

**LEGISLATIVE ORDER OF THE TOHONO O'ODHAM COUNCIL
(Setting Hearing and Adopting Special Rules of
Hearing and Procedure Upon Accusations for Removal)**

LEGISLATIVE ORDER NO. 94-157

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4 **WHEREAS, on November 15, 1993, Clarene Garcia, a member and**
5 **registered voter of the Tohono O'odham Nation, filed**
6 **two Accusations for Removal From Office ("Accusations")**
7 **with the Chairman of the Judiciary Committee against**
8 **Roy Montana and Anthony Flores, respectively the**
9 **Chairman and Vice Chairman of the Gu Vo District, in**
10 **accordance with the provisions of Section 2 of Article IX**
11 **of the Uniform Election Ordinance; and**

12
13 **WHEREAS, the Accusations against Anthony Flores were withdrawn**
14 **following his resignation from office; and**

15 **WHEREAS, on March 29 and 30, 1994, the Judiciary Committee held**
16 **hearings and received evidence on the Accusations**
17 **against Roy Montana and, by Resolution No. JUD-01-94,**
18 **did determine and certify that there is reasonable cause**
19 **to believe that Roy Montana committed the removable**
20 **offense of gross neglect of duty and misconduct as**
21 **charged in the Accusations; and**

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24 **WHEREAS, the Judiciary Committee did file the Resolution and the**
25 **Accusations with the Secretary of the Legislative Council**
26 **in accordance with the provisions of Section 2(D) of**
27 **Article IX of the Uniform Election Ordinance; and**
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WHEREAS, the Accusations against Roy Montana are identified in
allegations numbered Item One through Item Five; and

WHEREAS, the Uniform Election Ordinance provides for a hearing
on accusations for removal from office filed by the
Judiciary Committee; and

WHEREAS, it is necessary for the Legislative Council to set a hearing
on the Accusations and to adopt Special Rules of
Hearing & Procedure Upon Accusations For Removal
("Special Rules") in order to assure a fair and timely
hearing.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. A hearing on the Accusations against Roy Montana,
Chairman of the Gu Vo District (the "Accused"), will
be held on Tuesday, the 17th day of May, 1994 at
10:00 a.m., in the Council Chambers, at the Capitol
Building, Sells, Arizona.

2. The Secretary of the Legislative Council shall provide
copies of the Accusations against Mr. Montana,
Resolution No. JUD-01-94 of the Judiciary Committee,
and the Special Rules adopted by this Order, to be
provided to the Accused and Clarene Garcia (the

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"Accuser") forthwith and not less than ten days before the date set for the hearing.

3. The following Special Rules of Hearing & Procedure Upon Accusations For Removal are hereby adopted and shall govern the conduct of the hearing:

(1) Site of Hearing. The hearing on the Accusations shall be held in the Council Chambers of the Capitol Building in Sells, Arizona. All necessary preparations in the Council Chambers shall be made under the direction of the Chairperson of the Legislative Council.

(2) Presiding Officer. The Chairperson of the Legislative Council, or in his absence the Vice Chairperson, shall serve as the Presiding Officer at the hearing. The Presiding Officer shall conduct the hearing, call for any votes of Council necessary in the course of the hearing and rule on any objections regarding evidence or procedural matters raised by the parties.

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3 **(3) Marshall of Hearing. The Presiding Officer may at**
4 **any time designate and appoint a person or persons,**
5 **other than a member of the Legislative Council but**
6 **including an officer of the Tohono O'odham Police**
7 **Department, as Marshall for the hearing.**
8
9 **(4) Clerk of Hearing. The Secretary of the Legislative**
10 **Council shall serve as Clerk of the hearing and shall**
11 **administer the oath to all witnesses, keep the**
12 **minutes of the hearing and perform all other duties**
13 **assigned by the Presiding Officer. An Assistant Clerk**
14 **may also be appointed.**
15
16 **(5) Legal Representation. The Accused and Accuser shall**
17 **each have the right to be represented by an attorney**
18 **or other representative at their own cost. An**
19 **attorney from the Nation's Office of Attorney General**
20 **shall be available to advise the Presiding Officer, the**
21 **Clerk and the Legislative Council.**
22
23 **(6) List of Witnesses. On or before 10:00 a.m., Thursday,**
24 **May 12, 1994, the Accuser and Accused shall provide**
25 **to the other party and shall file with the Secretary of**
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3 the Legislative Council a list of all witnesses they
4 intend to call to testify on their behalf in support or
5 opposition of each of the separate allegations
6 contained in the Accusations, numbered Item One
7 through Item Five, identifying each witness with the
8 number assigned to each of the specific allegations
9 they are called to testify upon and providing an
10 estimate of the time required for each witness to
11 testify thereon. Except upon the vote of a majority of
12 the members of the Legislative Council present, no
13 witnesses, other than those appearing on the witness
14 list, shall be permitted to appear and testify at the
15 hearing on behalf of any of the parties with respect
16 to any of the allegations contained in the
17 Accusations.
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22 (7) **Documentary Evidence.** On or before 10:00 a.m.,
23 Thursday, May 12, 1994, the Accuser and Accused
24 shall provide to the other party and shall file with
25 the Secretary of the Legislative Council copies of all
26 documents they intend to produce at the hearing in
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support of or opposition to each of the separate allegations, numbered Item One through Item Five, identifying each document with the number assigned to each of the specific allegations in support or opposition of which it is produced. Except on the vote of a majority of the members of the Council present, no documents, other than those filed with the Secretary, shall be produced or accepted into evidence at the hearing on behalf of any of the parties with respect to any of the allegations contained in the Accusations.

(8) Oaths. Before any witness gives testimony, the witness shall subscribe to the following oath:

"Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?"

(9) Presence of Witnesses. Except during their testimony, all witnesses other than the Accused and

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3 **Accuser shall be sequestered in a room located**
4 **outside the Council Chambers and shall be**
5 **instructed not to discuss any matter related to the**
6 **proceedings until their testimony has been given,**
7 **they have been excused by the Presiding Officer and**
8 **the hearing has concluded.**

9
10 **(10) Rules of Evidence/Objections. All testimonial and**
11 **documentary evidence must be relevant to the issues**
12 **raised by the Accusations or the defenses to such**
13 **Accusation. Any other rules of evidence applicable**
14 **in judicial proceedings shall not apply. Decisions on**
15 **limitation of testimony, how the testimony is**
16 **presented, the form and extent of questioning, and**
17 **any procedural matters are solely within the**
18 **discretion of the Presiding Officer.**

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21 **(11) Appearance. On the day set for the hearing, the**
22 **business of the Council shall be suspended except as**
23 **otherwise ordered by the Council, and the Council**
24 **shall convene the hearing on removal. At the time**
25 **fixed in the notice for the appearance of the Accused**
26 **and on proof of notice, the Presiding Officer shall**
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read each Accusation and shall call the Accused to appear and plead either guilty or not guilty to each Accusation against him. If the Accused appears or any person appears for him, their appearance and plea shall be recorded by the Clerk. If the Accused pleads guilty or refuses to plead, the Presiding Officer shall enter a guilty verdict and decision removing the Accused from office. If the Accused appears and pleads not guilty, the Council shall immediately try the Accusations. If the Accused does not appear, either personally or by counsel, the failure to appear shall be recorded and the hearing shall be conducted as though the Accused was present and had entered a plea of not guilty.

(12) Sufficiency of Accusations. Any motion to challenge the sufficiency of an Accusation shall be submitted, in writing, at the time fixed in the notice for the appearance of the Accused. Arguments regarding the sufficiency of an Accusation shall not exceed fifteen minutes, unless extended by a vote of a majority of the members of the Council present.

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If the objection to the sufficiency of an accusation is not sustained in a roll call vote made by a majority of the members of the Council who heard the argument, the hearing shall proceed.

(13) Procedure. After preliminary motions are heard and decided, the Accuser or her counsel may make an opening statement not to exceed thirty minutes. The Accused or his counsel may then make an opening statement not to exceed thirty minutes. Thereafter, the Accuser and the Accused shall, in turn and as called by the Presiding Officer, present evidence in support of or opposition to the Accusations, in the following order:

(a) Subject to the opportunity for cross-examination, re-direct, re-cross and questions by Council members, testimony and documentary evidence presented on direct examination of the Accuser in support of each of the allegations contained in the Accusations, beginning with testimony and documentary evidence in support of the Accusations

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contained in the allegations numbered Item One and, upon completion of direct examination thereon, continuing, in sequence, with testimony and documentary evidence in support of the Accusations contained in the allegations numbered Two through Item Five. Except on the vote of a majority of the Council present, the Accuser shall not change the order of the testimony or documentary evidence presented. Upon completion of presentation of all direct testimony and documentary evidence in support of the accusations contained in the allegations numbered Five, the Accuser shall rest.

(b) Subject to the opportunity for cross-examination, re-direct, re-cross and questions by Council members, testimony and documentary evidence presented on direct examination in opposition to each of the allegations contained in the Accusations, presented by the Accused beginning with

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testimony and evidence in opposition to the accusations contained in the allegations numbered Item One and, upon completion of direct examination thereon, continuing, in sequence, with testimony and documentary evidence in opposition to the accusations contained in the allegations numbered Item Two through Item Five. Except on vote of a majority of the Council present, the Accused shall not change the order of the testimony or documentary evidence presented. Upon completion of presentation of all direct testimony and documentary evidence in opposition to the accusations contained in the allegations numbered Item Five the Accused shall rest.

Closing arguments shall follow the presentation of all evidence and shall not exceed thirty minutes. On motion of any of the parties before closing argument, the time for closing argument may be extended by a vote of a majority of the members of

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the Council present. Closing argument shall be first presented by the Accuser, and then by the Accused.

(14) Examination of Witnesses. All witnesses shall be examined by the party producing them or his/her counsel, and then cross-examined by the opposing party or his/her counsel. Only one attorney for each party may examine each witness. The parties shall limit their questions on cross-examination of opposing witnesses to testimony given on direct examination. The Presiding Officer shall permit re-direct examination and may permit re-cross examination. After completion of questioning by the parties, any member of the Council desiring to question the witness may do so.

(15) Record. A sound recording of the proceedings shall be made and kept by the Clerk, and a copy thereof shall be provided to each party as promptly as practical on requesting and payment of the cost of copying.

(16) Motions.
(a) All motions made by the parties or their counsel shall be addressed to the Presiding

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Officer, who will refer the question to a vote of a majority of the members of the Council present. In addition, if the Presiding Officer or any member of the Council requests, the Presiding Officer shall submit any other question (except determinations and questions which these Rules authorize the Presiding Officer to decide) to a vote of a majority of the members of the Council present.

(b) On motion of a member of the Council and a vote by a majority of the members of the Council present, or at the request of the Presiding Officer, the party shall commit the motion to writing.

(c) Except as otherwise provided, arguments by parties or their counsel on motions shall not exceed ten minutes, unless further extended by a majority vote of the members of the Council present.

(d) Roll call votes shall be taken if requested by a member of the Council.

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(17) **Attendance.** All members of the Council shall attend the proceedings unless excused for good cause by a vote of two-thirds of the Council present.

(18) **Instructions.** At any time, on his own motion or on request of a member of the Council, the Presiding Officer may request the Council for instructions on procedural matters.

(19) **Conference.** At any point during the proceedings and at the request of the Presiding Officer or a member of the Council, there shall be an immediate private conference of all members of the Council present and the Council attorney.

(20) **Contempt.** The Presiding Officer shall have the power to preserve order and to make all lawful orders that may be necessary. The Legislative Council may, by resolution, punish a person who violates such order for contempt.

(21) **Verdict and Judgment.**

(a) After closing arguments all members of the Council present at the hearing shall be required to vote on the question of whether the

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Accused is guilty of a removable offense as charged in the Accusations. A vote to sustain a guilty verdict means that the voting Council member has found the Accused committed a removable offense which is prescribed in Article IX, Section 2 of the Election Ordinance and alleged in the Accusations; a vote of not guilty means that the voting Council member has found the Accused did not commit any such removable offense.

(b) If a majority of the members of the Council present at the hearing vote to sustain a guilty verdict, a written decision of the Legislative Council shall be entered removing the Accused from office. The decision shall be filed with the official records of the Council. If the vote to sustain a guilty verdict is less than a majority of the Council members present, the Accusations shall be dismissed, the vote of the dismissal shall be entered upon the minutes of Council and the Accused shall continue in office for the remainder of his term.

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(c) A copy of the Council's decision shall be provided by the Secretary of the Council on the Accused and the Accuser within five business days following the date of the decision.

(d) The decision of the Legislative Council shall be final.

(22) Majority Vote. As used herein, references to a majority vote means a majority of the votes cast by members of the Council present in accordance with Article V, Section 2 of the Constitution of the Tohono O'odham Nation.

(23) Floor Privileges. Members of the Council, Council personnel, the parties and legal counsel will be permitted within the Council Chambers during the hearing. Subject to the seating capacity limitations of the Council Chambers, enrolled members of the Tohono O'odham Nation who have not been called as witnesses will, on a first come-first served basis, also be permitted within the Council Chambers during the hearing. No one else will be permitted within the Council Chambers during the hearing. Persons attending the proceedings will, at the direction of the

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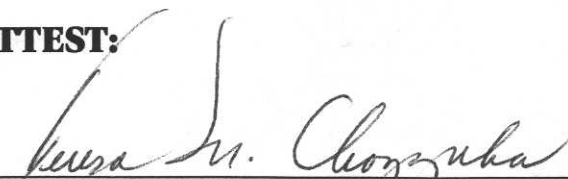
Presiding Officer, be ejected from the Council Chambers by the Marshall if they are under the influence of drugs or alcohol, or in any way interrupt, disrupt or interfere with the proceedings.

The foregoing Order was passed by the Tohono O'Odham Legislative Council on the 2ND. day of MAY, 1994 at a meeting at which a quorum was present with a vote of 1,320.0 FOR; -0- AGAINST; 62.0 NOT VOTING; and 381.0 [08] ABSENT, pursuant to the powers vested in the Council by Section 1(a) of Article VI and Section 1 and 3 of Article XIII of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Alex J. Ramon, Legislative Chairman

ATTEST:


Teresa M. Choyguha, Legislative Secretary

ACTION: SETTING HEARING AND ADOPTING SPECIAL RULES OF HEARING AND PROCEDURES UPON ACCUSATIONS FOR REMOVAL

MOVED: COUNCILWOMAN ALBERTA LOPEZ

SECOND: COUNCILMAN ANDREW PATRICIO

DATE: MAY 02, 1994

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 151.0	1. WILLARD JUAN, SR. (Delbert Thomas)	75.5				X
	2. MARY ANN ANTONE (Nellie Miguel)	75.5				X
SELLS 290.0	1. ANDREW M. PATRICIO (Lucille Encinas)	145.0	X			
	2. JOSEPH T. JOAQUIN (Allen W. Garcia, Jr.)	145.0	X			X
SCHUK TOAK 113.0	1. FRANCES FRANCISCO ()	56.5	X			X
	2. KENNETH J. ANTONE ()	56.5	X			
SAN XAVIER 135.0	1. EUGENE ENIS, SR. ()	67.5	X			
	2. DENNIS RAMON ()	67.5	X			
BABOQUIVARI 230.0	1. FRANCES MIGUEL ()	115.0				X
	2. EARL A. FRANCISCO ()	115.0				X
GU ACHI 180.0	1. WILLARD ANITA ()	90.0	X			
	2. ALEX J. RAMON (Marian Johnson)	90.0	X			
PISINEMO 128.0	1. CHESTER ANTONE (Fernando Valentine)	64.0	X			
	2. JOHNSON M. JOSE (Roseleen Antone)	64.0	X			
SAN LUCY 98.0	1. JOHN RENO ()	49.0	X			
	2. ALBERT MANUEL, JR. (Ernestine Marquez)	49.0	X			
GU VO 124.0	1. EMILIO LEWIS ()	62.0	X			
	2. MICHAEL FLORES (Fern Salcido)	62.0			X	
HICKIWAN 136.0	1. MANUEL OSEQUEDA, JR. ()	68.0	X			X
	2. LLOYD FRANCISCO ()	68.0	X			
CHUKUT KUK 178.0	1. ALBERTA M. LOPEZ (Berdella Jose)	89.0	X			
	2. KENNETH WILLIAMS ()	89.0	X			X
TOTAL		1,763.0	1,320.0	-0-	62.0	381.0 [08]

****PASSED VOTES**