

TOHONO O'ODHAM CODE

TITLE 6 – COURTS

CHAPTER 4 – SUSPENSION OF JUDGES

Legislative History: 6 T.O.C. Chapter 4, "Suspension of Judges," was adopted by Resolution No. 12-267, which also repealed 6 T.O.C. Chapter 1, subsection 1103(D) Compensation, effective July 10, 2012.

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CHAPTER 4 – SUSPENSION OF JUDGES

Section 4101 Suspension from Office

- (A) There is no right to hold office as a Judicial Court judge.
- (B) A Judicial Court judge may be suspended from office for a period not to exceed 60 days in accordance with this chapter and any additional procedures adopted by the Legislative Judiciary Committee or the Legislative Council.
- (C) Suspension proceedings shall not be governed by civil or criminal court rules or procedures.

Section 4102 Grounds

- (A) A judge may be suspended for
 - (1) conduct prejudicial to administration of justice;
 - (2) conduct contrary to justice, honesty, modesty or good morals;
 - (3) gross neglect of duty, including failure to issue timely decisions, attend assigned hearings, or otherwise attend to judicial business;
 - (4) malfeasance in office;
 - (5) misconduct reflecting on the dignity and integrity of the Judicial Court;
 - (6) disciplinary action by a licensing agency or jurisdiction; or
 - (7) criminal conduct.
- (B) A judge shall not be suspended for making an erroneous decision, absent conclusive evidence that the wrong decision was made knowingly or in reckless disregard of the rights of the litigants.
- (C) A suspension may be based on acts or omissions occurring before or during the judge's term in office.

Section 4103 Suspension Statement

Proceedings under this Chapter shall be commenced by the filing with the chairperson of the Judiciary Committee a written, notarized statement stating the offense(s) charged against the accused judge in ordinary and concise language, identifying the relevant grounds provided in Section 4102, providing general supporting facts, and signed by the person or persons submitting the statement (“suspension statement”).

Section 4104 Reasonable Cause Proceeding

- (A) The Judiciary Committee may adopt reasonable cause hearing procedures to implement this section.
- (B) Reasonable cause proceedings shall be conducted in closed session and shall not be recorded or reported except as provided in this chapter.
- (C) Upon the filing of the suspension statement, the Judiciary Committee chairperson shall set a reasonable cause hearing before the Judiciary Committee within 15 business days and shall invite for examination the complainant(s) and the accused judge and such witnesses as the complainant(s) and the accused judge may request or as the Judiciary Committee may deem necessary. A majority of the Judiciary Committee may continue the hearing for good cause. The Judiciary Committee may invite the chief judge to appear as a witness.
- (D) If a majority of the members of the committee determines from the suspension statement, any affidavits filed, and any testimony or other evidence taken that there is reasonable cause to believe that the accused judge has committed an offense for which suspension is available as charged in the suspension statement, the committee shall file the suspension statement with the secretary of the Council, together with a copy of the committee's resolution supporting its determination.
- (E) If the committee determines from the suspension statement, any affidavits filed, and any testimony or other evidence taken that there is not reasonable cause to believe the accused judge has committed an offense for which suspension is available as charged in the suspension statement, the committee shall dismiss the suspension statement.
- (F) The committee's determination on each offense shall be recorded in a separate committee resolution and its determination shall be final.
- (G) If the suspension statement is dismissed, the committee shall provide the Legislative Council with an oral report of the reasonable cause proceedings in closed session and shall include a description of the suspension statement, the accused judge's response, the witnesses and evidence presented at the reasonable cause hearing, and the committee's determination on each offense alleged.

Section 4105 Suspension Proceedings

- (A) The Legislative Council may adopt procedures governing the suspension proceedings.
- (B) Suspension proceedings shall be conducted in open session unless a majority of the Council votes to proceed into closed session for any portion of the proceedings.
- (C) Upon the filing of the suspension statement and any Judiciary Committee resolutions as provided in this chapter, the secretary of the Council shall serve the accused judge with copies, and require by written notice of not less than ten days that the judge appear before the Council

and answer the suspension statement. The accused judge will be personally served or, if the judge cannot upon diligent inquiry be found, the accused judge may be served by verified electronic mail or certified mail with return receipt requested, or in another reasonable manner that is intended to provide notice. The accused judge may agree in writing to accept notices and other communications provided under this chapter by electronic mail or another form of communication.

(D) The accused judge shall appear at the time appointed in the notice and at least three working days prior to the hearing may object in writing to the sufficiency of the suspension statement or provide a written answer the suspension statement, unless the Council assigns another day for that purpose. If the accused judge does not appear, after notice has been provided, the Council may hear and determine the suspension statement in the judge's absence.

(E) If there is a written objection to the sufficiency of the suspension statement and the objection is not sustained by a majority vote of the members of the Council, the accused judge shall be directed to answer each offense in the suspension statement for which reasonable cause was found with a plea of responsible or not responsible.

(F) If there is an answer of not responsible, the not responsible plea shall be recorded in the Council minutes. If the accused judge refuses to plea or fails to appear after having been given notice of the hearing, a not responsible plea will be recording in the Council minutes.

(G) If there is an answer of responsible, the Council shall by majority vote suspend the judge from office for 60 days; provided that the Council may by a separate vote reduce the suspension to a shorter period of not less than ten days.

(H) The Council shall immediately try the suspension and the accused judge shall be given an opportunity to answer any and all offenses before the Council. No Council representative shall be disqualified from suspension proceedings, provided that a Council officer shall not preside over a suspension hearing if that officer is a complainant.

(I) If the accused judge is found responsible for any offense by a majority vote of the representatives of the Council present at the hearing, the accused judge shall be suspended from office for 60 days effective immediately upon the Council's vote; provided that the Council may by a separate vote reduce the suspension to a shorter period of not less than ten days. The Council's decision shall be final and its decision on each offense shall be recorded in a separate legislative action.

(J) A Council resolution suspending a judge shall be a public record and shall be published to any jurisdictions where the judge is admitted to practice or serves as a judge.

Section 4106 Continuance in Office

(A) Unless provided otherwise by law, an accused judge shall continue to perform the duties of the judge's office until suspended.

(B) During the term of a suspension, a suspended judge shall not exercise any powers of the Judicial Court and shall not be deemed to continue in office.

Section 4107 Removal

The suspension of a judge does not prevent the judge from being removed from office in a separate proceeding based upon the same conduct; provided that any removal will be conducted in accordance with the Nation's Constitution and laws. If a removal upon accusation is filed against the same judge while suspension proceedings are pending, the suspension proceedings shall be postponed until the removal is concluded.

Section 4108 Appeal

A suspended judge may within 30 days of the Legislative Council's judgment file a written appeal to the Judicial Court; provided that the judgment shall be upheld unless the suspension violated due process or another fundamental right guaranteed by the Nation's Constitution or Title II of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302. Trial de novo shall not be permitted, nor shall the record of the Council's proceedings be reviewed for alleged errors of fact or law or to determine the rules to be followed during Council proceedings.