

**LEGISLATIVE ORDER OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(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. 99-029

1 **WHEREAS, the Legislative Council adopted "Rules of Hearing and Procedure for**
2 **Hearings on Enrollment and Adoption Applications" by Resolution No. 214-**
3 **84; and**

4 **WHEREAS, the Rules Committee in consultation with the Enrollment Committee has**
5 **reviewed the Rules adopted under Resolution No. 214-84 and finds such**
6 **Rules require revision; and**

7 **WHEREAS, Article VIII § 1 (B) of the Enrollment Ordinance provides that the manner**
8 **of conducting final determination of Eligibility for Enrollment or Adoption**
9 **shall be determined by the Council; and**

10 **WHEREAS, upon the recommendation of the Rules Committee, the Legislative Council**
11 **desires that by adoption of these Rules, any and all prior resolutions or**
12 **legislative orders concerning the matter are rescinded, such as but not**
13 **limited to Resolution No. 214-84.**

14 **NOW, THEREFORE, BE IT ORDERED BY THE TOHONO O'ODHAM LEGISLATIVE**
15 **COUNCIL THAT:**

16 **The following Rules of Procedure For Hearings on Final Determination**
17 **of Eligibility for Enrollment or Adoption where the Enrollment Committee**
18 **is recommending that the Legislative Council reject an application**
19 **are hereby adopted and all prior resolutions or legislative orders**
20 **concerning this matter are rescinded, such as but not limited to Resolution**
21 **No. 214-84.**

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

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

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

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

20 **(4) Closed Hearing. Because of the confidentiality concerns involved in**
21 **applications for enrollment or adoption, the hearing will be held in closed**
22 **session. Only members of the Council, Council personnel or agents**
23 **authorized by the Presiding Officer, applicant, witnesses, Marshall,**
24 **Enrollment Committee members, Interpreter, Enrollment Office Staff and**

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1 **legal counsel will be permitted in chambers. Applicant¹, his legal counsel and**
2 **witnesses shall wait outside Council chambers until applicant's case is called.**
3 **The Presiding Officer shall arrange a waiting room outside the Council**
4 **chambers for the applicant.**

5 **(5) Presiding Officer. The Chairman of the Council shall serve as Presiding**
6 **Officer. The Presiding Officer shall conduct the hearing, call for any votes of**
7 **Council necessary in the course of the hearing and rule on any objections**
8 **regarding evidence or procedural matters raised by the parties.**

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

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

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

23 **(9) (a) Clerk of Hearing. The Secretary of the Legislative Council shall**

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

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1 **serve as Clerk of the hearing and shall administer the oath to all**
2 **witnesses, keep the minutes of the hearing and perform all other**
3 **duties assigned by the Presiding Officer. The Presiding Officer**
4 **may appoint an assistant Clerk if necessary.**

5 **(b) Interpreter. The Enrollment Committee and Enrollment Office**
6 **Director shall provide interpretation services for the hearing at**
7 **their expense. Trilingual, O'odham, Spanish and English,**
8 **interpreters are preferred but bilingual O'odham/English and**
9 **Spanish/English interpreters may be used. Any applicant desiring**
10 **interpretation services from the Enrollment Committee or**
11 **Enrollment Office Director shall make appropriate scheduling**
12 **arrangements in advance, preferably ten working days prior to**
13 **hearing. If the applicant declines to utilize the interpretation**
14 **services provided by the Enrollment Committee or Enrollment**
15 **Office Director, the applicant may provide such services at**
16 **applicant's expense for applicant's presentation.**

17 **(10) Legal Counsel. The applicant shall have the right to be represented by an**
18 **attorney or other representative at the hearing at the applicant's expense. An**
19 **attorney from the Nation's Office of Attorney General shall be available to**
20 **represent the Enrollment Committee and Enrollment Office. The Enrollment**
21 **Committee and Enrollment Office Director shall make appropriate scheduling**
22 **arrangements in advance, preferably 30 calendar days or more before any**
23 **hearing, with the Nation's Attorney General. The Council may utilize its**
24 **contract attorney or in house legal counsel to provide legal representation to**
25 **the Council for the hearing at the request of the Presiding Officer.**

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

4 *“Do you solemnly swear or affirm that the*
5 *testimony you are about to give will be the*
6 *truth, the whole truth, and nothing but the*
7 *truth?”*

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

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

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

23 **(14) Procedure. The Presenting Officer may make an opening statement not to**
24 **exceed five minutes. The applicant may then make an opening statement not**
25 **to exceed five minutes. Thereafter, the Presenting Officer and applicant shall,**

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1 **in turn and as called by the Presiding Officer, may present its case in the**
2 **following order:**

3 **(a) Presenting Officer's presentation. On or before the hearing**
4 **commences, the Presenting Officer shall file with the Clerk,**
5 **introduce into evidence and enter into the record an**
6 **enrollment rejection packet per each applicant which shall**
7 **consist of the following:**

8 **(i) a copy of the membership, adoption and/or blood**
9 **degree determination application(s);**

10 **(ii) a copy of applicant's birth certificate listing birth**
11 **parents;**

12 **(iii) a copy of the applicant's family tree as described**
13 **by the Enrollment Committee;**

14 **(iv) a listing of public records (or records applicant**
15 **provided) relied upon by the Enrollment**
16 **Committee such as but not limited to the 1937**
17 **base roll, current membership roll, BIA sugar**
18 **and shoe ration records, BIA school records, IHS**
19 **medical records and the 1961 Ethnic Research**
20 **Study, copies of which the Presenting Officer**
21 **shall make available for inspection by the**
22 **Council or applicant² at the hearing;**

23 **(v) copy of membership record(s) of other tribes, if**

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

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1 applicable;

2 (vi) a copy of *Final Notice of Rejection of Application*
3 *for Enrollment* and proof of service of such
4 notice;

5 (vii) resolution entitled *Rejection of membership or*
6 *(and) adoption application of . . .*, the contents
7 of which shall conform to the requirements of
8 Article VIII § 1 (C) of the Enrollment Ordinance;
9 and

10 (viii) a statement that a copy of these rules is
11 available upon request to the Enrollment
12 Committee.

13 The Presenting Officer shall provide the applicant a copy of the packet 10
14 calendar days prior to hearing. The Presenting Officer shall provide the
15 Council an oral summary of its recommendation. Upon completion of the
16 presentation which shall not exceed thirty minutes per applicant, the
17 Presenting Officer shall rest. Then the Presenting Officer shall be subject to
18 questioning by the applicant and then Council members.

19 (b) Applicant's presentation. The applicant may file with the Clerk,
20 introduce into evidence and enter into the record testimony and
21 documentary evidence in support of the applicant's application
22 for Enrollment or Adoption. The applicant shall provide copies of
23 such documents to each member of Legislative Council and the
24 Presenting Officer. Upon completion of applicant's presentation
25 which shall not exceed thirty minutes per applicant, the applicant

1 shall rest. Then the applicant shall be subject to questioning by
2 the Presenting Officer and then Council members.

3 (c) At any time, the Presenting Officer upon the majority vote of the
4 Enrollment Committee may withdraw a recommendation to
5 reject and change it to a recommendation to approve the
6 application for Enrollment or Adoption.

7 (d) Closing arguments shall follow the presentation of all evidence
8 and shall not exceed ten minutes per side. Closing arguments
9 shall be presented by the Presenting Officer, and then by the
10 applicant.

11 (e) At the conclusion of closing arguments, the Presiding Officer will
12 excuse everyone from Council chambers except the Legislative
13 Council and authorized Legislative personnel or agents. Once the
14 chambers has been cleared, no one may be recalled to appear
15 before Council, and all motions shall be made before the
16 deliberation process begins.

17 (15) Scope of Cross Examination of Witnesses. Only one person per party may
18 examine each witness. The scope of the questioning referred to in 14 (a) and
19 (b) above shall be limited to the testimony given.

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

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

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1 they are under the influence of drugs or alcohol, or in any way interrupt,
2 disrupt or interfere with the proceeding.

3 **(18) Deliberation on Applicant's Eligibility.** Once the Council chambers has been
4 cleared, discussion and deliberation by the Council shall begin. Upon the
5 conclusion of the discussion and deliberation, the resolution to reject an
6 application as defined in 14 (a) (vii) above will be submitted to a vote of the
7 Council without the requirement of a motion or second. If the resolution
8 passes, the applicant will be deemed ineligible for membership according to
9 Article VIII of the Enrollment Ordinance. If the resolution fails, the applicant
10 will be deemed eligible for membership according to Article VIII of the
11 Enrollment Ordinance. The Council shall not table the consideration and
12 vote on the resolution unless the Council does so by unanimous vote.

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

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The foregoing Order was passed by the Tohono O'odham Legislative Council on the 19TH day of JANUARY, 1999 at a meeting at which a quorum was present with a vote of 1,737.0 FOR; -0- AGAINST; -0- NOT VOTING; and 190.0 [09] ABSENT, pursuant to the powers vested in the Council by Section 1(a) & (h) of Article VI 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

ATTEST:



Julianna Saraficio, Acting Legislative Secretary

ACTION: 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: COUNCILWOMAN EVELYN JUAN

SECOND: COUNCILMAN JOSEPH JUAN

DATE: JANUARY 19, 1999

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
CHUKUT KUK 189.0	1. DAVID GARCIA (Marvin Thomas) 2. KENNETH WILLIAMS (Arnold F. Smith Sr.)	94.5 94.5	X X			X
HICKIWAN 146.0	1. ALEX JOSE () 2. LLOYD FRANCISCO (Susan Sam)	73.0 73.0	X X			X
GU VO 142.0	1. FERN SALCIDO (Larry Montana) 2. GLORIA MONTANA (Phillip Antone)	71.0 71.0	X X			X
SAN LUCY 114.0	1. JOHN RENO (Mary Hoffman) 2. ALBERT MANUEL, JR. (Jana Montana)	57.0 57.0	X X			X
PISINEMO 139.0	1. BARBARA SALVICIO () 2. JOHNSON JOSE ()	69.5 69.5	X X			
GU ACHI 190.0	1. LOUIS JOHNSON () 2. ALEX J. RAMON ()	95.0 95.0				X X
BABOQUIVARI 258.0	1. FRANCES MIGUEL () 2. FRANCES G. ANTONE (Edward N. Kisto)	129.0 129.0	X X			X
SAN XAVIER 146.0	1. TONY BURRELL () 2. DENNIS RAMON ()	73.0 73.0	X X			
SCHUK TOAK 120.0	1. JOSEPH JUAN () 2. AMBROSE ENCINAS ()	60.0 60.0	X X			X
SELLS 322.0	1. DENNIS E. JOSE () 2. EVELYN JUAN ()	161.0 161.0	X X			X
SIF Oidak 161.0	1. RITA MARTINEZ (Maxine Norris) 2. MARY ANN ANTONE (Darlene Andrew)	80.5 80.5	X X			
TOTAL		1,927.0	1,737.0	-0-	-0-	190.0 [09]

****PASSED VOTES**