D Actions, Consistent with Federal Law.** All Title IV-D cases adjudicated in the Colorado River Indian Tribal Court shall be adjudicated pursuant to, and in concert with, the requirements of hereby incorporated IV-D statutes, regulations and authorized federal policy transmittals and pronouncements, as well

LRCSP 24 (Cont.) as applicable case law interpreting same. Except as necessary for processing in the Tribal Court, the Court shall have no other administrative Title IV-D functions, and shall order or provide for no transfers of funds from the Arizona Department of Economic Security ("DES") to the Tribes or the La Paz County Attorney. All payments ordered in Title IV-D cases shall be in U.S. dollars to the DES 's Clearinghouse.

(b) **Interception of Tax Refunds.** Upon establishment of a child support order, the Court may order interception of the obligor's federal income tax refunds, and may establish liens on the obligor's real property located off the Reservation, or on the Reservation, consistent with and subject to federal and Tribal law.

(c) **Child Support, Assignment of Payments of Child Support.** No assignment of child support payments shall be ordered, except a stipulated assignment of child support order, without the opportunity for a hearing thereon afforded to the person who otherwise would receive payments directly from the Tribal Court.

ANNOTATIONS

LRCSP 25

Child Support, Order of Support, Method of Payment, Modification, Revocation, Laches, Child Support, Judgment on Arrearage and Notice and Supplemental Law Paternity, Laches, Limitation of Action. To the extent not inconsistent with Tribal law per L&O 110 (a) and (b), Judges of the Tribal Court shall apply the relevant provisions of A.R.S. § 12-2453, in which the term "state" means the "State of Arizona" or the "Colorado River Indian Tribes" and "Superior Court" means the "La Paz County Superior Court" or the "Tribal Court of the Colorado River Indian Tribes", as determined in the context by the Tribal Judge. Actions for the establishment of paternity are not limited to commencement prior to a child's eighteenth birthday.

ANNOTATIONS

See State of Arizona vs Gregory Sharp, Colorado River Indian Tribal Court, Case No. 95-4054 (Tribal Court Opinion 1995)(Addressing Laches, Retroactive Collection of Child Support Payments and DRC 2-217) and see Insert C

VII. TRIAL OR HEARING SETTING, PREFERENCE FOR TRIAL

LRCSP 26

(a) **Child Support, Expedited Hearing, Paternity, Expedited Hearing.** Fully stipulated child support child support actions and fully stipulated paternity actions and child support modification shall be set for hearing per Insert B.

(b) In actions for the initial establishment of paternity and child support order, at the time of filing, the Clerk will set the matter for an expedited hearing per Insert B.

ANNOTATIONS

cf. LRCSP 5 (b)(Laches)

COLORADO RIVER INDIAN TRIBAL COURT

LOCAL RULES OF PROCEDURE FOR

SECTION 632 ACTIONS "LRP632"

I. LRP632 SCOPE

LRP632 1

These Rules apply to actions per only L&O 632 for the suspension of driving privilege.

ANNOTATIONS

II. PLEADING AND FILING

LRP632 2

Affidavit of Refusal and Notice Required. In every Section 632 action, a Tribal Police Officer shall complete an affidavit that recites, or incorporates from an attached written report, the FACTS upon which the Tribal Police believe the respondent/defendant was driving or in physical control of a motor vehicle while under the influence of intoxicating liquor on the Colorado River Indian Reservation, and was arrested, and was offered and refused the breath, blood or other chemical test for blood alcohol offered, and, whether commenced by summons and complaint or citation, shall recite, or incorporate, a notice that substantially advises the respondent/defendant of his or her right to be present in Court at the time and date specified in the summons or citation and thereat to request an immediate hearing to contest the suspension, if ordered, which hearing will be held at that time, if requested, and of the right to bring an attorney with him, and that failure to appear personally, or by an attorney at that hearing, will result in the permanent loss of the right to contest any suspension ordered.

ANNOTATIONS

LRP632 3

Summons and Complaint or Citation, Pleading. Section 632 actions may be commenced by summons and complaint, or by citation, as any other regulatory action per LRCF 2 (55) and summoned to the Court per LRCF 6 (2), except that a Tribal Police Officer completing the citation for the Section 632 action shall set the date thereon for appearance at such date as the Officer needed to testify thereon may also appear, and may use a separate citation for the Section 632 action and its appearance date from any related criminal citation and its appearance date.

ANNOTATIONS

LRP632 4

Complaint and Citation, Filing, When Required, Limitation of Action. A summons and complaint or citation in a Section 632 action shall be filed with the Court within a reasonably short time after driving or physical control therein, and in any event, prior to the time and date of appearance set in the summons or citation.

ANNOTATIONS

cf. LRCF 5 (b)(Laches)

LRP632 5

Suspension of Driving Privilege, When Ordered. No suspension shall be ordered per L&O 632 (d) without the affidavit of refusal, the notice, and either a summons and complaint or a citation, having been served on the respondent/defendant per LRP632 3. No suspension shall be sustained, unless the defendant/respondent is afforded an immediate hearing per LRP632 7.

ANNOTATIONS

III. SECTION 632, JUDICIAL REVIEW, SECTION 632 HEARING, SECTION 632 DEFAULT, SECTION 632 ENFORCEMENT

LRP632 6

Judicial Review, Amendment of Complaint or Citation. At the time and date set in the summons per LRCF or citation per LRCF 6 (2) and LRCF 38 (c), the Judge shall first proceed to examine, amend, advise, and dismiss or set bail and otherwise proceed on the complaint or citation per LRCF 38 (c), including

LRP632 6 (Cont.) examining the affidavit, the notice per LRCP LRP632 2, and evidence of service on the respondent/defendant, and thereafter a complaint or citation may amended per LRCP 5 (a)(1)(ii) or LRCP 6 (a)(3). If the complaint or citation is sufficient, the Judge shall then proceed to review the documents and either order, or not order, a suspension of driving privilege on the Colorado River Indian Reservation per L&O 632 (d), with such exceptions for work or medical treatment, as the Judge, in her sole discretion, may allow. If a suspension is ordered, at that time in open Court, the Judge shall inform the person of his or her right to an immediate hearing under L&O 632 (e), and if requested shall proceed per LRP632 7.

ANNOTATIONS

LRP632 7

Section 632 Hearing. If the person whose privilege to drive is suspended is present at the judicial review per LRP632 6, in person or by an attorney, and after the suspension is ordered requests a hearing to contest the suspension, the Judge shall proceed per L&O 632 (e), and ultimately either rescind or sustain the suspension if the Tribal Prosecutor carries his burden to show by a preponderance of the evidence the facts stated in LRP632 2.

ANNOTATIONS

LRP632 8

Section 632 Default. If the person whose privilege is at issue fails to appear at the judicial review per LRP632 6, the Judge shall nonetheless conduct the review, and either order or not order, the suspension, but need not conduct any hearing thereafter per LRP632 7.

ANNOTATIONS

LRP632 9

Section 632 Enforcement. A violation of any order of suspension of driving privilege shall be enforceable as the criminal offense of disobedience of a court order per L&O 341 and the LRCP.

ANNOTATIONS

**IV. SECTION 632, STAY OF PROCEEDING TO ENFORCE JUDGMENT OR ORDER
OF SUSPENSION OF DRIVING PRIVILEGE**

LRP632 10

Stay of Order Sustaining Suspension. Any final order, judgment, or sentence of suspension per L&O 632 -- whether made in the form of a minute order or not -- is immediately effective, unless the Court orders otherwise, and may be made per LRCP 17 (b) in open court, and if so made, and shall be deemed denied, unless granted at the hearing in which made, unless the moving party agrees otherwise, as any other motion for stay of proceedings.

ANNOTATIONS

LRCP 17 (Stay); TRCP 62 (Stay by Motion); LRCP 18 (Motion to Reconsider)