

**LEGISLATIVE ORDER OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Amending Legislative Order No. 99-029, "Adopting Rules of Procedure for Hearings on  
Final Determination of Eligibility for Enrollment or Adoption When the Enrollment  
Committee is Recommending Rejection of an Application")**

**LEGISLATIVE ORDER NO. 01-570**

1 **WHEREAS, Article VIII § 1 (B) of the Enrollment Ordinance provides that the manner of**  
2 **conducting final determination of eligibility for enrollment or adoption hearings shall**  
3 **be determined by the Council; and**

4 **WHEREAS, on January 19, 1999, the Legislative Council adopted Legislative Order No. 99-029,**  
5 **"Adopting Rules of Procedure for Hearings on Final Determination of Eligibility for**  
6 **Enrollment or Adoption When the Enrollment Committee Is Recommending Rejection**  
7 **of an Application" ("Rejection Hearing Rules"); and**

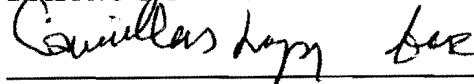
8 **WHEREAS, the Rules Committee, in consultation with the Enrollment Committee, has reviewed**  
9 **the Rejection Hearing Rules and finds they require revision; and**

10 **WHEREAS, the Rules Committee, after extensive consultation with the Enrollment Committee,**  
11 **recommends the adoption of the attached amendments to the Rejection Hearing**  
12 **Rules.**

13 **NOW, THEREFORE, BE IT ORDERED by the Tohono O'odham Legislative Council that the attached**  
14 **"Amended Rules of Procedure for Hearings on Final Determination of Eligibility for**  
15 **Enrollment or Adoption Where the Enrollment Committee Is Recommending That the**  
16 **Legislative Council Reject an Application" are hereby adopted and Legislative Order**  
17 **No. 99-029 is accordingly amended.**

18 **The foregoing Order was passed by the Tohono O'odham Legislative Council on the 09<sup>TH</sup> Day of**  
19 **NOVEMBER, 2001 at a meeting at which a quorum was present with a vote of 2,273.0 FOR; -0-**  
20 **AGAINST; -0- NOT VOTING; and 144.5 [07] ABSENT, pursuant to the powers vested in the Council by**  
21 **Section 1 (a) and (h) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the**  
22 **Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**  
23 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**  
24 **18, 1934 (48 Stat. 984).**

25  
26 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

27 

28  
29 **Rita A. Martinez, Legislative Chairwoman**

30  
31 **ATTEST:**

32 

33  
34 **Julianna Saraffio, Acting Legislative Secretary**

**Amended Rules of Procedure for Hearings on Final Determination of Eligibility for Enrollment or Adoption Where the Enrollment Committee Is Recommending That the Legislative Council Reject an Application**

1 **INTRODUCTION AND EFFECTIVE DATE:** Unless required otherwise by these rules, the Legislative  
2 **Rules of the Tohono O'odham Legislative Council are applicable and govern hearings regarding**  
3 **final determination of eligibility for enrollment or adoption where the Enrollment Committee**  
4 **is recommending rejection of an application for enrollment or adoption. These rules are**  
5 **effective upon adoption and such future hearings shall conform to these rules.**

6 (1) **Scheduling.** Hearing dates before the Legislative Council to review applications for  
7 **enrollment or adoption will be held on days and at times scheduled by the Chairman of**  
8 **the Council in consultation with the Enrollment Committee.**

9 (2) **Consolidated Hearings.** Upon the request of the Enrollment Committee or applicant(s),  
10 **the Presiding Officer may consolidate hearings regarding applications involving common**  
11 **issues of fact provided the requesting party has provided ten calendar days written notice**  
12 **prior to the hearing to the other party(ies) and there is no written objection is filed with**  
13 **the Presiding Officer by any party. Applicants in a consolidated hearing may designate a**  
14 **group spokesman.**

15 (3) **Site of Hearing.** The hearing shall be held in the chambers of the Legislative Council in  
16 **Sells, Arizona.**

17 (4) **Closed Hearing.** Because of the confidentiality concerns involved in applications for  
18 **enrollment or adoption, the hearing will be held in closed session. Only members of the**  
19 **Council, Council personnel or agents authorized by the Presiding Officer, applicant,**  
20 **witnesses, Marshall, Enrollment Committee members, Interpreter, Enrollment Office**  
21 **Staff and legal counsel will be permitted in chambers. Applicant<sup>1</sup>, his legal counsel and**  
22 **witnesses shall wait outside Council chambers until applicant's case is called. The**  
23 **Presiding Officer shall arrange a waiting room outside the Council chambers for the**  
24 **applicant.**

25 (5) **Presiding Officer.** The Chairman of the Council shall serve as Presiding Officer. The  
26 **Presiding Officer shall conduct the hearing, call for any votes of Council necessary in the**  
27 **course of the hearing and rule on any objections regarding evidence or procedural**

---

<sup>1</sup> Applicant shall refer to the applicant or his sponsor as defined in Article I § 12 of the Enrollment Ordinance.

1           **matters raised by the parties.**

2       **(6) Mandatory Attendance. All members of the Council shall attend the proceedings. A**  
3       **quorum of the Council members as defined in the Legislative Rules is required. The**  
4       **Presiding Officer shall notify the members of the Legislative Council of the scheduling of**  
5       **hearing dates thirty days prior to any hearing. All members of the Enrollment Committee**  
6       **and the Enrollment Office Director shall attend unless excused by the Presiding Officer.**

7       **(7) Presenting Officer. The Enrollment Committee shall designate from its membership a**  
8       **Presenting Officer for the hearing.**

9       **(8) Marshall of Hearing. Prior to the hearing, the Presiding Officer may appoint an officer of**  
10       **the Tohono O'odham Police Department as Marshall of the hearing. The Presiding Officer**  
11       **may appoint an additional officer as Marshall who shall supervise the applicant and**  
12       **witnesses outside of the chambers. The Presiding Officer shall be responsible for making**  
13       **appropriate scheduling arrangements in advance with the Police Department.**

14       **(9) (a) Clerk of Hearing. The Secretary of the Legislative Council shall serve as Clerk of the**  
15       **hearing and shall administer the oath to all witnesses, keep the minutes of the**  
16       **hearing and perform all other duties assigned by the Presiding Officer. The Presiding**  
17       **Officer may appoint an assistant Clerk if necessary.**

18       **(b) Interpreter. The Enrollment Committee and Enrollment Office Director shall**  
19       **provide interpretation services for the hearing at their expense. Trilingual, O'odham,**  
20       **Spanish and English, interpreters are preferred but bilingual O'odham/English and**  
21       **Spanish/English interpreters may be used. Any applicant desiring interpretation**  
22       **services from the Enrollment Committee or Enrollment Office Director shall make**  
23       **appropriate scheduling arrangements in advance, preferably ten working days prior**  
24       **to hearing. If the applicant declines to utilize the interpretation services provided**  
25       **by the Enrollment Committee or Enrollment Office Director, the applicant may**  
26       **provide such services at applicant's expense for applicant's presentation.**

27       **(10) Legal Counsel. The applicant shall have the right to be represented by an attorney or**  
28       **other representative at the hearing at the applicant's expense. An attorney from the**  
29       **Nation's Office of Attorney General shall be available to represent the Enrollment**

1           **Committee and Enrollment Office. The Enrollment Committee and Enrollment Office**  
2           **Director shall make appropriate scheduling arrangements in advance, preferably 30**  
3           **calendar days or more before any hearing, with the Nation's Attorney General. The**  
4           **Council may utilize its contract attorney or in house legal counsel to provide legal**  
5           **representation to the Council for the hearing at the request of the Presiding Officer.**

6           **(11) Oaths and Sound Recording of Witness Testimony. Before any witness gives testimony, the**  
7           **witness shall subscribe to the following oath as administered by the Clerk:**

8                       ***"Do you solemnly swear or affirm that the testimony you are about to give will be***  
9                       ***the truth, the whole truth, and nothing but the truth?"***

10           **The Clerk shall make a sound recording of all witness testimony as presented in 14 below,**  
11           **and such recording shall constitute a record of witness testimony.**

12           **(12) Rules of Evidence/Objections. All testimonial and documentary evidence must be**  
13           **relevant. Any other rules of evidence applicable in other judicial proceedings shall not**  
14           **apply. Decisions on limitation of testimony, how testimony is presented, the form and**  
15           **extent of questioning, and any procedural matters are solely within the discretion of the**  
16           **Presiding Officer.**

17           **(13) Appearance. On the day set for the hearing, the business of the Council shall be**  
18           **suspended except as otherwise ordered by the Council, and the Council shall convene the**  
19           **hearing. The Presiding Officer shall call the applicant, the Enrollment Committee**  
20           **members and Enrollment Office Director to appear before the Council, and the Clerk shall**  
21           **record their appearance. If the applicant fails to appear, the Clerk shall record the**  
22           **absence and the hearing shall be conducted as though the absent applicant is present.**

23           **(14) Procedure.**

24           **(a) The Presiding Officer shall ask whether the applicant will be presenting evidence that**  
25           **has not previously been submitted to the Enrollment Committee. If the applicant**  
26           **does intend to present evidence not previously submitted to the Enrollment**  
27           **Committee, the hearing shall be continued to a later date and the evidence and**  
28           **application shall be referred to the Enrollment Committee for further review.**

29           **(b) If the applicant will not be presenting evidence not previously submitted to the**

1 Enrollment Committee, the Presenting Officer may make an opening statement not  
2 to exceed five minutes. The applicant may then make an opening statement not to  
3 exceed five minutes. Thereafter, the Presenting Officer and applicant shall, in turn  
4 and as called by the Presiding Officer, may present its case in the following order:

5 (c) **Presenting Officer's presentation.** Before the hearing commences, the Presenting  
6 Officer shall file with the Clerk, an enrollment rejection packet per each applicant  
7 which shall consist of the following:

- 8 (i) a copy of the membership, adoption and/ or blood degree determination  
9 application (s);
- 10 (ii) a copy of applicant's birth certificate listing birth parents;
- 11 (iii) a copy of the applicant's family tree as described by the Enrollment  
12 Committee;
- 13 (iv) a listing of public records (or records applicant provided) relied upon by  
14 the Enrollment Committee such as but not limited to the 1937 base roll,  
15 current membership roll, BIA sugar and shoe ration records, BIA school  
16 records, IHS medical records and the 1961 Ethnic Research Study, copies  
17 of which the Presenting Officer shall make available for inspection by  
18 the Council or applicant<sup>2</sup> at the hearing;
- 19 (v) copy of membership record(s) of other tribes, if applicable;
- 20 (vi) a copy of *Final Notice of Rejection of Application for Enrollment and*  
21 *proof of service of such notice;*
- 22 (vii) resolution entitled *Rejection of membership or (and) adoption*  
23 *application of . . . .*, the contents of which shall conform to the  
24 requirements of Article VIII § 1 (C) of the Enrollment Ordinance; and
- 25 (viii) a statement that a copy of these rules is available upon request to the  
26 Enrollment Committee.

---

<sup>2</sup> Upon the request of the applicant and at anytime after applicant receives the notice referred to in "14 (c) (vi)", the Enrollment Office Director shall make these documents available to the applicant for inspection at the Enrollment Office.

1           **The Presenting Officer shall provide the applicant a copy of the packet 10 calendar days**  
2           **prior to hearing. The Presenting Officer shall provide the Council an oral summary of the**  
3           **Enrollment Committee's recommendation. Upon completion of the presentation, which**  
4           **shall not exceed thirty minutes per applicant, the Presenting Officer shall rest. Then the**  
5           **Presenting Officer shall be subject to questioning by the applicant and then Council**  
6           **members.**

7           **(d) Applicant's presentation. Before the hearing commences, the applicant shall file a**  
8           **list of all witnesses and copies of any evidence in support of the applicant's**  
9           **application for enrollment or adoption with the Clerk. The applicant shall also**  
10           **provide copies of the applicant's witness list and evidence in support of the**  
11           **applicant's application to each member of the Legislative Council and the Presenting**  
12           **Officer. The applicant may testify, call and question any witness identified on the**  
13           **applicant's witness list, and present evidence supporting the application for**  
14           **enrollment or adoption. If at any time during the hearing the applicant presents**  
15           **evidence not previously submitted to the Enrollment Committee, the hearing shall**  
16           **be continued to a later date and the evidence and application shall be referred to the**  
17           **Enrollment Committee for further review. Upon completion of applicant's**  
18           **presentation, which shall not exceed thirty minutes per applicant, the applicant shall**  
19           **rest. Then the applicant shall be subject to questioning by the Presenting Officer and**  
20           **then Council members.**

21           **(e) At any time, the Presenting Officer upon the majority vote of the Enrollment**  
22           **Committee may withdraw a recommendation to reject and change it to a**  
23           **recommendation to approve the application for Enrollment or Adoption.**

24           **(f) Closing arguments shall follow the presentation of all evidence and shall not exceed**  
25           **ten minutes per side. Closing arguments shall be presented by the Presenting Officer,**  
26           **and then by the applicant.**

27           **(g) At the conclusion of closing arguments, the Presiding Officer will excuse everyone**  
28           **from Council chambers except the Legislative Council and authorized Legislative**  
29           **personnel or agents. Once the chambers has been cleared, no one may be recalled**

1                   **to appear before Council.**

2       **(15) Scope of Cross Examination of Witnesses. Only one person per party may examine each**  
3                   **witness. The scope of the questioning referred to in 14 (c) and (d) above shall be limited**  
4                   **to the testimony given.**

5       **(16) Instructions. At any time, the Presiding Officer may request instructions from the Council**  
6                   **on procedural matters.**

7       **(17) Maintaining Order. The Presiding Officer shall have the power to preserve order and to**  
8                   **make all lawful orders that may be necessary for that purpose. Persons in attendance of**  
9                   **the proceedings shall, at the direction of the Presiding Officer, be ejected from the Council**  
10                  **chambers by the Marshall if they are under the influence of drugs or alcohol, or in anyway**  
11                  **interrupt, disrupt or interfere with the proceeding.**

12       **(18) Deliberation on Applicant's Eligibility.**

13                  **(a) Once the Council chambers has been cleared, discussion and deliberation by the**  
14                  **Council shall begin. Upon the conclusion of the discussion and deliberation, the**  
15                  **resolution to reject an application as defined in 14 (c) (vii) above shall be submitted**  
16                  **to a vote of the Council. The rejection resolution shall incorporate findings of fact as**  
17                  **required pursuant to Article VIII, Section 1(C) of the Enrollment Ordinance. The**  
18                  **Council shall not table the discussion and deliberation or the vote on any resolution**  
19                  **described in this Section unless the Council does so by unanimous vote.**

20                  **(b) If the rejection resolution passes and becomes effective, the applicant shall be**  
21                  **deemed ineligible for membership according to Article VIII of the Enrollment**  
22                  **Ordinance. An applicant whose application for enrollment or adoption has been**  
23                  **rejected by the Legislative Council may appeal such rejection to the Tohono O'odham**  
24                  **Judicial Court in accordance with Article VIII of the Enrollment Ordinance.**

25                  **(c) If the rejection resolution fails, a separate, written resolution to enroll or adopt the**  
26                  **applicant may then be submitted by any Legislative Representative. A vote on the**  
27                  **written resolution to enroll or adopt shall be taken. The resolution to enroll or adopt**  
28                  **shall make findings of fact supporting the applicant's enrollment eligibility pursuant**  
29                  **to Article VIII, Section 1(C) of the Enrollment Ordinance and Article II of the**

1                   **Constitution of the Tohono O'odham Nation. If the written resolution to enroll or**  
2                   **adopt passes and becomes effective, the applicant shall be enrolled or adopted**  
3                   **pursuant to the criteria identified in the resolution.**

4                   **(d) If the resolution to enroll or adopt fails or does not become effective, if no resolution**  
5                   **to enroll or adopt is submitted, or if the resolution to enroll or adopt is declared**  
6                   **dead, the application shall be deemed rejected and the rejection shall be the**  
7                   **Legislative Council's final determination. The applicant may then appeal the final**  
8                   **determination to the Tohono O'odham Judicial Court in accordance with Article VIII**  
9                   **of the Enrollment Ordinance.**

10                  **(e) Upon expiration of the time for filing an appeal pursuant to subsection (b) or (d) of**  
11                  **this Section, the applicant may reapply for membership provided that a new**  
12                  **application and additional evidence of eligibility which has not previously been**  
13                  **presented for consideration are filed with the Enrollment Committee. The applicant**  
14                  **shall have the burden of providing such additional evidence.**

15                  **(f) After the Legislative Council makes its final determination, all individuals permitted**  
16                  **in chambers pursuant to Section 4 shall be permitted to re-enter the chambers and**  
17                  **the Council's decision shall be announced.**

18                  **(19) Upon conclusion of the hearing, each Council member shall seal each enrollment**  
19                  **rejection packet as described in 14 (c) ( i - vii) above and return it to the Clerk who shall**  
20                  **verify with the Presiding Officer that all packets have been collected and accounted for.**  
21                  **The Clerk shall return each enrollment rejection packet to the Presenting Officer. The**  
22                  **Presenting Officer shall preserve at least one copy of each enrollment packet and file it**  
23                  **with the Enrollment Office Director. In the event an applicant files an appeal of a final**  
24                  **determination under Article VIII § 3 of the Enrollment Ordinance, the Enrollment Office**  
25                  **Director shall provide a copy of the enrollment rejection packet to the Chairman of the**  
26                  **Council upon request.**

27  
28  
29



**ACTION:** AMENDING LEGISLATIVE ORDER NO. 99-029, "ADOPTING RULES OF PROCEDURE FOR HEARINGS ON FINAL DETERMINATION OF ELIGIBILITY FOR ENROLLMENT OR ADOPTION WHEN THE ENROLLMENT COMMITTEE IS RECOMMENDING REJECTION OF AN APPLICATION"

**MOVED:** COUNCILMAN DENNIS JOSE

**SECOND:** COUNCILWOMAN SHIRLEY MOLINA

**DATE:** NOVEMBER 09, 2001

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
<b>BABOQUIVARI</b> 317.7	1. FRANCES MIGUEL ( )	158.85	X			
	2. FRANCES G. ANTONE (Lucilda Norris-Valenzuela)	158.85	X			X
<b>CHUKUT KUK</b> 248.1	1. KENNETH WILLIAMS (Juanita Homer)	124.05	X			
	2. DAVID GARCIA (Mary Audrey Juan)	124.05	X			X
<b>GU ACHI</b> 230.7	1. CAMILLUS LOPEZ ( )	115.35	X			
	2. ALEX J. RAMON (Jerome Joaquin)	115.35	X			X
<b>GU VO</b> 188.3	1. FERN SALCIDO ( )	94.15	X			X
	2. EMILIO LEWIS (Michael Flores)	94.15	X			
<b>HICKIWAN</b> 167.3	1. SHIRLEY MOLINA ( )	83.65	X			
	2. SANDRA ORTEGA ( )	83.65	X			
<b>PISINEMO</b> 174.7	1. BARBARA SALVICIO (Alex Antone)	87.35	X			
	2. PATRICIA CRUZ (Johnson Jose)	87.35	X			X
<b>SAN LUCY</b> 160.7	1. ALBERT MANUEL, JR. (John W. Lawson, Sr.)	80.35	X			
	2. GLORIA RAMIREZ ** ( )	80.35	X			
<b>SAN XAVIER</b> 184.7	1. TONY BURRELL ( )	92.35	X			
	2. DENNIS RAMON ( )	92.35	X			
<b>SCHUK TOAK</b> 144.5	1. MARY FLORES ( )	72.25				X
	2. AMBROSE ENCINAS (Frances B. Conde(Francisco))	72.25				X
<b>SELLS</b> 416.1	1. DENNIS E. JOSE ( )	208.05	X			
	2. EVELYN JUAN ( )	208.05	X			
<b>SIF OIDAK</b> 184.7	1. ISIDRO LOPEZ ( )	92.35	X			
	2. RITA MARTINEZ (Nicholas Jose)	92.35	X			
<b>TOTAL</b>		<b>2,417.5</b>	<b>2,273.0</b>	<b>-0-</b>	<b>-0-</b>	<b>144.5 [07]</b>

\*\*PASSED VOTES