

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

LEGISLATIVE ORDER NO. 60-89

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3 WHEREAS, on January 5, 1989, Tony Felix, a member and registered  
4 voter of the Tohono O'odham Nation, filed two  
5 Accusations for Removal From Office ("Accusations")  
6 with the Chairman of the Judiciary Committee against  
7 Enos Francisco, Jr. and Angelo Joaquin, respectively the  
8 Chairman and Vice Chairman of the Tohono O'odham Nation,  
9 in accordance with the provisions of section 2 of  
10 Article IX of the Uniform Election Ordinance; and

11 WHEREAS, the Judiciary Committee has held consolidated hearings  
12 and taken evidence upon the Accusations and, by  
13 Resolution No. JC-09-89, did determine and certify that  
14 there is reasonable cause to believe that Enos  
15 Francisco, Jr. and Angelo Joaquin, respectively the  
16 Chairman and Vice Chairman of the Tohono O'odham Nation,  
17 have committed removable offenses as charged in the  
18 Accusations; and

19 WHEREAS, the Judiciary Committee did file the resolution and the  
20 Accusations with the Secretary of the Legislative  
21 Council in accordance with the provisions of section  
22 2(D) of Article IX of the Uniform Election Ordinance;  
23 and

24 WHEREAS, each Accusation makes eight identical allegations,  
25 lettered "A" through "H", against each of the Accused;  
26 and

27 WHEREAS, the Uniform Election Ordinance and the current Rules of  
28 Hearing & Procedure Upon Accusations For Removal

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("Rules") of the Tohono O'odham Council provide for a timely trial of 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 an efficient and timely trial of the Accusations.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. A consolidated trial of the Accusations against both Enos Francisco, Jr. and Angelo Joaquin, Chairman and Vice Chairman, respectively, of the Tohono O'odham Nation, will be held on Monday, the 13th day of March, 1989, at 10:00 a.m., in the Council chambers, at the Capitol Building, Sells, Arizona.
2. The Secretary of the Legislative Council shall cause a copy of each Accusation, of Resolution No. JC-09-89 of the Judiciary Committee, of the Rules of Hearing & Procedure, and of this Legislative Order, to be served on both Accused forthwith and not less than ten days before date set for the trial.
3. The following Special Rules of Hearing & Procedure Upon Accusations For Removal are hereby adopted and shall govern the proceedings before the Court of Removal:

(1) List of Witnesses. On or before 10:00 a.m., Tuesday, March 7, 1989, the Accuser and Accused

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shall serve on the opposing parties and shall file with the Secretary of the Legislative Council a list of all witnesses they intend to call to testify on their behalf in support or opposition of each of the separate allegations contained in the Accusations, lettered "A" through "H", identifying each witness with the letter assigned to each of the specific allegations they are called to testify upon and providing an estimate of the time required for each witness to testify thereon. Except upon the vote of a majority of the members of the Council present, no witnesses, other than those appearing on the witness list, shall be permitted to appear and testify at the trial on behalf of any of the parties with respect to any of the allegations contained in the Accusations.

(2) Documentary Evidence. On or before 10:00 a.m., Tuesday, March 7, 1989, the Accuser and Accused shall serve on the opposing parties and shall file with the Secretary of the Legislative Council copies of all documents they intend to produce at trial in support or opposition of each of the separate allegations, lettered "A" through "H", identifying each document with the letter 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

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present, no documents, other than those filed with the Secretary, shall be produced or accepted into evidence at the trial on behalf of any of the parties with respect to any of the allegations contained in the Accusations.

(3) Site of Hearing. Trial of 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.

(4) Marshall of Court. The Chairperson of the Legislative Council may at any time designate and appoint a person or persons, other than a member of the Council but including an officer of the Tohono O'odham Police Department, as Marshall of the Court of Removal.

(5) Clerk of Court. The Secretary of the Legislative Council shall serve as Clerk of the Court of Removal and shall administer the oath of all witnesses, keep the Minutes of the trial and perform all other duties usually performed by the clerk of a judicial court. An Assistant Clerk may also be appointed.

(6) Oaths. Before any witness shall give testimony, the Clerk of the Court of Removal shall administer to such witness the following oath or affirmation:

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

6 (7) Appearance. On the day appointed for the trial on  
7 the Accusations, the legislative business of the  
8 Council shall be suspended except as otherwise  
9 ordered by the Council, and the Council shall  
10 convene as a Court of Removal. At the time fixed  
11 in the notice for the appearance of the Accused and  
12 on proof of service the Chairperson shall read each  
13 Accusation, starting with the Accusation against  
14 the Chairman of the Nation, and shall call each  
15 Accused to appear and plead either guilty or not  
16 guilty to the Accusation against him. If the  
17 Accused appear or any person appears for them,  
18 their appearance and plea shall be recorded by the  
19 Clerk. If the Accused, or either of them, plead  
20 guilty or refuse to plead, the Court of Removal  
21 shall, by a vote of a majority of the members of  
22 the Council present, render judgment of conviction  
23 against them or him. If the Accused, or either of  
24 them, appear and plead not guilty, the Court of  
25 Removal shall immediately try the Accusations. If  
26 the Accused, or either of them, do not appear,  
27 either personally or by counsel, the same shall be  
28 recorded and the trial conducted as though the  
Accused, or either of them, were present and had

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entered a plea of not guilty.

(8) 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 on 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. 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 trial shall proceed.

(9) Procedure. After preliminary motions are heard and decided, the Accuser or his counsel may make an opening statement not to exceed thirty minutes. The Accused Chairman, followed by the Vice Chairman, of the Nation or their counsel may then make opening statements not to exceed thirty minutes each. Thereafter, the Accuser and the Accused shall, in turn and as called by the Chairperson of the Council, present evidence in support or opposition of the Accusations, in the following order:

(a) Testimony and evidence presented on direct examination of the Accuser in support of each of the allegations contained in the Accusations, beginning with testimony and

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evidence in support of the accusations contained in the allegations lettered "A" and, upon completion of direct examination thereon, continuing, in sequence, with testimony and evidence in support of the accusations contained in the allegations letters "B" through "H". Except on the vote of a majority of the Council present, the Accuser shall not change the order of the testimony or evidence presented. Upon completion of presentation of all direct testimony and evidence in support of the accusations contained in the allegations lettered "H", the Accuser shall rest. Thereupon, the Court shall hear:

- (b) Testimony and evidence presented on direct examination in opposition to each of the allegations contained in the Accusations, presented by each Accused in turn, starting with the Chairman and followed by the Vice Chairman of the Nation, beginning with testimony and evidence in opposition to the accusations contained in the allegations lettered "A" and, upon completion of direct examination thereon, continuing, in sequence, with testimony and evidence in opposition to the accusations contained in the allegations lettered "B" through "H". The Chairman shall

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2 have the first opportunity to present  
3 testimony and evidence on direct examination  
4 in opposition to each of the separately  
5 lettered allegations, and the Vice Chairman  
6 shall then have an opportunity to present  
7 testimony and evidence on direct examination  
8 in opposition the same lettered allegations.  
9 Except on vote of a majority of the Council  
10 present, the Accused shall not change the  
11 order of the testimony or evidence presented.  
12 Upon completion of presentation of all direct  
13 testimony and evidence in opposition to the  
14 accusations contained in the allegations  
15 lettered "H", both Accused in turn shall rest.

16 Closing arguments shall follow the presentation of  
17 all evidence to the Court of Removal and shall not  
18 exceed thirty minutes. On motion of any of the  
19 parties before closing argument, the time for  
20 closing argument may be extended by a vote of a  
21 majority of the members of the Council present.  
22 The argument shall be opened and closed by or on  
23 behalf of the Accuser.

24 (10) Witnesses. All witnesses shall be examined by the  
25 party producing them or his counsel, and then  
26 cross-examined by opposing parties or their  
27 counsel, in turn and as directed by the Chairperson  
28 of the Council. Only one attorney for each party



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may examine each witness. The parties shall limit their questions on cross-examination of opposing witnesses to testimony given on direct examination. The Chairperson of the Council 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. If objection is raised to a question asked by a member of the Council, by a party or a member of the Council, the member of the Council desiring to question the witness may request a vote on the objection by a majority of the members of the Council present. Any member of the Council may request a conference of all members of the Council before the vote is taken.

(11) Subpoenas. Subpoenas shall be issued by the Chairperson of the Legislative Council for witnesses and documents on application of the parties. The Chairperson may issue subpoenas in blank. The subpoena may be served and returned in like manner as civil process. If a witness neglects or refuses to obey a legislative subpoena, or, appearing, neglects or refuses to testify, the Legislative Council may, by resolution, commit or punish him for contempt.

(12) Evidence. The Council shall consider all relevant

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evidence, but the relevancy, weight and sufficiency of the evidence will be determined by the Council. All objections to the relevancy of evidence made by the parties or their counsel shall be addressed to the Chairperson of the Council, who will refer the question to a vote of a majority of the members of the Council present. In addition, if the Chairperson or any member of the Council objects to the relevancy of evidence, the Chairperson of the Council shall submit the question to be decided by a vote of a majority of the members of the Council present. Roll call votes shall be taken if requested by a member of the Council.

(13) Record. A sound recording of the proceedings shall be made and kept by the Clerk of the Court of Removal, and a copy of thereof shall be provided to the requesting parties, at cost and as promptly as practical.

(14) Motions.  
(a) All objections, motions, pleas and procedural questions made by the parties or their counsel shall be addressed to the Chairperson of the Council, who will refer the question to a vote of a majority of the members of the Council present. In addition, if the Chairperson or any member of the Council requests, the Chairperson shall submit the question to be decided by a vote of a majority

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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 Chairperson, the party shall commit the motion to writing.

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

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

(15) Eligibility. Every member of the Council, except the Accuser, is eligible to participate in the Court of Removal and is not subject to disqualification.

(16) Members as Witnesses. The parties may call members of the Council as witnesses, but may not call personnel or counsel of the Court of Recall as witnesses, nor subpoena the personal records of the members of the Council or of the personnel and counsel of the Court of Recall.

(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. Any member of the Council who is absent

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shall be provided an opportunity to review exhibits and sound tapes for the date or dates the member was absent.

(18) Instructions. At any time, on her own motion or on request of a member of the Council, the Chairperson of the Council may request the Council for instruction on procedural matters.

(19) Conference. At any point during the proceedings and at the request of the Chairperson 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 Chairperson of the Council shall have the power to compel attendance of witnesses, to enforce obedience by order of the Council, to preserve order, and to make all lawful orders that may be necessary. The Legislative Council may, by resolution, commit or 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 Accused are guilty of a removable offense as charged in the Accusations. The vote to sustain a guilty verdict shall be based on the preponderance of the evidence presented that the charges presented in the

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2 Accusations are true and that the same constitute a  
3 removable offense or offenses. The vote shall be  
4 taken as a roll call vote.

5 (b) If an Accused is acquitted of every offense  
6 charged in the Accusation filed against him, a  
7 judgment of acquittal shall be pronounced and  
8 entered in the Minutes of the Court of Removal, the  
9 Accusation shall be dismissed, and the Accused shall  
10 continue in office for the remainder of his term.

11 (c) If a majority of the members of the Council  
12 present at the hearing determines that an Accused is  
13 guilty of a removable offense as charged in the  
14 Accusations, the Court of Removal shall pronounce  
15 judgment of conviction and removal from office by  
16 judicial order entered into the Minutes of the Court  
17 of Removal. The judgment of conviction shall be  
18 final and shall provide that the Accused is removed  
19 from office.

20 (22) Floor Privileges

21 Members of the Council, personnel of the Court of  
22 Removal, the parties and counsel will be permitted  
23 within the Council Chambers during trial. Subject to  
24 the seating capacity limitations of the Council  
25 Chambers, registered voters of the Tohono O'Odham  
26 Nation who have not been called as witnesses will, on  
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2 a first come-first served basis, be also permitted  
3 within the Council Chambers during trial. No one  
4 else will be permitted within the Council Chambers  
5 during trial. Persons attending the proceedings  
6 will, at the direction of the Chairperson of the  
7 Council, be ejected from the Council Chambers by a  
8 Marshall of the Court of Removal if they are under  
9 the influence of drugs or alcohol, or in any way  
10 interrupt, disrupt or interfere with the proceedings.

11  
12 CERTIFICATION

13 The foregoing Legislative Order passed by the Tohono O'odham  
14 Council on the 17th. day of February, 1989 at a meeting at which  
15 a quorum was present with a vote of 1,640.0 for; -0- against;  
16 -0- not voting; and 02 absent, pursuant to the powers vested in  
17 the Council by Section 1 (a) of Article VI and Section 1 of  
18 Article XIII of the Constitution of the Tohono O'odham Nation,  
19 adopted by the Tohono O'odham Nation on January 18, 1986, and  
20 approved by the Acting Deputy Assistant Secretary - Indian  
21 Affairs (Operations) on March 6, 1986, pursuant to Section 16 of  
22 the Act of June 18, 1934 (48 Stat. 984).

23 TOHONO O'ODHAM LEGISLATIVE COUNCIL

24 Andrew M. Patricia  
25 Harriet Toro, Legislative Chairperson

26 ATTEST:

27 Lucinda Allen  
28 Lucinda Allen, Assistant Legislative Secretary

MOVED: Virgil Lewis

SUBJECT: Setting Hearing &

SECOND: Joseph Juan

Adopting Special Rules

DATE: February 17, 1989

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DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
CHUKUT KUK 169.0	1. Rosita Ruiz (Rosemary Lopez)	84.5	X			
	2. Harriet Toro ( )	84.5	X			
HICKIWAN 128.0	1. Lloyd Francisco (Eleanor Santos)	64.0	X			
	2. Henry Ramon (Billy Manuel)	64.0	X			X
GU VO 117.0	1. Cross Antone (Juan Joe Cipriano)	58.5	X			
	2. Virgil Lewis (Roy Montana)	58.5	X			
SAN LUCY 85.0	1. John Reno ( )	42.5	X			
	2. Max Jose (Dewey Ortega)	42.5	X			
PISINEMO 116.0	1. Edward Manuel (Alex Antone)	58.0	X			
	2. Johnson Jose ( )	58.0	X			
GU ACHI 158.0	1. Fernando Joaquin ( )	79.0	X			
	2. Percy Lopez ( )	79.0	X			
BABOQUIVARI 241.0	1. Joann Garcia (Frances Miguel)	120.5	X			
	2. Kenneth Chico, Sr. ( )	120.5	X			
SAN XAVIER 126.0	1. Tony Felix (Carmelita Mattias)	63.0	X			X
	2. Eugene Enis (Michael Rios)	63.0	X			
SCHUK TOAK 105.0	1. Joseph Juan (Frances Francisco)	52.5	X			
	2. Julia Carrillo (JoAnn Francisco)	52.5	X			
SELLS 257.0	1. Fred Stevens ( )	128.5	X			
	2. Andrew Patricio (Daniel Lopez)	128.5	X			
SIF OIDAK 138.0	1. Willard Juan, Sr. (Melissa Gregorio)	69.0	X			
	2. Nicholas Jose (Letitia Garcia)	69.0	X			
TOTAL		1,640.0	1,640.0	-0-	-0-	02