

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

LEGISLATIVE ORDER NO. 97-051

WHEREAS, the Legislative Council is authorized to hold hearings to consider removal from office of any representative of the Tohono O'odham Council, elected officer or judge of the Tohono O'odham Nation upon accusation by any voter or voters of the Tohono O'odham Nation under the authority of the Constitution of the Tohono O'odham Nation, Article XIII, Section 1, and the Uniform Election Ordinance, Article IX, Section 2; and

WHEREAS, it is necessary to adopt Special Rules of Procedure Upon Accusation for Removal in order to assure a fair and timely hearing, to provide for due process of law for the Accused and the Accuser, and to promote the dignity and integrity of the government of the Tohono O'odham Nation; and

WHEREAS, these Special Rules of Procedure Upon Accusation for Removal have been approved by the Legislative Council.

NOW, THEREFORE, BE IT ORDERED THAT:

The following Special Rules of Procedure Upon Accusation for Removal are hereby adopted.

(1) Service of Accusation. Not less than ten (10) business

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 2 of 16

1
2
3
4
5
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days before the hearing on the Accusation before the Legislative Council the Secretary of the Council shall cause to be served on the Accused and the Accuser: (a) a copy of the Accusation;(b) the Resolution of the Judiciary Committee certifying that there is reasonable cause to believe that the accused has committed a removable offense; (c) a copy of these Rules of Procedure for Removal Hearings; and (d) a notice of the date and time of the hearing. The Accused and the Accuser shall be served in the manner prescribed in Article IX, Section 2(D) of the Election Ordinance.

(2) Site of Hearing. The hearing on the Accusation shall be held in the chambers of the Legislative Council in Sells, Arizona. All necessary preparations in the Council chambers shall be made under the direction of the Presiding Officer of the hearing.

(3) Presiding Officer. The Council shall appoint a Judge Pro Tempore of the Tohono O’odham Judicial Courts to serve as the Presiding Officer. The Presiding

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 3 of 16

1
2
3
4
5
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8
9
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11
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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.

(4) Attendance. All members of the Council shall attend the proceedings unless excused in accordance with the Legislative Rules of the Council.

(5) Marshall of Hearing. Prior to the hearing, the Presiding Officer shall appoint an officer of the Tohono O'odham Police Department as Marshall of the hearing and may appoint a Marshall to supervise the witnesses.

(6) Clerk of Hearing. The Secretary of the Legislative Council shall serve as Clerk of the hearing and shall administer the oath to all witnesses, keep the minutes of the hearing and perform all other duties assigned by the Presiding Officer. An Assistant Clerk may also be appointed.

(7) Record. A sound recording of the hearing shall be made and kept by the Clerk, and a copy thereof shall

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 4 of 16

1
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3
4
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8
9
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11
12
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be provided to each party as promptly as practical upon request and payment of the cost of copying.

(8) 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.

(9) Legal Representation. The Accused and Accuser shall each have the right to be represented by an attorney or other representative at their own expense. An attorney from the Nation's Office of Attorney General shall be available to advise the Presiding Officer, the Clerk and the Legislative Council.

(10) Majority Vote. As used herein, references to a majority vote mean a majority of the votes cast by members of the Council present, in accordance with

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 5 of 16

1
2
3
4
5
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8
9
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**Article V, Section 2 of the Constitution of the Tohono
O'odham Nation.**

**(11) List of Witnesses. Not less than five (5) days prior to
the hearing, the Accuser and Accused shall provide
to the other party and shall file with the Secretary of
the Legislative Council a list of all witnesses they
intend to call to testify on their behalf Except on a
majority vote of the members of the Legislative
Council present, no witnesses, other than those
appearing on the witness list, shall be permitted to
appear and testify at the hearing.**

**(12) Documentary Evidence. Not less than five (5) days
prior to the hearing, the Accuser and Accused shall
provide to the other party and shall file with the
Secretary of the Legislative Council copies of all
documents they intend to produce at the hearing.
Except on a majority vote of the members of the
Legislative Council present, no documents, other
than those provided to the other party and filed with
the Secretary, shall be produced or accepted into**

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LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 6 of 16

evidence at the hearing.

- (13) **Privilege Against Self-Incrimination.** The Presiding Officer shall read the following statement at the beginning of the hearing:

"The Accused shall have the right to invoke the privilege against self-incrimination and refuse to respond to any question posed during this proceeding which the Accused reasonably considers may compromise his or her right to protection against self-incrimination. If the Accused invokes the privilege, the Legislative Council will not draw any adverse inference from such action nor otherwise use the assertion against him or her. Like the rights of the Accuser, the Accused retains the right to cross-examine witnesses against him or her and present a defense through his or her own witnesses or documentary evidence."

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

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 7 of 16

1
2
3
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9
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11
12
13
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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."

(15) Presence of Witnesses. Except during their testimony, all witnesses other than the Accused and Accuser shall be sequestered in a room located outside the Council chambers and shall be instructed not to discuss any matter related to the proceedings until their testimony has been given, they have been excused by the Presiding Officer, and the hearing has concluded.

(16) Rules of Evidence/Objections. All testimonial and documentary evidence must be relevant to the issues raised by the Accusation or the defenses to such Accusation. Any other rules of evidence applicable in judicial proceedings shall not apply. Decisions on limitation of testimony, how the testimony is presented, the form and extent of questioning, and any procedural matters are solely within the

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 8 of 16

1
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3
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discretion of the Presiding Officer.

(17) Appearance. On the day set for the hearing, the business of the Council shall be suspended except as otherwise ordered by the Council, and the Council shall convene the hearing. The Presiding Officer shall read each Accusation and shall call the Accused to appear and plead either guilty or not guilty to each Accusation. If the Accused appears or any person appears for the Accused, their appearance and any plea entered on behalf of the Accused shall be recorded by the Clerk. If the Accused pleads guilty or refuses to plead, the Presiding Officer shall enter a guilty verdict and, upon majority vote of the members of the Legislative Council present, render a decision removing the Accused from office. If the Accused appears and pleads not guilty, the Council shall immediately try the Accusation. 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

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 9 of 16

1
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3
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present and had entered a plea of not guilty.

(18) Sufficiency of Accusation. 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 majority vote. If the objection to the sufficiency of an Accusation is not sustained by a majority vote of the members of the Legislative Council present, the hearing shall proceed.

(19) Procedure. After preliminary motions are heard and decided, the Accuser or the Accuser's counsel may make an opening statement not to exceed thirty minutes. The Accused or counsel for the Accused 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 in opposition to the Accusation in the following order:

LEGISLATIVE ORDER NO. 97-051
**(Adopting Special Rules of Procedure Upon Accusation
for Removal)**
Page 10 of 16

1
2
3
4
5
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8
9
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(a) Subject to the opportunity for cross-examination, re-direct, re-cross and questions by Council members, testimony and documentary evidence shall be presented on direct examination by the Accuser in support of each of the allegations contained in the Accusation. Upon completion of presentation of all direct testimony and documentary evidence in support of the Accusation, 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 shall be presented on direct examination in opposition to each of the allegations contained in the Accusation presented by the Accused. Upon completion of presentation of all direct testimony and documentary evidence in opposition to the Accusation contained in the allegations, the

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 11 of 16

1
2
3
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Accused shall rest.

(c) Closing arguments shall follow the presentation of all evidence and shall not exceed thirty minutes for each side. On motion of any of the parties before closing argument, the time for closing argument may be extended by a majority vote. Closing argument shall be first presented by the Accuser, and then by the Accused.

(20) 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

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 12 of 16

1
2
3
4
5
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7
8
9
10
11
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question the witness may do so.

(21) Motions.

(a) All motions made by the parties or their counsel shall be addressed to the Presiding Officer, who will refer the question to a vote of the Council. 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 the Council. Rulings on such motions or questions shall be made on majority vote of the members of the Legislative Council present.

(b) On motion of a member of the Council and a majority vote of the members of the Legislative 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

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 13 of 16

1
2
3
4
5
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parties or their counsel on motions shall not exceed ten minutes, unless further extended by a majority vote of the members of the Legislative Council present.

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

(22) Instructions. At any time, the Presiding Officer may request instructions from the Council on procedural matters.

(23) Conference. At any point during the proceedings, at the request of any member of the Council or on his own request, the Presiding Officer may call a private conference of all members of the Council and the Council attorney.

(24) Maintaining Order. The Presiding Officer shall have the power to preserve order and to make all lawful orders that may be necessary for that purpose. Persons attending the proceedings will, at the direction of the Presiding Officer, be ejected from the Council chambers by the Marshall if they are

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 14 of 16

1
2
3
4
5
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9
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under the influence of drugs or alcohol, or in any way interrupt, disrupt or interfere with the proceedings.

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

(b) If the Council sustains 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 Council enters a

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 15 of 16

1
2
3
4
5
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7
8
9
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not guilty verdict, the Accusation 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 or her term.

(c) A copy of the Council's decision shall be provided by the Secretary of the Council to the Accused and the Accuser within five (5) business days following the date of the decision.

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

The foregoing Order was passed by the Tohono O'Odham Legislative Council on the 6TH day of FEBRUARY, 1997 at a meeting at which a quorum was present with a vote of 1,249.0 FOR; 440.0 AGAINST; 187.0 NOT VOTING; and [07] ABSENT, pursuant to the powers vested in the Council by Section 1 (a) of Article VI and 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



Dennis Ramon, Legislative Chairman

LEGISLATIVE ORDER NO. 97-051
(Adopting Special Rules of Procedure Upon Accusation
for Removal)
Page 16 of 16

1
2
3
4
5
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7
8
9
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ATTEST:

Frances Antone

Frances Antone, Legislative Secretary

ACTION: ADOPTING SPECIAL RULES OF PROCEDURE UPON ACCUSATION FOR REMOVAL

MOVED: COUNCILWOMAN MARY ANN ANTONE **SECOND:** COUNCILWOMAN FERN SALCIDO

DATE: FEBRUARY 6, 1997

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 160.0	1. MARY ANN ANTONE (Nellie Miguel)	80.0	X			
	2. RITA MARTINEZ (Maxine Norris)	80.0	X			
SELLS 314.0	1. JOSEPH T. JOAQUIN (Allen W. Garcia, Jr.)	157.0	X			
	2. LUCILLE ENCINAS (Cynthia Chico)	157.0	X			X
SCHUK TOAK 117.0	1. KENNETH J. ANTONE ()	58.5	X			X
	2. JOSEPH JUAN ()	58.5	X			
SAN XAVIER 142.0	1. DENNIS RAMON ()	71.0	X			
	2. TONY BURRELL ()	71.0	X			
BABOQUIVARI 257.0	1. EDWARD KISTO (Idella Stanley)	128.5		X		X
	2. FRANCES MIGUEL ()	128.5		X		
GU ACHI 187.0	1. WILLARD ANITA (Louis Johnson)	93.5			X	
	2. ALEX J. RAMON (Marian Johnson)	93.5			X	X
PISINEMO 135.0	1. JOHNSON JOSE (Roseleen Antone)	67.5	X			
	2. BARBARA SALVICIO ()	67.5	X			
SAN LUCY 105.0	1. ALBERT MANUEL, JR. ()	52.5	X			
	2. JOHN RENO (Mary Hoffman)	52.5	X			X
GU VO 134.0	1. GLORIA MONTANA ()	67.0	X			X
	2. FERN SALCIDO (Larry Montana)	67.0	X			
HICKIWAN 142.0	1. LLOYD FRANCISCO ()	71.0	X			
	2. ALEX JOSE ()	71.0	X			
CHUKUT KUK 183.0	1. KENNETH WILLIAMS ()	91.5		X		X
	2. DAVID GARCIA (Marvin Thomas)	91.5		X		
TOTAL		1876.0	1,249.0	440.0	187.0	[07]

****PASSED VOTES**