



CA-08-006

Pascua Yaqui Tribe Court of Appeals

Herminia Frias, Plaintiff/Appellant

v.

Peter Yucupico, Vice-Chairman

and

Pascua Yaqui Tribal Council, Defendants/Appellees

ORDER

Petition for Reconsideration of an Opinion by the Pascua Yaqui Court of Appeals in CA-08-006, issued September 4, 2008.

Pilar M. Thomas, Esq., Lewis & Roca, LL.P, Phoenix, AZ, for the Plaintiff/Appellant.

Kathleen Carey, Esq., Law Offices of Kathleen Carey, Phoenix, AZ, for the Defendants/Appellees.

The Court has reviewed Appellant's Petition for Reconsideration of the Opinion issued September 4, 2008, affirming the Tribal Court's grant of Defendant's Motion to Dismiss, and finds the Opinion to have been correctly decided on all points.

The Court decided all issues in that case on their merits, applying tribal law; it examined the Trial Court's findings of fact for clear error and reviewed legal claims *de novo*.

The Court dismissed that complaint on the basis of Tribal sovereign immunity. While Plaintiff/Appellant alleged that Defendant/Appellant acted *ultra vires*, forfeiting sovereign immunity, she provided no evidence at Trial to substantiate these allegations; on Appeal, she offered instead the novel theory that she had no burden to produce evidence at all, and claimed that the Court was bound to accept the allegations as true, for having been merely alleged.

Appellant/Plaintiff/Petitioner's claim is not only obviously wrong, it is contradicted by the very case she cites in its support, *Burlington Northern & Santa Fe Railway Company v. Vaughan*, 509 F.3d 1085 (9th Cir.).

The law in civil cases is well settled; the party petitioning the court has the burden, *ceteris paribus*, to demonstrate, by a preponderance of the evidence, the truth of any allegations. (see *Schaffer v. Weast*, 126 S. Ct. 528 (2005), "plaintiffs bear the burden of persuasion regarding the essential aspects of their claims") In the instant case, Appellant/Plaintiff/Petitioner offered no evidence at all to support her claims, failing to meet her evidentiary burden by default, and claimed no exception, statutory or otherwise, to justify, or explain, this failure.

As Appellant/Plaintiff/Petitioner failed to meet her evidentiary burden at trial, this Court will not revisit her claims on appeal.

Having disposed of this question, Appellant/Plaintiff/Petitioner's Petitions offers no new legal argument and cites no additional authority which could compel this Court to review its findings and overturn or amend its Opinion.

Accordingly, and for the reasons set forth, the Petition for Reconsideration is denied and this case is hereby closed.

So ORDERED this 26th day of January, 2010.



James C. Hopkins, Chief Justice

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IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

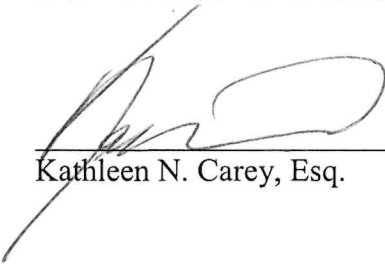
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|----------------------------------|---|-----------------------------------|
| Herminia Frias, Chairwoman, |) | Case No.: CV08-006 |
| |) | |
| Appellant - Plaintiff, |) | MOTION TO DISQUALIFY PILAR |
| vs. |) | THOMAS AS COUNSEL FOR |
| |) | APPELLANT – PLAINTIFF |
| Peter Yucupicio, Vice Chairman, |) | |
| and Pascua Yaqui Tribal Council, |) | ORAL ARGUMENT REQUESTED |
| |) | |
| Defendants. |) | |
| |) | |

COMES NOW Defendants Chairman Peter Yucupicio and the Pascua Yaqui Tribal Council, through undersigned counsel and pursuant to 3 PYT R.Civ. P. 14 and 3 PYTC § 1-4-40, and respectfully moves this Court to enter an order disqualifying Ms. Pilar Thomas as counsel for Plaintiff Frias.

The grounds for this motion are set forth in the following Memorandum of Points and Authorities.

Respectfully submitted this 3rd day of June, 2008.

LAW OFFICE OF KATHLEEN N. CAREY


Kathleen N. Carey, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS.

On April 18, 2005, counsel for Plaintiff Frias, Pilar Thomas, was hired by the Office of the Attorney General to serve the Pascua Yaqui Tribe as a Deputy Attorney General. As a deputy attorney general, Ms. Thomas was responsible for representing and providing legal advice to the Pascua Yaqui Tribe, its officials, departments, enterprises, branches, and the Tribal Council. [Exhibit A]. Under the supervision of the Attorney General, she was responsible for drafting resolutions and ordinances. [Exhibit A]. The position required that the deputy attorney general perform “all of the duties and responsibilities of the Office in accordance with the highest standards of legal ethics.” [Exhibit A]. One of the essential abilities for the position of deputy attorney general is the ability to maintain confidentiality. [Exhibit A]. Ms. Thomas was certified to practice in the Pascua Yaqui Tribal Court on April 27, 2005.

On June 13, 2005, Ms. Thomas assumed the position of Interim Attorney General for the Pascua Yaqui Tribe. As the Interim Attorney General, Ms. Thomas was charged with providing legal advice and representation to the Tribe, its officials, including Defendant Chairman Yucupicio, and the Defendant Tribal Council. [Exhibit B].

During her tenure as the Interim Attorney General, Ms. Thomas was called upon to draft legislation for the consideration of the Pascua Yaqui Tribal Council. Among the pieces of legislation drafted and presented to the Tribal Council by Ms. Thomas was the Tribal Council Code of Ethics and Standards of Conduct Ordinance of 2006. 2 PYTC § 1-2-10 *et seq.* In her capacity as Interim Attorney General, Ms. Thomas provided legal advice to Defendants Chairman Yucupicio and the Tribal Council in both executive and public session regarding the ordinance. Ms. Thomas prepared the first draft on the ordinance on September 21, 2005. [Exhibit C]. Ms. Thomas prepared subsequent drafts on December 7, 2005, December 8, 2005, December 15, 2005, January 10, 2006, and on January 11, 2006. [Exhibits D, E, F, G and H].

1 On January 18, 2006, Ms. Thomas submitted the final draft and ordinance to Defendant
2 Chairman Yucupicio and Defendant Tribal Council in both executive and public session for
3 consideration and ratification. [Exhibit I].

4 In addition to drafting legislation and providing the Tribal Council with legal advice, by
5 virtue of her position as Interim Attorney General, Ms. Thomas was involved in the investigation
6 of the alleged misuse of a tribal credit card by a member of the Tribal Council. [Exhibit J]. Ms.
7 Thomas served as the Interim Attorney General until February, 2007. Ms. Thomas left of the
8 Office of the Attorney General on February 4, 2007 to become Defendant Frias' chief of staff.

9 On October 7, 2007, Ms. Thomas, as counsel on behalf of Plaintiff Frias, filed an action
10 against her former clients, Defendants Chairman Yucupicio and the Pascua Yaqui Tribal
11 Council. [*Frias v. Yucupicio & Pascua Yaqui Tribal Council*, CV-08-002, filed 10/7/05,
12 *hereinafter* “complaint”]. Chairman Yucupicio and the Tribal Council have not, and will not,
13 give consent to the Plaintiff’s representation by Ms. Thomas.

14 The complaint contains several factual allegations relevant to the issue of Ms. Thomas’
15 conflict of interest. It alleges that on January 18, 2006, the Tribal Council enacted the Tribal
16 Council Ethics and Standards of Conduct Ordinance of 2006 and that Chairman Yucupicio and
17 the Tribal Council failed to comply with the ethics ordinance. [Complaint at ¶¶ 9, 47-49]. The
18 complaint also alleges that Councilwoman Priscilla Flores was biased against the Plaintiff
19 because the Plaintiff had the discovered the allegedly improper use of a Tribal credit card and
20 that as a result, the Plaintiff was denied her right to due process. [Complaint at ¶¶ 24(a), 51(g)].

21 **II. PLAINTIFF’S COUNSEL, PILAR THOMAS, HAS A CONFLICT OF INTEREST**
22 **WITH HER FORMER CLIENTS AND MUST BE DISQUALIFIED AS COUNSEL**
23 **FOR THE PLAINTIFF.**

24 Any person employed as the Attorney General, Deputy Attorney General, or as an
25 Assistant Attorney General for the Pascua Yaqui Tribe must be certified to practice in the Pascua
Yaqui Tribal Court and in the State of Arizona. 2 P.Y.T.C. § 2-1-20 (B). The Pascua Yaqui

1 Titles and Codes provide that “any attorney practicing in the Pascua Yaqui Courts shall conform
2 to the usual standards of conduct of the American Bar Association in the performance of their
3 duties as an attorney.” 2 P.Y.T.C. § 1-4-40(C). Attorneys licensed in Arizona are also bound by
4 the Arizona Rules of Professional Conduct. Az.Sup.Ct.R. 41-42.

5 The American Bar Association Model Rules of Professional Conduct (“ABA Model
6 Rules”) and the Arizona Rules of Professional Conduct set forth the standards of professional
7 conduct for attorneys. ABA Model Rule 1.9 and Arizona Rule of Professional Responsibility 1.9
8 address conflicts of interest with former clients. ABA Model Rules Rule 1.9 provides that:

9 (a) A lawyer who has formerly represented a client in a matter shall not thereafter
10 represent another person in the same or a substantially related matter in which that
11 person’s interests are materially adverse to the interests of the former client unless the
12 former client gives informed consent, confirmed in writing.

13 (b) A lawyer shall not knowingly represent a person in the same or a substantially
14 related matter in which a firm with which the lawyer was formerly was associated with
15 had previously represented a client

- 16 (1) whose interests are materially adverse to that person; and
- 17 (2) about whom the lawyer acquired information protected by Rules
18 1.6 and 1.9(c) that is material to the matter;

19 Unless the former client gives informed consent, confirmed in writing.

20 (c) A lawyer who has formerly represented a client in a matter or whose present
21 or former firm has formerly represented a client in a matter shall not thereafter:

- 22 (1) use information relating to the representation to the disadvantage
23 of the former client except as these Rules would permit or require
24 with respect to a client, or when the information has become
25 generally known; or
- (2) reveal information relating to the representation except as these
Rules would permit or require with respect to a client.

Arizona Rule of Professional Responsibility 1.9 is identical to ABA Model Rule 1.9.

ABA Model Rule 1.9 acknowledges that a lawyer has certain continuing duties to former
clients with respect to confidentiality and conflicts of interests. For example, the rule prohibits a

1 lawyer from seeking to rescind a contract for a new client that he or she drafted on behalf of a
2 former client. *Comment*, Rule 1.9, ABA Model Rules for Professional Conduct.

3 In addition to ABA Model Rule 1.9, ABA Model Rule 1.11 addresses conflicts of interest
4 for former government officers and employees. The rule provides, in pertinent part, that:

5 (a) Except as law may otherwise expressly permit, a lawyer who has formerly
6 served as a public officer or employee of the government:

7 (1) is subject to Rule 1.9(c); and

8 (2) shall not otherwise represent a client in connection with a matter in
9 which the lawyer participated personally and substantially as a public
10 office or employee, unless the appropriate government agency gives its
11 informed consent, confirmed in writing, to the representation.

12 ...

13 (c) Except as law may otherwise expressly permit, a lawyer having information
14 that the lawyer knows in confidential government information about a person
15 acquired when the lawyer was a public office or employee, may not represent a
16 private client who interests are adverse to that person in a matter in which the
17 information could be used to the material disadvantage of that person. As used in
18 this Rule, the term "confidential government information" means information
19 that has been obtained under governmental authority and which, at the time this
20 Rule is applied, the government is prohibited by law from disclosing to the public
21 or has a legal privilege not to disclose and which is not otherwise available to the
22 public.

23 ABA Rule 1.11 represents a balancing of interests. According to the *Comment* to the
24 rule:

25 where successive clients are a government agency and another client, public or
private, the risk exists that power or discretion vested in that agency might be
used for the special benefit of the other client. A lawyer should not be in a
position where benefit to the other client might affect performance of the lawyer's
professional functions on behalf of the government. Also, *unfair advantage could
accrue to the other client by reason of access to confidential government
information about the client's adversary obtainable only through the lawyer's
government service.*

1 (emphasis added). A former government lawyer is disqualified from particular matters in which
2 the lawyer participated personally and substantially. *Id.*; *Dugar v. Board of Educ., Dist. 299*,
3 1992 U.S. Dist. LEXIS 8650 (N.D. Ill. 1992).

4 The disqualification of an attorney who has been exposed to confidential information that
5 would unfairly advantage her client is part of a court's duty to protect the sacrosanct privacy of
6 the attorney-client relationship. *Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 721
7 (7th Cir. 1982). The United States Court of Appeals for the Seventh Circuit has formulated a
8 three-part test to determine whether the disqualification of an attorney is appropriate:

9 First, the trial judge must make a factual reconstruction of the scope of the prior
10 legal representation. Second, it must be determined whether it is reasonable to
11 infer that the confidential information allegedly given would have been given to a
12 lawyer representing a client in those matters. Third, it must be determined
whether that information is relevant to the issues raised in the litigation pending
against the former client.

13 *LaSalle National Bank v. County of Lake*, 703 F.2d 252, 255-6 (7th Cir. 1983) (citations omitted).

14 If the court finds that a substantial relationship exists, the court may presume that the attorney
15 received confidential information during the course of the representation. *Id.* at 257.

16 Disqualification does not require proof that the attorney received specific information, but only
17 that the subject matter of the prior and present representation are substantially related. *Id.* at 255.

18 A. The scope of Ms. Thomas's previous representation of Chairman Yucupicio and
19 the Tribal Council demonstrates that a substantial relationship existed.

20 Prior to filing the action on behalf of Plaintiff Frias, Ms. Thomas occupied a
21 position of trust and responsibility with the government of the Pascua Yaqui Tribe. First,
22 beginning in April, 2005, she served as a deputy attorney general. As a deputy attorney
23 general, Ms. Thomas was charged with providing legal advice and representation to the
24 Tribe, its officials, including Defendant Chairman Yucupicio, and the Defendant Tribal
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1 Council. [Exhibit A]. As a result of her position, Ms. Thomas was privy to confidential
2 information, not available to the community, which was protected by the attorney-client
3 privilege. Ms. Thomas met routinely with the Attorney General and other attorneys of
4 the Office of the Attorney General to discuss legal issues confronting the Tribe and
5 provided legal advice to the Tribal Council. As a requirement of her position, she was
6 required to maintain confidentiality. [*Id.*].

7 In June, 2005, Ms. Thomas was appointed to serve as the Interim Attorney
8 General for the Pascua Yaqui Tribe. As the Interim Attorney General, Ms. Thomas was
9 charged with providing legal advice and representation to the Tribe, its officials,
10 including Defendant Chairman Yucupicio, and the Defendant Tribal Council. [Exhibit
11 B].

12 During her tenure as the Interim Attorney General, Ms. Thomas was called upon
13 to draft legislation for the consideration of the Pascua Yaqui Tribal Council. Among the
14 pieces of legislation drafted and presented to the Tribal Council by Ms. Thomas was the
15 Tribal Council Code of Ethics and Standards of Conduct Ordinance of 2006. 2 PYTC §
16 1-2-10 *et seq.* In her capacity as Interim Attorney General, Ms. Thomas provided legal
17 advice to Defendants Chairman Yucupicio and the Tribal Council in both executive and
18 public session regarding the ordinance. Ms. Thomas prepared the first draft on the
19 ordinance on September 20, 2005. [Exhibit C]. Ms. Thomas prepared subsequent drafts
20 on December 7, 2005, December 8, 2005, December 15, 2005, January 10, 2006, and on
21 January 11, 2006. [Exhibits Exhibits D, E, F, G and H]. On January 18, 2006, Ms.
22 Thomas submitted the final draft and ordinance to Defendant Chairman Yucupicio and
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1 Defendant Tribal Council in both executive and public session for consideration. [Exhibit
2 I].

3 In addition to drafting legislation and providing the Tribal Council with legal
4 advice, by virtue of her position as Interim Attorney General, Ms. Thomas was involved
5 in the investigation of the alleged misuse of a tribal credit card by a member of the Tribal
6 Council. [Exhibit J].

7 Although Ms. Thomas was no longer employed by the Defendants at the time
8 she initiated the lawsuit on behalf of the Plaintiff, the record demonstrates that a
9 substantial relationship exists between Ms. Thomas' former work as an attorney for the
10 Defendants and the Defendants' policies, procedures, and practices at issue in the present
11 litigation. Ms. Thomas' involvement in these matters was both personal and substantial.
12 It is clear that the scope of Ms. Thomas' past representation of the Defendants
13 encompasses issues relevant to this case.
14

15 B. It is reasonable to infer that Ms. Thomas is in possession of confidential
16 information regarding Defendant Chairman Yucupicio's and Defendant Tribal
17 Council's legal analysis and strategies regarding the Ethics Ordinance of 2006 as
well as the investigation regarding the alleged misuse of a tribal credit card by a
member of the Defendant Tribal Council.

18 A simple review of Ms. Thomas' employment history with the Pascua Yaqui
19 Tribe, as discussed above, makes it clear that not only is it reasonable to infer that Ms.
20 Thomas was in possession of confidential information, but that she was in fact in
21 possession of confidential information obtained by virtue of the attorney-client
22 relationship with Defendant Chairman Yucupicio and Defendant Tribal Council. During
23 the course of her representation the Defendants, Ms. Thomas attended numerous
24 executive Council meetings and provided confidential legal advice to the Defendants. By
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1 virtue of the attorney/client privilege, she was privy to confidential information that
2 included matters relevant to the Plaintiff's suit.

3 C. The confidential information possessed by Ms. Thomas is relevant to Plaintiff
4 Frias' legal action against Ms. Thomas' former clients, Defendant Chairman
5 Yucupicio and Defendant Tribal Council.

6 The final prong of the analysis requires this Court to determine whether Ms.
7 Thomas is in possession of confidential information relevant to the Plaintiff's suit against
8 the Defendants. As previously discussed, during her tenure as the Interim Attorney
9 General, Ms. Thomas was called upon to draft legislation for the consideration of the
10 Pascua Yaqui Tribal Council, including the Tribal Council Code of Ethics and Standards
11 of Conduct Ordinance of 2006. 2 PYTC § 1-2-10 *et seq.* In her capacity as Interim
12 Attorney General, Ms. Thomas provided legal advice to Defendants Chairman Yucupicio
13 and the Tribal Council in both executive and public session regarding the ordinance.

14 In addition to drafting legislation and providing the Tribal Council with legal
15 advice, by virtue of her position as Interim Attorney General, Ms. Thomas was involved
16 in the investigation of the alleged misuse of a tribal credit card by a member of the Tribal
17 Council. [Exhibit J].

18 In her suit against the Defendants, the Plaintiff specifically alleges that on
19 January 18, 2006, the Tribal Council enacted the Tribal Council Ethics and Standards of
20 Conduct Ordinance of 2006 and that Chairman Yucupicio and the Tribal Council failed to
21 comply with the ethics ordinance. [Complaint at ¶¶ 9, 47-49]. The complaint also alleges
22 that Councilwoman Priscilla Flores was biased against the Plaintiff because the Plaintiff
23 had the discovered the allegedly improper use of a Tribal credit card and that as a result,
24 the Plaintiff was denied her right to due process. [Complaint at ¶¶ 24(a), 51(g)]. Based
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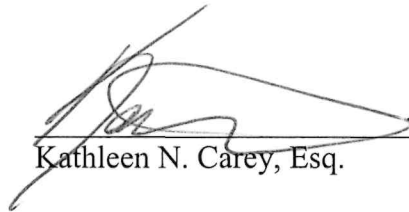
1 on the Plaintiff's own pleading, it is abundantly clear that the confidential information
2 within Ms. Thomas' possession is relevant to the present litigation.

3 **III. CONCLUSION.**

4 The record demonstrates that Ms. Thomas has a conflict of interest and must be
5 disqualified from representing the Plaintiff in this matter. Ms. Thomas had a substantial
6 relationship with Defendants Yucupicio and the Pascua Yaqui Tribal Council. By virtue of that
7 relationship, she is in possession of confidential information and that information is relevant to
8 the issues in the present litigation. In order to protect the sanctity of the attorney/client privilege,
9 this Court must enter and order disqualifying Ms. Thomas as counsel for Plaintiff Frias.

10 DATED this 3rd day of June, 2008.

11 LAW OFFICE OF KATHLEEN N. CAREY

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13
14 
Kathleen N. Carey, Esq.

1 ORIGINAL delivered via Electronic Delivery
and via U.S. Mail this 3rd of June, 2008 to:

2 Pascua Yaqui Tribe Court of Appeals
3 4781 W. Calle Torim
Tucson, AZ 85757

4 COPY of the foregoing delivered via Electronic
5 Transmission this 3rd day of June,
2008, and via U.S. Mail on the 3rd day of
6 June, 2008, to Counsel for the Appellant-Plaintiff:

7 Pilar M. Thomas, Esquire
8 Lewis & Roca L.L.P
40 North Central
9 Phoenix, AZ 85004

10
11 By: 

Kathleen N. Carey, Esq.

EXHIBIT A

JOB DESCRIPTION



Job Title: Deputy Attorney General
Dept./Division: Attorney General Office
Supervised by: Attorney General
Employee Type: Salary
Pay Grade:

NATURE OF WORK: Under direct supervision of Attorney General, represents and provides nonpartisan legal advice to the Tribe, its officials, departments, enterprises, branches, the Tribal Council and its committees in accordance with Title 15 of the Pascua Yaqui Code.

This list of duties and responsibilities is merely illustrative of the tasks performed by this position and is not all-inclusive.

ESSENTIAL FUNCTIONS:

- Assists Attorney General in formulating overall administrative and operating policies pertaining to the Office of the Attorney General and implements such policies.
- Supervises personnel and otherwise manages the Office of the Attorney General in the absence of the Attorney General.
- Drafts, negotiates and reviews contracts, intergovernmental and other agreements, leases, rights of way and similar documents in order to protect the legal interests of the Tribe; approves contracts above established amounts as to form in accordance with the Pascua Yaqui Code as assigned by Attorney General.
- Drafts resolutions and ordinances.
- Performs all of the duties and responsibilities of the Office in accordance with the highest standards of legal ethics.
- Analyzes tribal, state, and federal legislation and regulations, constitutions, statutes, decisions and ordinances of judicial bodies; conducts research on assigned legal matters; drafts legal memoranda providing advice and legal conclusions.
- As directed by Attorney General, represents the Tribe in legal proceedings and in other matters that affect the legal interests of the Tribe; represents departments in personnel grievance and other administrative hearings.
- Maintains professional and technical knowledge by conducting research, analyzing pending legislation and cases, attending workshops, conferences and seminars; networks with outside entities; confers with representatives of contracting agencies and related organizations.
- Coordinates, directs and evaluates the activities of contract lawyers retained by the Tribe as directed by Attorney General.
- As assigned by Attorney General, negotiates and approves as to form contracts with attorneys, lobbyists, independent auditors, and other professional advisors to the Tribal Council for which an ongoing relationship is anticipated.
- Performs other duties as assigned by the Attorney General.

ESSENTIAL KNOWLEDGE, SKILLS AND ABILITIES:

Knowledge of:

- Applicable tribal, federal, state, and local laws, regulations, and requirements.
- Principles of Federal Indian Law.
- Rules of evidence, procedure, and ethics.

- Indian regulatory, civil and criminal jurisdiction; Indian Civil Rights Act.
- Tribal government practices and procedures.

Skills in:

- Trial advocacy.
- Presenting oral and written legal arguments.
- Litigating in tribal, state and federal courts.
- Preparing, reviewing, analyzing and interpreting complex legal documents and issues.

Ability to:

- Render logical, clear, and effective legal opinions, reports and present oral arguments.
- Work independently and meet deadlines.
- Work long hours and effectively under pressure.
- Maintain confidentiality.
- Interact and maintain good working relationships with official, employees.
- Communicate efficiently and effectively, both verbally and in writing.
- Exercise independent judgment, negotiate agreements, and recommend appropriate legal action.
- Interpret applicable tribal, federal, state, and local laws, regulations, and requirements.
- Establish and maintain effective working relationships with the public, employees, tribal officials, and individuals of varying social and cultural backgrounds.

MINIMUM QUALIFICATIONS:

- Jurist Doctor from an accredited law school.
- Five years' work experience as a practicing attorney, including substantial involvement in the management and policymaking function of a law office
- Working knowledge of and experience in Indian law in a tribal setting preferred.
- Member in good standing with State Bar of Arizona.
- Must have a valid Arizona driver's license.
- Must successfully complete a background check and drug screening.
- Bilingual in English/Spanish preferred, but not required.
- Must be capable of performing all essential functions and possess sufficient knowledge, skills, and abilities to perform such functions.

PHYSICAL DEMANDS: While performing the duties of this job, the employee is regularly required to sit; use hands to handle or feel and talk or hear. The employee is frequently required to stand and walk. The employee is occasionally required to reach with hands and arms.

WORK ENVIRONMENTS: The noise level in the work environment is usually moderate.

Review and Approved by:

Department Head and/or Designee

Date

H.R. Manager/Classification & Compensation

Date

Human Resources Director

Date

EXHIBIT B

JOB DESCRIPTION

Job Title: Attorney General
Dept./Division: Attorney General Office
Supervised by: Appointed by the Chairperson
Employee Type: Salary
Pay Grade: Z

NATURE OF WORK: Provides nonpartisan legal advice and representation to the tribe, its officials, departments, agencies, offices, enterprises, branches, the Tribal Council and its committees, and such other entities as the Tribal Council shall authorize in accordance with Title 15 of the Pascua Yaqui Code.

This list of duties and responsibilities is merely illustrative of the tasks performed by this position and is not all-inclusive.

ESSENTIAL FUNCTIONS:

- Formulates overall administrative and operating policies pertaining to the Office of the Attorney General and implements such policies
- Exercises supervisory control and direction over all personnel within the Office of the Attorney General; assigns legal projects; plans, monitors, and evaluates job performance
- Drafts, negotiates and reviews contracts, agreements, leases, rights of way and similar documents in order to protect the legal interests of the Tribe; approves all contracts above established amounts as to form in accordance with Title 15 and Title 17 of the Pascua Yaqui Code
- Reports to the Tribal Council and Chairperson on the legal affairs of the Tribe and on the progress of the Attorney General in meeting the Tribe's legal needs
- Drafts and presents resolutions and ordinances to the Tribal Council
- Advises the Tribal Council and oversees the compilation and adoption of a comprehensive code of the laws; proposes the enactment of such additional laws as are required for the orderly management of the Tribe's affairs and the regulation of persons and activities within the Tribe
- Performs all duties and responsibilities of the Office in accordance with the highest standards of legal ethics
- Studies federal legislation, federal regulations, constitutions, statutes, decisions and ordinances of judicial bodies; examines legal data and conducts research on assigned legal matters; drafts legal memoranda summarizing advice and legal conclusions
- Represents the Tribe in all legal proceedings and in other matters that affect the legal interests of the Tribe; represents departments in personnel grievance hearings
- Works with the Judicial Branch attorney on legal matters involving action by or the involvement of the Judicial Branch, to promote cooperation and resolution of any potential conflicts or disagreements between the governmental branches
- Maintains professional and technical knowledge by conducting research, analyzing pending legislation and cases, attending workshops, conferences and seminars; networks with outside entities; confers with representatives of contracting agencies and related organizations
- Coordinates, directs and evaluates the activities of contract lawyers retained by the Tribe; makes determination whether outside counsel should be retained
- Negotiates and approves as to form all contracts with attorneys, lobbyists, independent auditors, and other professional advisors to the Tribal Council for which an ongoing relationship is anticipated
- Annually develops and submits to the Tribal Council a budget for the operation of the Office of the Attorney General

- Establishes and maintains a filing and records system for all projects, documents, and work product; maintains confidentiality of information
- Perform other related duties as assigned by Tribal Council

ESSENTIAL KNOWLEDGE, SKILLS AND ABILITIES:

Knowledge of:

- Applicable federal, state, county, and local laws, regulations, and requirements
- Principles and practices of Federal Indian Law
- Rules of evidence and ethics
- Legal procedures and administrative proceedings
- Indian regulatory civil, and criminal jurisdiction
- Indian civil rights act
- Gaming law, including Indian Gaming Regulatory Act, National Indian Gaming Commission, regulations, gaming compacts
- Tribal government practices and procedures

Skills to/in:

- Trial advocacy
- Presenting oral and written legal arguments
- Litigating in tribal, state and federal courts
- Gathering, analyzing, and organizing information
- Preparing, reviewing, analyzing and interpreting complex legal documents and publications
- Demonstrated management, leadership skills and capabilities with progressive management responsibilities and authorities.

Ability to:

- Render logical, clear, and effective legal opinions and reports; present oral arguments
- Immediately address unanticipated problems effectively
- Work independently and meet strict time lines
- Work long hours and effectively under pressure
- Maintain confidentiality
- Interact and maintain good working relationships with individuals of varying social and cultural backgrounds
- Communicate efficiently and effectively, both verbally and in writing
- Exercise independent judgment and negotiate agreements, and recommend appropriate legal action
- Interpret applicable federal, state, and local laws, regulations, and requirements
- Establish and maintain effective working relationships with the public, employees and officials of the Pascua Yaqui Tribe
- Manage a multi-million dollar office operations and contract budget.

MINIMUM QUALIFICATIONS:

1. Jurist Doctor from an accredited Law School
2. Admission to State Bar of Arizona or admittance to practice in the State of Arizona within eighteen (18) months of hire
3. Eight (8) years work experience as a practicing attorney, including two (2) years of managing a law office or other general management experience
4. One (1) year experience as an Attorney General or similar position

AND

- Working knowledge of and experience in Indian Law in a Tribal setting preferred
- Bilingual in English/Spanish preferred, but not required
- Must have a valid Arizona driver's license
- Must successfully pass a background check and drug testing. Fingerprinting requirement determined by funding and sensitivity of position

Note: This position may require the use of personal, GSA or Tribal vehicle for Tribal business. Individuals must be physically capable of operating the vehicles safely, possess a valid driver's license and have an acceptable driving record. Use of a personal vehicle for Tribal business will be prohibited if the employee is not authorized to drive a Tribal vehicle or if the employee does not have personal insurance coverage.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to sit; use hands to handle or feel; talk or hear. The employee is frequently required to stand and walk. The employee is occasionally required to reach with hands and arms.

WORK ENVIRONMENTS:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

Review and Approved by:

Department Head and/or Designee

Date

H.R. Manager/Classification & Compensation

Date

Human Resources Director

Date

EXHIBIT C

ORDINANCE NO. (xx) 05

**BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE,
PURSUANT TO RESOLUTION NO. C10-XXX-05, AN ORDINANCE ESTABLISHING
A CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS
OF THE PASCUA YAQUI TRIBE.**

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises broad legislative authority and exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and setting forth the consequences for violating these obligations.

Section 20. Policy

Tribal Council Members shall maintain the highest standards of honest, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions in their role as Council Members which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are defined at Article X, Section 1 of the Constitution.

Section 40. Definitions

(A) “Conflict of Interest” means action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership, or when the Council Member taking the action has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

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FOR DISCUSSION PURPOSES ONLY

(B) “Actual or Apparent Improprieties” means those acts involving an actual impropriety such as illegal acts while serving on behalf of the Tribe, acts involving an abuse of power, acts involving dishonest conduct or acts that would do a disservice to the Tribe’s reputation.

(C) “Immediate Family” means spouse, parents, brothers, sisters, children, siblings of parents and/or grandparents, grandparents, in-laws, and/or other legal dependents.

Section 50 Ethical Obligations

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member has a personal or financial interest which could be affected by such action. When a conflict of interest exists with regard to a particular issue, the Council Member may participate in any discussion or action with regard to such matter but shall not vote, as provided in 2 PYTC 1-1-60(A).

(B) Council Members shall not act as a representative of the Tribal Council or make statements to the media without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council unless that authority is otherwise delegated.

(C) Council members shall not bring action as a Tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings, as defined in 2 PYTC 1-1-60(B). Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal member who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not engage in contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

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(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe

(J) Council Members shall not knowingly making public any subject matter of a confidential nature received in connection with one's duties as an official of the Tribe, including but not limited to:

- (1) matters discussed during Tribal Council executive session;
- (2) matters protected as confidential under federal, state, or Tribal law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential

Section 50 Prohibition on Acts Involving Impropriety

(A) The acts prohibited under this ordinance that constitute acts involving actual or apparent improprieties include, but are not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten or intimidate a tribal member or tribal employee to provide personal, financial or political benefit to oneself or their immediate family, or someone they have business or financial ties to or for any other purpose, or using one's official title in Tribal government to conduct personal business;
- (2) Intoxication or under the influence of illegal drugs while conducting official tribal business;
- (3) Misappropriation or misuse of Tribal funds or property;
- (4) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;

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- (5) Committing perjury or fraud;
- (6) Violating the Tribe's administration policies, including, but not limited to, the travel and credit card policies;
- (7) Any other acts prohibited by tribal, federal or state law while a Council member.

ALTERNATIVE ONE:

Section 60. Sanctions Regarding Tribal Council Members

(A) The sovereign immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred at the hands of the individual. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

(B) Tribal Council members accused of violating the prohibitions set out under this section shall have the matter determined by the Tribal Council, subject to the following procedures.

(1) Any member of the Tribe, including members of the Tribal Council, or tribal employee, may present an accusation to the Tribal Council in writing alleging that a particular Council member violated the prohibitions of this ordinance. The accusation must be filed within two (2) years of the alleged event.

(2) The Council shall hear the matter in open session within thirty (30) days of receiving the accusation, provided that the hearing may be extended beyond thirty days by the Council if any party involved in the proceeding, including the Council, requires additional time to gather necessary information.

(3) The party accusing the Council member shall present evidence and witnesses to support the accusation.

(4) The Council itself, or through a party so delegated, may conduct an independent investigation, and enter evidence and witness testimony into the record during the actual hearing.

(5) The accused Council member shall have the right to confront witnesses, to challenge the evidence, and to offer witnesses and evidence in his or her own behalf.

(6) Presentation of witnesses and evidence may be done in an informal manner, provided that the rights of the accused Council member are protected in a manner consistent with the Tribe's Constitution.

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(7) The Council shall render its determination in writing in a timely manner, including its evidentiary findings, which must be approved by at least six (6) of those Council members voting, provided that the Council can request further information be produced prior to rendering a determination, provided further that the accused Council member shall not vote in this determination.

(8) If the Council determines that the accused Council member has violated the prohibitions set out in this section, the Council shall choose the sanction it deems appropriate, including reprimand, censure (to be published in the Tribe's Newsletter), restitution, temporary suspension from the Council (not to exceed three (3) months), or removal from office. To be valid and binding, the sanction must be approved by at least six (6) of those Council members voting on the issue, except for removal, which requires a vote of 8 Council Members. The accused Council member shall not vote in this determination.

(C) The Tribal Court is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

- (1) The appeal must be filed within thirty (30) days of the Council's determination.
- (2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

ALTERNATIVE TWO:

Section 60 Procedure to Investigate Violations

(A) The Tribal Council shall be responsible for processing alleged ethical violations under this ordinance.

(B) The sovereign immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred at the hands of the individual. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

(C) Allegations of unethical conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

(1) Allegations of unethical conduct against a Council Member shall be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.

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(2) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical conduct as defined by this ordinance. The complaint shall specify the Council Member against whom a complaint of unethical conduct is being made, and the conduct that is alleged to be unethical.

(3) A Council Member may make an oral allegation of unethical conduct against another Council Member during a regular or special meeting, and a tribal member may make an oral allegation of unethical conduct against a Council Member during a scheduled regular meeting. Such an oral allegation shall be treated the same as the submission of a written allegation. The Chairperson may ask the person making the oral allegation questions sufficient to clarify the nature of the allegation.

(4) If an allegation of unethical conduct involves action which allegedly wronged a person, the allegation of unethical conduct can only be made by the person against whom the unethical conduct allegedly occurred.

(D) The Tribal Council shall perform an initial review in executive session of an allegation of unethical conduct. This initial review may be conducted at the time the allegation is made, or at any subsequent time during a regular or special Tribal Council meeting. Such review shall take place no later than thirty-one (31) days after it has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of unethical conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

(E) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical conduct, the Tribal Council shall refer the allegation for investigation as specified below. The Council Member against whom the allegation is made shall be provided with a copy of the allegation, or if made orally, a written summary of the allegation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.

- (1) Such investigation may be performed by an ad hoc committee of the Council or the Office of the Attorney General ("OAG").
- (2) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the person allegedly wronged by the Council Member's action, if any, members of the Council, and OAG shall have the right to be present when sworn testimony is given.

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(F) The results of the investigation shall be presented to the Tribal Council in executive session, in a hearing in which the Council Member against whom the allegation is made, his or her spokesperson, the OAG, the complainant, and the person allegedly wronged by the Council Member's actions, if any, may be present and may present evidence, cross examine witnesses, and question the investigator.

- (1) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (2) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.
- (3) Upon receipt of the investigation report, the Chairperson shall send notice, by certified mail, to the Council Member accused of the ethical violation, the complainant, and the person allegedly wronged by the Council Member's actions, if any, setting a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place. A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Council Member's spokesperson.
- (4) The hearing shall take place in executive session, and shall be recorded. Only the Tribal Council, OAG, complainant, person allegedly wronged by the Council Member's action, if any, Council Member accused of an ethical violation and his or her spokesperson shall be present during the hearing, provided that witnesses may be called into the Tribal Council executive session to testify.

(G) At the conclusion of the hearing, the Council Member accused of an ethical violation, the complainant, and the person allegedly wronged by the Council Member's action, if any, shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.

(H) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any to impose on the Council Member who engaged in unethical conduct.

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(I) The Council Member against whom an allegation of unethical conduct under this ordinance is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 70 Sanctions

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;
- (B) restitution;
- (C) suspension, provided that the suspension shall not exceed three (3) month for any specific violation;
- (D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 80 Appeals

Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court. If the Council determines

Section 90 Severability

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT D

ORDINANCE NO. (xx) 05

**BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE,
PURSUANT TO RESOLUTION NO. C10-XXX-05, AN ORDINANCE ESTABLISHING
A CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS
OF THE PASCUA YAQUI TRIBE.**

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises broad legislative authority and exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and setting forth the consequences for violating these obligations.

Section 20. Policy

Tribal Council Members shall maintain the highest standards of honest, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions in their role as Council Members which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are defined at Article X, Section 1 of the Constitution.

Section 30. Definitions

(A) “Conflict of Interest” means action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership, or when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

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(B) "Actual or Apparent Improprieties" means those acts involving an actual impropriety such as illegal acts while serving on behalf of the Tribe, acts involving an abuse of power, acts involving dishonest conduct or acts that would do a disservice to the Tribe's reputation.

(C) "Immediate Family" means spouse, parents, brothers, sisters, children, siblings of parents and/or other legal dependents.

Section 40 Ethical Obligations

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member has a personal or financial interest which could be affected by such action. When a conflict of interest exists with regard to a particular issue, the Council Member may participate in any discussion or action with regard to such matter but shall not vote, as provided in 2 PYTC 1-1-60(A).

(B) Council Members shall not act as a representative of the Tribal Council or make statements to the media without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council unless that authority is otherwise delegated.

(C) Council members shall not bring action as a Tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings, as defined in 2 PYTC 1-1-60(B). Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal member who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not engage in contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

ATTORNEY CLIENT COMMUNICATION
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(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe

(J) Council Members shall not knowingly making public any subject matter of a confidential nature received in connection with one's duties as an official of the Tribe, including but not limited to:

- (1) matters discussed during Tribal Council executive session;
- (2) matters protected as confidential under federal, state, or Tribal law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential

Section 50 Prohibition on Acts Involving Impropriety

(A) The acts prohibited under this ordinance that constitute acts involving actual or apparent improprieties include, but are not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten or intimidate a tribal member or tribal employee to provide personal, financial or political benefit to oneself or their immediate family, or someone they have business or financial ties to or for any other purpose, or using one's official title in Tribal government to conduct personal business;
- (2) Intoxication or under the influence of illegal drugs while conducting official tribal business;
- (3) Misappropriation or misuse of Tribal funds or property;
- (4) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;

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- (5) Committing perjury or fraud;
- (6) Violating the Tribe's administration policies;
- (7) Any other acts prohibited by tribal, federal or state law while a Council member.

ALTERNATIVE ONE:

Section 60. Procedures to Investigate Tribal Council Members

- (A) The sovereign immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred at the hands of the individual. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.
- (B) Tribal Council members accused of violating the prohibitions set out under this section shall have the matter determined by the Tribal Council, subject to the following procedures.
- (1) Any member of the Tribe, including members of the Tribal Council, or tribal employee, may present an accusation to the Tribal Council in writing alleging that a particular Council member violated the prohibitions of this ordinance. The accusation must be filed within two (2) years of the alleged event.
 - (2) The Council shall hear the matter in open session within thirty (30) days of receiving the accusation, provided that the hearing may be extended beyond thirty days by the Council if any party involved in the proceeding, including the Council, requires additional time to gather necessary information.
 - (3) The party accusing the Council member shall present evidence and witnesses to support the accusation.
 - (4) The Council itself, or through a party so delegated, may conduct an independent investigation, and enter evidence and witness testimony into the record during the actual hearing.
 - (5) The accused Council member shall have the right to confront witnesses, to challenge the evidence, and to offer witnesses and evidence in his or her own behalf.
 - (6) Presentation of witnesses and evidence may be done in an informal manner, provided that the rights of the accused Council member are protected in a manner consistent with the Tribe's Constitution.

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Section 70 Determination

The Council shall render its determination in writing in a timely manner, including its evidentiary findings, which must be approved by at least six (6) of those Council members voting, provided that the Council can request further information be produced prior to rendering a determination, provided further that the accused Council member shall not vote in this determination.

ALTERNATIVE TWO:

Section 60 Procedure to Investigate Tribal Council Members

(A) The Tribal Council shall be responsible for investigating any alleged violations under this ordinance.

(B) The sovereign immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred at the hands of the individual. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

(C) Allegations of unethical or improper conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

(1) Allegations of unethical or improper conduct against a Council Member shall be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.

(2) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical or improper conduct as defined by this ordinance. The complaint shall specify the Council Member against whom a complaint is being made, and the conduct that is alleged to be unethical or improper.

(3) A Council Member may make an oral allegation of unethical or improper conduct against another Council Member during a regular or special meeting. A tribal member may make an oral allegation of unethical or improper conduct against a Council Member only during a scheduled regular meeting. Such an oral allegation shall be treated the same as the submission of a written allegation. The Chairperson may ask the person making the oral allegation questions sufficient to clarify the nature of the allegation.

(4) If an allegation of unethical or improper conduct involves action which allegedly wronged a person, the complaint can only be made by the person against whom the unethical or improper conduct allegedly occurred.

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(D) The Tribal Council shall perform an initial review in executive session of the allegation and complaint. This initial review may be conducted at the time the allegation is made, or at any subsequent time during a regular or special Tribal Council meeting. Such review shall take place no later than thirty-one (31) days after it has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of unethical or improper conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

(E) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical or improper conduct, the Tribal Council shall refer the allegation for investigation as specified below. The Council Member against whom the allegation is made shall be provided with a copy of the allegation, or if made orally, a written summary of the allegation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.

- (1) Such investigation may be performed by an ad hoc committee of the Council or the Office of the Attorney General ("OAG").
- (2) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the complainant, members of the Council, and OAG shall have the right to be present when sworn testimony is given.

(F) The results of the investigation shall be presented to the Tribal Council in executive session, in a hearing in which the Council Member against whom the allegation is made, his or her attorney, the OAG, and the complainant may be present and may present evidence, cross examine witnesses, and question the investigator.

- (1) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (2) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.
- (3) Upon receipt of the investigation report, the Chairperson shall:

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- (i) send notice, by certified mail, to the Council Member accused of the ethical violation and the complainant; and
 - (ii) set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place.
- (4) A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Council Member's spokesperson.
- (5) The hearing shall take place in executive session, and shall be recorded. Only the Tribal Council, OAG, complainant, Council Member accused of an ethical violation and his or her attorney shall be present during the hearing, provided that witnesses may be called into the Tribal Council executive session to testify.

Section 70 Determination

- (A) At the conclusion of the hearing, the Council Member accused of an ethical violation, and the complainant shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.
- (B) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any to impose on the Council Member who engaged in unethical conduct.
- (C) The Council Member against whom an allegation of unethical conduct under this ordinance is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 80 Sanctions

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;
- (B) restitution;

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(C) suspension, provided that the suspension shall not exceed three (3) month for any specific violation;

(D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 90 Appeals

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

(1) The appeal must be filed within thirty (30) days of the Council's determination.

(2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

Section 100 Severability

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT E

ORDINANCE NO. (xx) 05

**BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE,
PURSUANT TO RESOLUTION NO. _____, AN ORDINANCE ESTABLISHING A
CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS OF
THE PASCUA YAQUI TRIBE.**

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose (2 PYTC § 1-2-10)

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and setting forth the consequences for violating these obligations.

Section 20. Policy (2 PYTC § 1-2-20)

Tribal Council Members shall maintain the highest standards of honest, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions in their role as Council Members which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are used in Article X, Section 1 of the Constitution.

Section 30. Definitions (2 PYTC § 1-2-30)

(A) “Conflict of Interest” means action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership, or when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

ORDINANCE NO. (xx) 05

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE, PURSUANT TO RESOLUTION NO. _____, AN ORDINANCE ESTABLISHING A CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS OF THE PASCUA YAQUI TRIBE.

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE

Title 2 – Government Administration

Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose (2 PYTC § 1-2-10)

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and setting forth the consequences for violating these obligations.

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Tribal Council Members shall maintain the highest standards of honest, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions in their role as Council Members which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are used in Article X, Section 1 of the Constitution.

Section 30. Definitions (2 PYTC § 1-2-30)

(A) “Conflict of Interest” means action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership, or when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

(B) “Actual or Apparent Improprieties” means those acts involving an actual impropriety such as illegal acts while serving on behalf of the Tribe, acts involving an abuse of power, acts involving dishonest conduct or acts that would do a disservice to the Tribe’s reputation.

(C) “Immediate Family” means spouse, parents, brothers, sisters, children, siblings of parents and/or other legal dependents.

Section 40 Ethical Obligations (2 PYTC § 1-2-40)

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member, or a member of his or her immediate family, has a personal or financial interest which could be affected by such action. When a conflict of interest exists with regard to a particular issue, the Council Member may participate in any discussion or action with regard to such matter but shall not vote, as provided in 2 PYTC § 1-1-60(A).

(B) Council Members shall not act as a representative of the Tribal Council or the Tribe, or make statements to the media, without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council unless that authority is otherwise delegated.

(C) Council members shall not bring action as a Tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings, as defined in 2 PYTC § 1-1-60(B). Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal employee who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not engage in contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

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(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe

(J) Council Members shall not knowingly making public any subject matter of a confidential nature received in connection with one's duties as an official of the Tribe, including but not limited to:

- (1) matters discussed during Tribal Council executive session;
- (2) matters protected as confidential under federal, state, or Tribal law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential

Section 50 Prohibition on Acts Involving Impropriety (2 PYTC § 1-2-50)

(A) The acts prohibited under this ordinance that constitute acts involving actual or apparent improprieties include, but are not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten or intimidate a tribal member or tribal employee to provide personal, financial or political benefit to oneself or immediate family, or someone they have business or financial ties to, or for any other purpose, or using one's official title in Tribal government to conduct personal business;
- (2) Intoxication or under the influence of illegal drugs while conducting official tribal business;
- (3) Misappropriation or misuse of Tribal funds or property;

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- (4) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;
- (5) Committing perjury or fraud;
- (6) Violating the Tribe's administrative rules, regulations or policies;
- (7) Any other acts prohibited by tribal, federal or state law.

ALTERNATIVE ONE:

Section 60. Procedures to Investigate Tribal Council Members (2 PYTC § 1-2-60)

Tribal Council members accused of violating the prohibitions set out under this section shall have the matter determined by the Tribal Council, subject to the following procedures.

- (A) Any member of the Tribe, including members of the Tribal Council, or tribal employee, may present an accusation to the Tribal Council in writing alleging that a particular Council member violated the prohibitions of this ordinance. The accusation must be filed within two (2) years of the alleged event.
- (B) The Council shall hear the matter in open session within thirty (30) days of receiving the accusation, provided that the hearing may be extended beyond thirty days by the Council if any party involved in the proceeding, including the Council, requires additional time to gather necessary information.
- (C) The party accusing the Council member shall present evidence and witnesses to support the accusation.
- (D) The Council itself, or through a party so delegated, may conduct an independent investigation, and enter evidence and witness testimony into the record during the actual hearing.
- (E) The accused Council member shall have the right to confront witnesses, to challenge the evidence, and to offer witnesses and evidence in his or her own behalf.
- (F) Presentation of witnesses and evidence may be done in an informal manner, provided that the rights of the accused Council member are protected in a manner consistent with the Tribe's Constitution.

Section 70 Final Determination (2 PYTC § 1-2-70)

The Council shall render its determination in writing in a timely manner, including its evidentiary findings, which must be approved by at least six (6) of those Council members voting, provided that the Council can request further information be produced prior to rendering a determination. The accused Council member shall not vote in this determination.

ALTERNATIVE TWO:

Section 60 Procedure to Investigate Tribal Council Members (2 PYTC § 1-2-60)

(A) The Tribal Council shall be responsible for investigating any alleged violations under this ordinance.

(B) Allegations of unethical or improper conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

(1) Allegations of unethical or improper conduct against a Council Member shall be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.

(2) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical or improper conduct as defined by this ordinance. The complaint shall specify the Council Member against whom a complaint is being made, and the conduct that is alleged to be unethical or improper.

(3) A Council Member may make an oral allegation of unethical or improper conduct against another Council Member during a regular or special meeting. A tribal member may make an oral allegation of unethical or improper conduct against a Council Member only during a scheduled regular meeting. Such an oral allegation shall be treated the same as the submission of a written allegation. The Chairperson may ask the person making the oral allegation questions sufficient to clarify the nature of the allegation.

(4) If an allegation of unethical or improper conduct involves action which allegedly wronged a person, the complaint can only be made by the person against whom the unethical or improper conduct allegedly occurred.

(C) The Tribal Council shall perform an initial review in executive session of the allegation and complaint. This initial review may be conducted at the time the allegation is made, or at any subsequent time during a regular or special Tribal Council meeting. Such review shall take place no later than thirty-one (31) days after it has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of

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unethical or improper conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

(D) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical or improper conduct, the Tribal Council shall refer the allegation for investigation as specified below. The Council Member against whom the allegation is made shall be provided with a copy of the allegation, or if made orally, a written summary of the allegation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.

- (1) Such investigation may be performed by an ad hoc committee of the Council or the Office of the Attorney General (“OAG”).
- (2) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the complainant, members of the Council, and OAG shall have the right to be present when sworn testimony is given.

(E) The results of the investigation shall be presented to the Tribal Council in executive session, in a hearing in which the Council Member against whom the allegation is made, his or her attorney, the OAG, and the complainant may be present and may present evidence, cross examine witnesses, and question the investigator.

- (1) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (2) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.
- (3) Upon receipt of the investigation report, the Chairperson shall:
 - (i) send notice, by certified mail, to the Council Member accused of the ethical violation and the complainant; and
 - (ii) set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place.

- (4) A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Council Member's spokesperson.
- (5) The hearing shall take place in executive session, and shall be recorded. Only the Tribal Council, OAG, complainant, Council Member accused of an ethical violation and his or her attorney shall be present during the hearing, provided that witnesses may be called into the Tribal Council executive session to testify.

Section 70 Final Determination (2 PYTC § 1-2-70)

(A) At the conclusion of the hearing, the Council Member accused of an ethical violation, and the complainant shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.

(B) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any to impose on the Council Member who engaged in unethical conduct.

(C) The Council Member against whom an allegation of unethical conduct under this ordinance is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 80 Limited Waiver of Individual Immunity (2 PYTC § 1-2-80)

The absolute immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred at the hands of the individual. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

Section 90 Sanctions (2 PYTC § 1-2-90)

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;

- (B) restitution;
- (C) suspension, provided that the suspension shall not exceed three (3) month for any specific violation;
- (D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 100 Appeals (2 PYTC § 1-2-100)

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

- (1) The appeal must be filed within thirty (30) days of the Council's determination.
- (2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

Section 110 Severability (2 PYTC § 1-2-110)

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT F

ORDINANCE NO. (xx) 06

**BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE,
PURSUANT TO RESOLUTION NO. _____, AN ORDINANCE ESTABLISHING A
CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS OF
THE PASCUA YAQUI TRIBAL COUNCIL.**

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose (2 PYTC § 1-2-10)

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and setting forth the consequences for violating these obligations.

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Tribal Council Members shall maintain the highest standards of honest, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions in their role as Council Members which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are used in Article X, Section 1 of the Constitution.

Section 30. Definitions (2 PYTC § 1-2-30)

(A) “Conflict of Interest” means action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership, or when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

(B) “Actual or Apparent Improprieties” means those acts involving an actual impropriety such as illegal acts while serving on behalf of the Tribe, acts involving an abuse of power, acts involving dishonest conduct or acts that would do a disservice to the Tribe’s reputation.

(C) “Immediate Family” means spouse, parents, brothers, sisters, children, siblings of parents and/or other legal dependents.

Section 40 Ethical Obligations (2 PYTC § 1-2-40)

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member, or a member of his or her immediate family, has a personal or financial interest which could be affected by such action. When a conflict of interest exists with regard to a particular issue, the Council Member may participate in any discussion or action with regard to such matter but shall not vote, as provided in 2 PYTC § 1-1-60(A).

(B) Council Members shall not act as a representative of the Tribal Council or the Tribe, or make statements to the media, without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council unless that authority is otherwise delegated.

(C) Council members shall not bring action as a Tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings, as defined in 2 PYTC § 1-1-60(B). Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal employee who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not engage in contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

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(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe

(J) Council Members shall not knowingly making public any subject matter of a confidential nature received in connection with one's duties as an official of the Tribe, including but not limited to:

- (1) matters discussed during Tribal Council executive session;
- (2) matters protected as confidential under federal, state, or Tribal law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential

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(A) The acts prohibited under this ordinance that constitute acts involving actual or apparent improprieties include, but are not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten or intimidate a tribal member or tribal employee to provide personal, financial or political benefit to oneself or immediate family, or someone they have business or financial ties to, or for any other purpose, or using one's official title in Tribal government to conduct personal business;
- (2) Intoxication or under the influence of illegal drugs while conducting official tribal business;
- (3) Misappropriation or misuse of Tribal funds or property;

- (4) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;
- (5) Committing perjury or fraud;
- (6) Violating the Tribe's administrative rules, regulations or policies;
- (7) Any other acts prohibited by tribal, federal or state law.

ALTERNATIVE ONE:

Section 60. Procedures to Investigate Tribal Council Members (2 PYTC § 1-2-60)

Tribal Council members accused of violating the prohibitions set out under this section shall have the matter determined by the Tribal Council, subject to the following procedures.

- (A) Any member of the Tribe, including members of the Tribal Council, or tribal employee, may present an accusation to the Tribal Council in writing alleging that a particular Council member violated the prohibitions of this ordinance. The accusation must be filed within two (2) years of the alleged event.
- (B) The Council shall hear the matter in open session within thirty (30) days of receiving the accusation, provided that the hearing may be extended beyond thirty days by the Council if any party involved in the proceeding, including the Council, requires additional time to gather necessary information.
- (C) The party accusing the Council member shall present evidence and witnesses to support the accusation.
- (D) The Council itself, or through a party so delegated, may conduct an independent investigation, and enter evidence and witness testimony into the record during the actual hearing.
- (E) The accused Council member shall have the right to confront witnesses, to challenge the evidence, and to offer witnesses and evidence in his or her own behalf.
- (F) Presentation of witnesses and evidence may be done in an informal manner, provided that the rights of the accused Council member are protected in a manner consistent with the Tribe's Constitution.

Section 70 Final Determination (2 PYTC § 1-2-70)

The Council shall render its determination in writing in a timely manner, including its evidentiary findings, which must be approved by at least six (6) of those Council members voting, provided that the Council can request further information be produced prior to rendering a determination. The accused Council member shall not vote in this determination.

ALTERNATIVE TWO:

Section 60 Procedure to Investigate Tribal Council Members (2 PYTC § 1-2-60)

(A) The Tribal Council shall be responsible for investigating any alleged violations under this ordinance.

(B) Allegations of unethical or improper conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

(1) Allegations of unethical or improper conduct against a Council Member shall be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.

(2) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical or improper conduct as defined by this ordinance. The complaint shall specify the Council Member against whom a complaint is being made, and the conduct that is alleged to be unethical or improper.

(3) A Council Member may make an oral allegation of unethical or improper conduct against another Council Member during a regular or special meeting. A tribal member may make an oral allegation of unethical or improper conduct against a Council Member only during a scheduled regular meeting. Such an oral allegation shall be treated the same as the submission of a written allegation. The Chairperson may ask the person making the oral allegation questions sufficient to clarify the nature of the allegation.

(4) If an allegation of unethical or improper conduct involves action which allegedly wronged a person, the complaint can only be made by the person against whom the unethical or improper conduct allegedly occurred.

(C) The Tribal Council shall perform an initial review in executive session of the allegation and complaint. This initial review may be conducted at the time the allegation is made, or at any subsequent time during a regular or special Tribal Council meeting. Such review shall take place no later than thirty-one (31) days after it has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of

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unethical or improper conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

(D) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical or improper conduct, the Tribal Council shall refer the allegation for investigation as specified below. The Council Member against whom the allegation is made shall be provided with a copy of the allegation, or if made orally, a written summary of the allegation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.

- (1) Such investigation may be performed by an ad hoc committee of the Council or the Office of the Attorney General (“OAG”).
- (2) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the complainant, members of the Council, and OAG shall have the right to be present when sworn testimony is given.

(E) The results of the investigation shall be presented to the Tribal Council in executive session, in a hearing in which the Council Member against whom the allegation is made, his or her attorney, the OAG, and the complainant may be present and may present evidence, cross examine witnesses, and question the investigator.

- (1) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (2) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.
- (3) Upon receipt of the investigation report, the Chairperson shall:
 - (i) send notice, by certified mail, to the Council Member accused of the ethical violation and the complainant; and
 - (ii) set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place.

- (4) A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Council Member's spokesperson.
- (5) The hearing shall take place in executive session, and shall be recorded. Only the Tribal Council, OAG, complainant, Council Member accused of an ethical violation and his or her attorney shall be present during the hearing, provided that witnesses may be called into the Tribal Council executive session to testify.

Section 70 Final Determination (2 PYTC § 1-2-70)

(A) At the conclusion of the hearing, the Council Member accused of an ethical violation, and the complainant shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.

(B) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any to impose on the Council Member who engaged in unethical conduct.

(C) The Council Member against whom an allegation of unethical conduct under this ordinance is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 80 Limited Waiver of Individual Immunity (2 PYTC § 1-2-80)

The absolute immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred at the hands of the individual. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

Section 90 Sanctions (2 PYTC § 1-2-90)

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;

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- (B) restitution;
- (C) suspension, provided that the suspension shall not exceed three (3) month for any specific violation;
- (D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 100 Appeals (2 PYTC § 1-2-100)

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

- (1) The appeal must be filed within thirty (30) days of the Council's determination.
- (2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

Section 110 Severability (2 PYTC § 1-2-110)

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT G

ORDINANCE NO. (xx) 06

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE, PURSUANT TO RESOLUTION NO. _____, AN ORDINANCE ESTABLISHING A CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS OF THE PASCUA YAQUI TRIBAL COUNCIL.

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose (2 PYTC § 1-2-10)

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and to set forth the consequences for violating these obligations.

Section 20. Policy (2 PYTC § 1-2-20)

Tribal Council Members shall maintain the highest standards of honesty, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest, or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are used in Article X, Section 1 of the Constitution.

Section 30. Definitions (2 PYTC § 1-2-30)

(A) “Conflict of Interest” means: i) action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership; or ii) when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

(B) “Actual or Apparent Improprieties” means those acts involving an actual impropriety (such as illegal acts) while serving on behalf of the Tribe; acts involving an abuse of power; acts involving dishonest conduct; or acts that would do a disservice to the Tribe’s reputation.

(C) “Immediate Family” means spouse, parents, brothers, sisters, children, siblings of parents and/or other legal dependents.

Section 40 Ethical Obligations (2 PYTC § 1-2-40)

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member, or a member of his or her immediate family, has a personal or financial interest which could be affected by such action.

(B) Council Members shall not act as official representatives of the Tribal Council or the Tribe, or make statements to the media, without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council, unless that authority is otherwise properly delegated.

(C) Council Members shall not bring an action as a tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings. Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with or participate in any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal employee who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not vote on the contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe.

(J) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, any gifts, monetary or otherwise, intended for the Tribe.

(K) Council Members shall not knowingly making public any confidential information received in connection with one's duties as a council member, including but not limited to:

- (1) matters discussed during Tribal Council study or executive sessions;
- (2) matters protected as confidential under Tribal, federal, or state law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential.

Section 50 Prohibition on Improper Conduct (2 PYTC § 1-2-50)

(A) Improper conduct prohibited under this ordinance includes, but is not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten or intimidate a tribal member or tribal employee to provide personal, financial or political benefit to oneself or immediate family, or someone they have business or financial ties to, or for any other purpose, or using one's official title in Tribal government to conduct personal business;
- (2) Unauthorized participation or involvement in Executive Branch administration and operations, including, but not limited to, business, program, law enforcement, employment, and personnel decisions.
- (3) Unauthorized participation or involvement in any tribally owned or operated enterprise operations, including, but not limited to, business, employment, and personnel decisions.

- (4) Intoxication or under the influence of illegal drugs while conducting official tribal business;
- (5) Misappropriation or misuse of Tribal funds or property;
- (6) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;
- (7) Committing perjury or fraud;
- (8) Violating the Tribe's laws, ordinances, resolutions, rules, regulations or policies;
- (9) Any other acts prohibited by tribal, federal or state law.

Section 60 Procedure to Investigate Tribal Council Members (2 PYTC § 1-2-60)

(A) The Tribal Council shall be responsible for investigating any alleged violations under this ordinance.

(B) Allegations of unethical or improper conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

- (1) Allegations of unethical or improper conduct against a Council Member shall only be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.
 - (i) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical or improper conduct as defined by this ordinance. The complaint shall specify the Council Member against whom a complaint is being made, and the conduct that is alleged to be unethical or improper.
 - (ii) If an allegation of unethical or improper conduct involves action which allegedly wronged a person, the complaint can only be made by the person against whom the unethical or improper conduct allegedly occurred.
 - (iii) The Council Member against whom the allegation is made shall be provided with a copy of the allegation.
- (2) The Tribal Council shall perform an initial review in executive session of the allegation and complaint. Such review shall take place no later than thirty-one

(31) days after the complaint has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of unethical or improper conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

- (3) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical or improper conduct, the Tribal Council, by majority vote, may refer the allegation for investigation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.
 - (i) Any investigation requested by the Tribal Council may be conducted by ad hoc committee of the Council, the Internal Audit Department, or an independent, outside investigator appointed by the Tribal Council.
 - (ii) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the complainant, members of the Council, and OAG shall have the right to be present when sworn testimony is given.
 - (iii) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.
 - (iv) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (4) Upon receipt of the investigation report, the Chairperson shall:
 - (i) send notice, by certified mail, to the Council Member accused of the ethical violation and the complainant; and
 - (ii) set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place.

- (iii) A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Council Member's spokesperson.
- (5) If no investigation is requested by Council, then the Chairperson shall set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, and the hearing will take place.
- (6) The hearing shall take place in executive session, with all Tribal Council members present, and shall be recorded. The results of the investigation, if any, shall be presented to the Tribal Council. Only the Tribal Council, OAG, complainant, Council Member accused of an ethical violation and his or her attorney shall be present during the hearing, provided that witnesses may be called into the Tribal Council executive session to testify.

Section 70 Final Determination (2 PYTC § 1-2-70)

- (A) At the conclusion of the hearing, the Council Member accused of an ethical violation, and the complainant shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.
- (B) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any, to impose on the Council Member who engaged in unethical conduct.
- (C) The Council Member against whom an allegation of unethical or improper conduct is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 80 Limited Waiver of Individual Immunity (2 PYTC § 1-2-80)

The absolute immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred in connection with, or as a result of, unethical or improper conduct. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

Section 90 Sanctions (2 PYTC § 1-2-90)

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;
- (B) restitution or fine;
- (C) suspension without pay, provided that the suspension shall not exceed three (3) month for any specific violation;
- (D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 100 Appeals (2 PYTC § 1-2-100)

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

- (1) The appeal must be filed within thirty (30) days of the Council's determination.
- (2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

Section 110 Severability (2 PYTC § 1-2-110)

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT H

ORDINANCE NO. (xx) 06

**BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE,
PURSUANT TO RESOLUTION NO. _____, AN ORDINANCE ESTABLISHING A
CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS OF
THE PASCUA YAQUI TRIBAL COUNCIL.**

TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 10. Purpose (2 PYTC § 1-2-10)

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and to set forth the consequences for violating these obligations.

Section 20. Policy (2 PYTC § 1-2-20)

Tribal Council Members shall maintain the highest standards of honesty, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest, or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are used in Article X, Section 1 of the Constitution.

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(A) “Conflict of Interest” means: i) action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership; or ii) when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

(B) “Actual or Apparent Improprieties” means those acts involving an actual impropriety (such as illegal acts) while serving on behalf of the Tribe; acts involving an abuse of power; acts involving dishonest conduct; or acts that would do a disservice to the Tribe’s reputation.

(C) “Immediate Family” means spouse, parents, brothers, sisters, children, siblings of parents and/or other legal dependents.

Section 40 Ethical Obligations (2 PYTC § 1-2-40)

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member, or a member of his or her immediate family, has a personal or financial interest which could be affected by such action.

(B) Council Members shall not act as official representatives of the Tribal Council or the Tribe, or make statements to the media, without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council, unless that authority is otherwise properly delegated.

(C) Council Members shall not bring an action as a tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings. Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with or participate in any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal employee who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not vote on the contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe.

(J) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, any gifts, monetary or otherwise, intended for the Tribe.

(K) Council Members shall not knowingly making public any confidential information received in connection with one's duties as a council member, including but not limited to:

- (1) matters discussed during Tribal Council study or executive sessions;
- (2) matters protected as confidential under Tribal, federal, or state law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential.

Section 50 Prohibition on Improper Conduct (2 PYTC § 1-2-50)

(A) Improper conduct prohibited under this ordinance includes, but is not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten or intimidate a tribal member or tribal employee to provide personal, financial or political benefit to oneself or immediate family, or someone they have business or financial ties to, or for any other purpose, or using one's official title in Tribal government to conduct personal business;
- (2) Unauthorized participation or involvement in Executive Branch administration and operations, including, but not limited to, business, program, law enforcement, employment, and personnel decisions.
- (3) Unauthorized participation or involvement in any tribally owned or operated enterprise operations, including, but not limited to, business, employment, and personnel decisions.

- (4) Intoxication or under the influence of illegal drugs while conducting official tribal business;
- (5) Misappropriation or misuse of Tribal funds or property;
- (6) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;
- (7) Committing perjury or fraud;
- (8) Violating the Tribe's laws, ordinances, resolutions, rules, regulations or policies;
- (9) Any other acts prohibited by tribal, federal or state law.

Section 60 Procedure to Investigate Tribal Council Members (2 PYTC § 1-2-60)

(A) The Tribal Council shall be responsible for investigating any alleged violations under this ordinance.

(B) Allegations of unethical or improper conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

- (1) Allegations of unethical or improper conduct against a Council Member shall only be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.
 - (i) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical or improper conduct as defined by this ordinance. The complaint shall specify the Council Member against whom a complaint is being made, and the conduct that is alleged to be unethical or improper.
 - (ii) If an allegation of unethical or improper conduct involves action which allegedly wronged a person, the complaint can only be made by the person against whom the unethical or improper conduct allegedly occurred.
 - (iii) The Council Member against whom the allegation is made shall be provided with a copy of the allegation.
- (2) The Tribal Council shall perform an initial review in executive session of the allegation and complaint. Such review shall take place no later than thirty-one

(31) days after the complaint has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of unethical or improper conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

- (3) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical or improper conduct, the Tribal Council, by majority vote, may refer the allegation for investigation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.
 - (i) Any investigation requested by the Tribal Council may be conducted by ad hoc committee of the Council, the Internal Audit Department, or an independent, outside investigator appointed by the Tribal Council.
 - (ii) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the complainant, members of the Council, and OAG shall have the right to be present when sworn testimony is given.
 - (iii) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.
 - (iv) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (4) Upon receipt of the investigation report, the Chairperson shall:
 - (i) send notice, by certified mail, to the Council Member accused of the ethical violation and the complainant; and
 - (ii) set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place.

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- (5) If no investigation is requested by Council, then the Chairperson shall set a hearing date and time at a Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, and the hearing will take place.
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Section 70 Final Determination (2 PYTC § 1-2-70)

- (A) At the conclusion of the hearing, the Council Member accused of an ethical violation, and the complainant shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.
- (B) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any, to impose on the Council Member who engaged in unethical conduct.
- (C) The Council Member against whom an allegation of unethical or improper conduct is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 80 Limited Waiver of Individual Immunity (2 PYTC § 1-2-80)

The absolute immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred in connection with, or as a result of, unethical or improper conduct. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

Section 90 Sanctions (2 PYTC § 1-2-90)

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;
- (B) restitution or fine;
- (C) suspension without pay, provided that the suspension shall not exceed three (3) month for any specific violation;
- (D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 100 Appeals (2 PYTC § 1-2-100)

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

- (1) The appeal must be filed within thirty (30) days of the Council's determination.
- (2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

Section 110 Severability (2 PYTC § 1-2-110)

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT I

ORDINANCE NO. (xx) 06

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE, PURSUANT TO RESOLUTION NO. C01-XX-06, AN ORDINANCE ESTABLISHING A CODE OF ETHICS AND STANDARDS OF CONDUCT FOR COUNCIL MEMBERS OF THE PASCUA YAQUI TRIBAL COUNCIL.

**TRIBAL COUNCIL CODE OF ETHICS ORDINANCE
Title 2 – Government Administration
Part I – Tribal Council**

Chapter 1-2 TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT

Section 1 Short Title; Codification

- (A) This ordinance shall be known as the “Tribal Council Code of Ethics and Standards of Conduct Ordinance of 2006.”
- (B) This ordinance shall be codified at Title 2, Chapter 1-2, Sections 1 – 110.

Section 10. Purpose (2 PYTC § 1-2-10)

Members of Tribal Council are vested with authority to represent and act on behalf of the tribal membership and the Pascua Yaqui Tribe. The Council exercises exclusive legislative authority under the Constitution. As such Council Members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Council Members, to define Standards of Conduct for Council Members, and to set forth the consequences for violating these obligations.

Section 20. Policy (2 PYTC § 1-2-20)

Tribal Council Members shall maintain the highest standards of honesty, integrity, fairness and impartiality in their conduct as Council Members, and shall avoid any actions which would adversely reflect on the Tribal Council or the Pascua Yaqui Tribe. Council Members shall take action in the best interest of the Tribe and the tribal membership, not in their personal interest. Council Members shall not engage in behavior involving a conflict of interest, or acts that involve actual or apparent impropriety, as those terms are defined in this ordinance. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are used in Article X, Section 1 of the Constitution.

Section 30. Definitions (2 PYTC § 1-2-30)

(A) “Conflict of Interest” means: i) action or conduct by a Council Member which is in conflict with the Council Member’s obligation to take actions in the best interest of the Tribe and the tribal membership; or ii) when the Council Member, or his immediately family, has or may foreseeably develop a personal or financial interest that is separate or adverse to the Tribe.

(B) “Actual or Apparent Improprieties” means those acts involving an actual impropriety (such as illegal acts) while serving on behalf of the Tribe; acts involving an abuse of power; acts involving dishonest conduct; or acts that would do a disservice to the Tribe’s reputation.

(C) “Immediate Family” means spouse, parents, brothers, sisters, children, siblings of parents and/or other legal dependents.

Section 40 Ethical Obligations (2 PYTC § 1-2-40)

(A) Council Members shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the Council Member, or a member of his or her immediate family, has a personal or financial interest which could be affected by such action.

(B) Council Members shall not act as official representatives of the Tribal Council or the Tribe, or make statements to the media, without express authorization of the Tribal Council or the Chairperson. The Chairperson is the official representative of the Tribe and the Tribal Council, unless that authority is otherwise properly delegated.

(C) Council Members shall not bring an action as a tribal member before any court, federal or state government in any proceeding in a matter in which the Tribe is a party or has an interest.

(D) Council Members shall attend all required meetings. Three (3) successive unexcused absences shall constitute a violation of this ordinance.

(E) Council Members shall not interfere with or participate in any tribal employment decisions related to his or her immediate family.

(F) Council members shall not become or remain employed as a tribal employee. A tribal employee who becomes a Council Member shall resign his or her employment upon being sworn into office. A Council Member who accepts employment as an employee of the Tribe or a tribal entity shall resign his or her office before commencing his or her first day of employment. Council Members shall not take employment that is not compatible with their duties and responsibilities to the Tribe as a Council Member or Officer of the Tribe.

(G) Council Members shall not engage in any personal investments that they become aware of as a result of their position in the Tribe unless they first disclose the opportunity to the Tribal Council and the Council votes to not take advantage of the opportunity.

(H) Council Members shall not vote on the contracting or procurement of goods in which they or their immediate family have a personal or financial interest, unless the interest is fully disclosed to the Tribal Council and the Council votes and approves the transaction.

(I) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, individual gifts valued at over \$150.00, except for the following:

- (1) ceremonial and customary gifts generally granted to dignitaries;
- (2) food and refreshments of a nominal value in the ordinary course of a luncheon or dinner meeting;
- (3) personal achievement awards for meritorious service;
- (4) unsolicited advertising or promotional material of nominal value;
- (5) loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribe.

(J) Council Members shall not accept on his or her own behalf, or on behalf of their immediate family, any gifts, monetary or otherwise, intended for the Tribe.

(K) Council Members shall not knowingly making public any confidential information received in connection with one's duties as a council member, including but not limited to:

- (1) matters discussed during Tribal Council study or executive sessions;
- (2) matters protected as confidential under Tribal, federal, or state law;
- (3) information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential.

Section 50 Prohibition on Improper Conduct (2 PYTC § 1-2-50)

(A) Improper conduct prohibited under this ordinance includes, but is not limited to, the following:

- (1) Abuse of power, such as using one's position to coerce, threaten, intimidate, or improperly influence a tribal member or tribal employee to provide personal, financial or

political benefit to oneself or immediate family, or someone they have business or financial ties to, or for any other purpose, or using one's official title in Tribal government to conduct personal business;

(2) Unauthorized participation or involvement in Executive Branch administration and operations, including, but not limited to, business, program, law enforcement, employment, and personnel decisions.

(3) Unauthorized participation or involvement in any tribally owned or operated enterprise operations, including, but not limited to, business, employment, and personnel decisions.

(4) Intoxication or under the influence of illegal drugs while conducting official tribal business;

(5) Misappropriation or misuse of Tribal funds or property;

(6) Unauthorized disclosure, concealing, removing, mutilating, or destroying Tribal records, or copying Tribal records for improper purposes;

(7) Committing perjury or fraud;

(8) Violating the Tribe's laws, ordinances, resolutions, rules, regulations or policies;

(9) Any other acts prohibited by tribal, federal or state law.

Section 60 Procedure to Investigate Tribal Council Members (2 PYTC § 1-2-60)

(A) The Tribal Council shall be responsible for investigating any alleged violations under this ordinance.

(B) Allegations of unethical or improper conduct as defined in this ordinance by a Tribal Council Member shall be presented to the Tribal Council and processed in the following manner:

(1) Allegations of unethical or improper conduct against a Council Member shall only be made in writing and submitted to the Chairperson, provided that if an allegation is made against the Chairperson, said allegation shall be filed with the Vice-Chairperson. Submission to the Council Secretary shall be construed as delivery to the appropriate Council Officer.

(i) A written complaint may be submitted by any Council Member, Tribal Member, or Tribal Employee who believes that a Council Member has engaged in unethical or improper conduct as defined by this ordinance.

The complaint shall specify the Council Member against whom a complaint is being made, and the conduct that is alleged to be unethical or improper.

- (ii) If an allegation of unethical or improper conduct involves action which allegedly wronged a person, the complaint can only be made by the person against whom the unethical or improper conduct allegedly occurred.
 - (iii) The Council Member against whom the allegation is made shall be provided with a copy of the allegation.
- (2) The Tribal Council shall perform an initial review in executive session of the allegation and complaint. Such review shall take place no later than thirty-one (31) days after the complaint has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of unethical or improper conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.
- (3) If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true might support a determination of unethical or improper conduct, the Tribal Council, by majority vote, may refer the allegation for investigation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.
- (i) Any investigation requested by the Tribal Council may be conducted by ad hoc committee of the Council, the Internal Audit Department, or an independent, outside investigator appointed by the Tribal Council.
 - (ii) The investigator shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Council Member against whom an allegation is made, the complainant, members of the Council, and OAG shall have the right to be present when sworn testimony is given.
 - (iii) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Council Member.

- (iv) The investigator shall notify the Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Chairperson to extend the investigation for a specified period of time.
- (4) Upon receipt of the investigation report, the Chairperson shall:
- (i) send notice, by certified mail, to the Council Member accused of the ethical violation and the complainant; and
 - (ii) set a hearing date and time not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented.
 - (iii) A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Council Member's spokesperson.
- (5) If Council does not request an independent investigation, then the Chairperson shall set a hearing date not less than ten (10) and not more than forty-five (45) days from the date of the initial review.
- (6) The hearing shall take place in executive session, with all Tribal Council members present, and shall be recorded. The results of the investigation, if any, shall be presented to the Tribal Council. Only the Tribal Council, OAG, complainant, accused Council Member and his or her attorney shall be present during the hearing, provided that witnesses may be called into the Tribal Council executive session to testify.

Section 70 Final Determination (2 PYTC § 1-2-70)

(A) At the conclusion of the hearing, the Council Member accused of an ethical violation, and the complainant shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.

(B) The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a majority vote. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any, to impose on the Council Member who engaged in unethical conduct.

(C) The Council Member against whom an allegation of unethical or improper conduct is made shall not participate in the review of the allegation by the Council, consideration by the Tribal Council of whether unethical conduct occurred and appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

Section 80 Limited Waiver of Individual Immunity (2 PYTC § 1-2-80)

The absolute immunity of individual Tribal Council members alleged to have violated this Chapter is waived to the extent that the Pascua Yaqui Tribe can pursue action to recoup any losses it may have incurred in connection with, or as a result of, unethical or improper conduct. This provision in no way waives the sovereign immunity of the Pascua Yaqui Tribe.

Section 90 Sanctions (2 PYTC § 1-2-90)

The Tribal Council may impose a sanction or sanctions against any Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (A) reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;
- (B) restitution or fine;
- (C) suspension without pay, provided that the suspension shall not exceed three (3) month for any specific violation;
- (D) expulsion or removal, provided that eight (8) Council Members, a 2/3 majority of Tribal Council, have voted for this sanction, pursuant to Constitution, Article X, Section 1.

Section 100 Appeals (2 PYTC § 1-2-100)

(A) Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

(B) The Court of Appeals is hereby granted jurisdiction to hear appeals of the issuance of such sanctions by the Tribal Council, provided, however, that the Tribal Court's jurisdiction in such matters is limited to a determination of whether or not the action taken by the Council was arbitrary and capricious, or in violation of the Tribe's Constitution or of the Indian Civil Rights Act.

- (1) The appeal must be filed within thirty (30) days of the Council's determination.
- (2) The evidentiary findings of the Council shall be accepted by the Court as final, unless such findings are arbitrary and capricious.

Section 110 Severability (2 PYTC § 1-2-110)

If any provision of this Chapter is found to be invalid under applicable law, that provision shall be severed from this ordinance and the remainder of the Chapter shall remain in full force and effect.

EXHIBIT J

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRWOMAN



February 2, 2007

Dear Honorable Priscilla Flores, Councilmember

It has come to my attention that you have not turned in your credit card receipts since June of last year. As a result, I began reviewing your credit card statements, and found several unauthorized and suspicious charges totaling over \$14,000. The charges do not appear to be related to tribal business.

Because of your improper use of your tribal credit card, I have cancelled your card effective today. In addition, I will be referring this matter to Tribal Council in the form of a formal ethics complaint.

Respectfully,

A handwritten signature in black ink, appearing to read 'Herminia Frias'. The signature is stylized and cursive.

Herminia Frias
Chairwoman

Cc: Michelle Aros
Treasurer Valencia
Interim AG Thomas Pilar Thomas

COUNCIL MEMBERS

HERMINIA FRIAS, TRIBAL CHAIRWOMAN • PETER YUCUPICIO, VICE-CHAIRMAN
CATALINA ALVAREZ, TRIBAL COUNCIL SECRETARY • FRANCISCO VALENCIA, COUNCIL TREASURER
PRISCILLA FLORES • LUIS L. GONZALES • ARCADIO GASTELUM • FRANCISCO D. MUÑOZ, SR.
DAVID RAMIREZ • BENITO F. VALENCIA • ROBERT VALENCIA

7474 S. Camino De Oeste • Tucson, Arizona 85757 • Phone (520) 883-5015 • FAX (520) 883-5099
1-800-572-7282 • E-mail: chairwoman.frias@pascuayaqui-nsn.gov

PASCUA YAQUI TRIBE

RESOLUTION NO. C01-19-06

RESOLUTION OF THE PASCUA YAQUI TRIBE ENACTING THE PASCUA YAQUI TRIBAL COUNCIL CODE OF ETHICS AND STANDARDS OF CONDUCT ORDINANCE OF 2006.



WHEREAS, the Tribal Council is vested with the power to establish rules and regulations governing its proceedings and the conduct of its members (Article VI, Section 1(p) of the Constitution of the Pascua Yaqui Tribe); and

WHEREAS, the Tribal Council last amended and revised its Code of Ethics in 1994; and

WHEREAS, the Tribal Council understands and believes that it is important for tribal members to have trust and faith in their elected officials; and

WHEREAS, it is imperative for tribal elected officials to perform their official duties in the highest ethical manner, putting the interests of the Tribe ahead of their own personal and family interests; and

WHEREAS, in today's environment where other governments are confronted with ethical breaches by its elected officials, a strong code of ethics is a signal to the tribal community and others that Tribal Council takes its ethical obligations seriously; and

WHEREAS, in order to promote ethical governance and ensure compliance, a varied and flexible enforcement scheme is important; and

WHEREAS, the Tribal Council believes that it is in the best interest of the Tribe to amend and update its Code of Ethics and Standards of Conduct so as to better fulfill its obligations and duties as the legislative body of the Tribal Government.

NOW THEREFORE BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE PASCUA YAQUI TRIBE that the Tribal Council hereby enacts the "Pascua Yaqui Tribal Council Code of Ethics and Standards of Conduct Ordinance of 2006." The Ordinance shall take effect immediately.

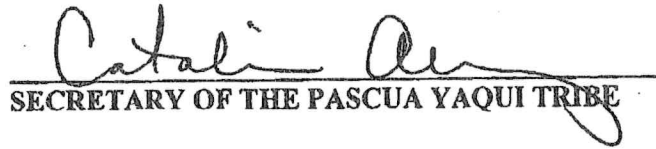
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RESOLUTION NO. C01-19-06
COUNCIL CODE OF ETHICS & STANDARDS OF CONDUCT ORDINANCE

CERTIFICATION

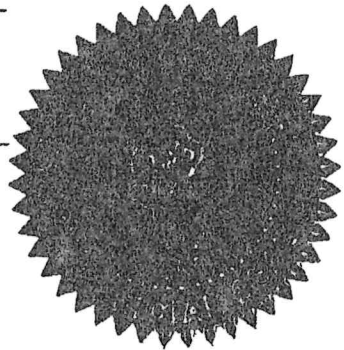
THE FOREGOING was on January 18, 2006 duly adopted by a vote of FIVE in favor, THREE opposed, and ZERO abstained, by the Tribal Council of the Pascua Yaqui Tribe pursuant to authority vested in it by Article VI, Sections 1(p) and 2, and Article XIX, Section 1 of the Constitution of the Pascua Yaqui Tribe as adopted on January 26, 1988 and approved by the Secretary of the Interior on February 8, 1988 pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



CHAIRWOMAN OF THE PASCUA YAQUI TRIBE



SECRETARY OF THE PASCUA YAQUI TRIBE



October 8, 2007

VIA FACSIMILE 520-883-5084

Mr. William Robert Gillon
Pascua Yaqui Tribe
Office of the Attorney General
4725 W. Calle Tetakusim Bldg. B
Tucson, AZ 85757-00001

Dear Mr. Gillon:

As you know, Pilar Thomas, formerly with Pascua Yaqui Tribe Office of the Attorney General Greenberg Traurig has accepted a position in the Phoenix office of Lewis and Roca. We understand that the following matters are open between the Pascua Yaqui Tribe and clients of Lewis and Roca LLP:

SMP / Pascua Yaqui Tribe matter - Responsible attorney: Steve Hart

Isaac Coronado adv. Pascua Yaqui Tribe - Responsible attorney: Jim Belanger

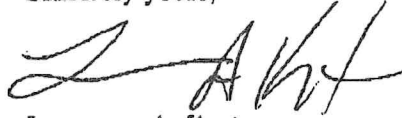
Patrick Borunda Community Development Financial Institution - Responsible attorney:
Steve Hart

Evergreen Devco re Pascua Yaqui Tribe - Responsible attorney: Keri Silvyn

We are sending you this letter to ensure compliance with the Rules of Professional Conduct that govern lawyers transitioning to new firms. Pursuant to ER 1.6 and ER 1.11 we will screen Ms. Thomas from any involvement in, or discussion about, these matters. Under these circumstances, we see no actual or potential conflict of interest and will continue to represent our clients in the above-referenced cases.

Please contact me if you believe these procedures are inadequate or if Ms. Thomas' employment by Lewis and Roca causes you or your clients any concern under the Rules of Professional Conduct.

Sincerely yours,



Lawrence A. Kasten
Chair, Professional Committee

LAK/jca

Cc: Pilar Thomas

No. CA-08-006
Pascua Yaqui Court of Appeals

HERMINIA FRIAS, Chairwoman,
Appellant-Plaintiff,

v.

PETER YUCUPICIO, Vice-Chairman;
Pascua Yaqui Tribal Council,
Appellees-Defendants.

ORDER

Appeal of a decision of the Pascua Yaqui Trial Court in Case No. CV-08-002

Pilar M. Thomas, Attorney for Appellant-Plaintiff, Phoenix, Arizona

Kathleen N. Carey, Attorney for Appellees-Defendants, Phoenix, Arizona

The Court, after careful consideration of the Appellees-Defendants' Motion for Extension of Time to File Response to Appellant's Opening Brief, and the Appellant-Plaintiff's Response in Opposition to Motion for Extension of Time to File Response to Appellant-Plaintiff's Opening Brief, finds good cause shown to grant a fifteen-day extension to file a response to the Appellant-Plaintiff's Opening Brief. Appellees-Defendants' Response Brief shall be filed with this Court no later than 5:00 p.m. on May 20th, 2008.

No further extension of time will be granted to any party in this case absent a showing of extraordinary circumstances.

So Ordered this 5th day of May, 2008.

A handwritten signature in cursive script, reading "James Hopkins". The signature is written in black ink and is positioned above a horizontal line.

James Hopkins, Chief Judge

IN THE PASCUA YAQUI TRIBE

COURT OF APPEALS

HERMINIA FRIAS, Chairwoman,

Appellant-Plaintiff,

vs.

PETER YUCUPICIO, Vice-Chairman; Pascua
Yaqui Tribal Council,

Appellees-Defendants.

No. CA 08-006

ORAL ARGUMENT REQUESTED

APPELLANT HERMINIA FRIAS' OPENING BRIEF

Pilar M. Thomas, Esq. (# 022063)

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Attorneys for Appellant-Plaintiff Herminia Frias

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STATEMENT OF THE CASE

Appellant Chairwoman Herminia Frias (“Chairwoman”) filed this Complaint on October 5, 2007 in the Pascua Yaqui Tribal Court alleging that the Appellees violated the Pascua Yaqui Tribe Ethics Ordinance, Pascua Yaqui Tribe Constitution and the Indian Civil Rights Act. The Chairwoman’s Complaint was necessary after this Court ruled that it did not have the jurisdiction to hear a direct appeal by the Chairwoman which sought to overturn the Appellees’ sanctions under the Ethics Ordinance. Pursuant to this Court’s decision, the Chairwoman filed her Complaint in Tribal Court.

The Chairwoman’s Complaint asserts that the Appellees’ failed to follow the Ethics Ordinance, thereby denying the Chairwoman her due process rights under both the Tribe’s Constitution and the Indian Civil Rights Act. In addition, the Complaint asserts that the Appellees acted arbitrarily and capriciously when they sanctioned her for various alleged violations of the Ethics Ordinance because the Appellees failed to provide sufficient due process.

On November 30, 2007, Appellees filed a Motion to Dismiss on sovereign immunity grounds. Oral argument was held on January 17, 2008. At the conclusion of oral argument, the Tribal Court ruled from the bench and granted Appellees’ Motion to Dismiss. In its written opinion, issued on January 18, 2008, the Tribal Court held that the Appellees were protected by the Tribe’s immunity from suit, and therefore, the Tribal Court did not have subject matter jurisdiction to hear the Chairwoman’s Complaint.

This timely appeal followed.

STATEMENT OF FACTS

A. Ethics Complaint and Hearing

On July 20, 2007, six Council Members and Appellee Yucupicio served a complaint on the Chairwoman alleging that as Chairwoman she had over 20 violations of the Tribe’s Ethics Ordinance. Complaint ¶¶ 10-11. Pursuant to the Ethics Ordinance, Appellee Yucupicio

conducted an executive session on July 21, 2007 to review the allegations, and set a hearing date for August 1, 2007. Comp. ¶ 12. Despite repeated requests from the Chairwoman's counsel for evidence, witnesses, and hearing procedures, Appellee Yucupicio refused to respond. Comp. ¶¶ 18–20. In addition, the Chairwoman sought to have the Council Members who filed the charges against her recused or disqualified from participating in the hearing. Comp. ¶ 19.

On August 1, 2007, the six complaining council members and Appellee Yucupicio participated in the hearing against the Chairwoman. None of the complaining council members presented any evidence to support their allegations. Comp. ¶ 23. Appellee Yucupicio did not allow the Chairwoman full representation of counsel. Comp. ¶ 22. Evidence of bias presented by the Chairwoman was ignored. Comp. ¶ 24. At the conclusion of the hearing, the six complaining council members deliberated, and voted to sanction the Chairwoman for six alleged violations of the Tribe's Ethics Ordinance. Comp. ¶ 25-26. The final sanctions were four three-month suspensions and two reprimands.

B. Subsequent Illegal Actions

On August 10, 2007, without notice, due process or any attempt to follow the Ethics Ordinance, the Appellees again suspended the Chairwoman. The second suspension was from her position as council member on tribal council. Comp. ¶ 29. Then, on September 12, 2007, again without following the Ethics Ordinance, without sufficient due process and in contravention of the Constitution, the Appellees voted to remove the Chairwoman from Tribal Council altogether. Comp. ¶¶ 32-44.

C. Appeal of Sanctions

Pursuant to the Ethics Ordinance, 2 PYTC § 1-2-100(A), on August 7, 2007 the Chairwoman filed an appeal in the Pascua Yaqui Court of Appeals challenging the Tribal Council's sanctions against her. Frias v. Yucupicio ("Frias I"), CA-07-015 (Aug. 2007). However the Court of Appeals dismissed the Chairwoman's appeal, holding that it did not have

appellate jurisdiction to hear the appeal. *See Frias I*, Order (August 28, 2007) and Opinion (October 16, 2007). Because of the Court of Appeals decision, language within the decision, and subsequent illegal actions taken by the Tribal Council, the Chairwoman filed her Complaint for Declaratory and Injunctive Relief in Tribal Court seeking to challenge the Tribal Council's many sanctions against her.

D. Applicable Tribal and Federal Law

The Tribal Council duly adopted the "Tribal Council Code of Ethics and Standards of Conduct Ordinance of 2006" ("Ethics Ordinance") on January 18, 2006. The stated purpose of the Ethics Ordinance is to define standards of conduct for council members and provide consequences when a council member is found in violation of those standards. The Ethics Ordinance can be broken down into four parts: (1) it defines the ethical obligations and standards of conduct for council members, 2 PYTC §§ 1-2-40, 50; (2) it creates a process for investigating and determining whether a council member has violated those obligations or standards, 2 PYTC §§ 1-2-60, 70; (3) it sets forth sanctions for violations, 2 PYTC § 1-2-90; and (4) it provides an appeal process which includes an explicit waiver of the Tribal Council's immunity from suit, 2 PYTC § 1-2-100(A).

The pertinent language at issue here reads:

Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination to the Pascua Yaqui Tribal Court of Appeals.

The Tribe's Constitution, Art. 1, Sec. 1(h) states that:

Consistent with the provisions of this Constitution, the Pascua Yaqui Tribe in exercising its powers of self-government shall not:

* * *

Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

The Tribe's sovereign immunity, and that of its officers and employees, can be found in Article XXIV. It states that:

The Pascua Yaqui Tribe and any person acting with the scope of his or her capacity as an officer or employee of the Pascua Yaqui Tribe shall be immune from suit, unless the tribal council enacts an ordinance expressly consenting to suit.

The Indian Civil Rights Act, 25 U.S.C. § 1302(8) states:

No Indian tribe in exercising powers of self-government shall--

* * *

deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

STATEMENT OF THE ISSUES

Whether the Tribal Court erred when it held that it did not have jurisdiction to hear the Chairwoman's Complaint against Appellees, which alleges various violations of the Pascua Yaqui Tribe's constitution and laws and federal law, on the grounds that the Ethics Ordinance appeal provision was severed from the Ordinance and in the absence of the appeal provision's explicit waiver of immunity, the Appellees accused of violating the Tribe's Constitution and laws and federal law are immune from suit.

ARGUMENT

A. Standard of Review

The standard of review of an order granting a motion to dismiss for lack of subject matter jurisdiction is de novo. Wilson v. A.H. Belo Corp., 87 F.3d 393, 396 (9th Cir. 1996). The question of whether tribal officials are immune from suit is also reviewed de novo. Linneen v. Gila River Indian Community, 276 F.3d 489, 492 (9th Cir. 2002).

B. The Tribal Court's Decision was In Error Because the Tribal Council Waived its Immunity from Suit for Appeals of Sanctions Issued Under the Ethics Ordinance

The Pascua Yaqui Tribe can waive its sovereign immunity, or the immunity of its officials, if it enacts an ordinance providing for the immunity waiver. Constitution, Art. XXIV. The Tribe can also waive its immunity, even if not done by ordinance, if it does so explicitly. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58-59 (1978). “Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council *shall have the right to appeal such determination* to the Pascua Yaqui Tribal Court of Appeals.” 2 PYTC § 1-2-100(A) (emphasis added). The Tribal Council clearly and explicitly waived its immunity from suit to allow an aggrieved Council Member—here, the Chairwoman—to appeal improperly imposed sanctions to the Tribe’s courts.

As contemplated in the Ethics Ordinance, the Chairwoman originally appealed the sanctions against her to this Court on August 7, 2007. Frias v. Yucupicio (“Frias I”), CA-07-015 (Aug. 2007). However the Court of Appeals dismissed the Chairwoman’s appeal, holding that it did not have appellate jurisdiction to hear the appeal because the Tribal Council could not enlarge this Court’s appellate jurisdiction inconsistent with the Constitution. *See* Frias I, Order (August 28, 2007) and Opinion (October 16, 2007). This Court found that the grant of appellate jurisdiction was unconstitutional, and struck it from the ordinance. *Id.*, at 5. Yet, the Tribal Court interpreted the language of this Court to sever the whole appeal provision. The Tribal Court reasoned that since this Court ruled the jurisdictional grant in the appeal provision was

unconstitutional the whole provision was excised from the Ethics Ordinance. Thus, no right to appeal exists. This interpretation is simplistic and overly narrow.

The issue before this Court in Frias I was whether the Tribal Council had the authority to grant appellate jurisdiction to the Court of Appeals to directly hear an appeal of sanctions under the Ethics Ordinance. Frias I, at 1-2. This Court ruled that Tribal Council could not grant this Court appellate jurisdiction beyond the allowable limits of the Constitution. Id., at 2. Having found the jurisdictional grant constitutionally defective, this Court further stated that the “the Pascua Yaqui trial court is the appropriate forum for the parties to initially bring their dispute. . .” Id. at 2, 5-6. As a result of this Court’s ruling, the Chairwoman filed her Complaint in Tribal Court to seek a review of the Tribal Council’s sanctions against her.

While this Court did not fully explain its reasoning behind its statement that the appropriate forum for review is the trial court, a severability analysis supports the conclusion that a right to review—and thus the immunity waiver—still exists. Generally, the standard for determining whether to sever an unconstitutional provision or language from a statute is that unless the legislature would not have enacted the law without those unconstitutional provisions, the invalid language or provisions will be severed as long as the rest of the law remains operative. Alaska Airlines, Inc. v. Brock, 480 U.S. 678, 684-85 (1987). However, there is a presumption the legislature intended offending language to be severed if a severability provision is included in the statute. Id. at 686. The relevant inquiry then is whether the statute will function as the legislature intended if the offending language is severed. Id.

The Ethics Ordinance contains a severability clause. 2 PYTC §1-2-110. Tribal Council thus intended that unconstitutional provisions would be severed. But, Tribal Council also intended a waiver of its immunity from suit so that challenges to sanctions could be appealed to the Tribe’s courts. If the whole appeal provision is severed, as the Tribal Court asserts, then Tribal Council’s intent cannot be fulfilled. In order to achieve Tribal Council’s intent, yet sever

the offending jurisdictional grant language, the offending language should be removed while leaving the rest of the provision in place. Thus, the appeal provision could reasonably read: “Any Council Member who is found to have violated this ordinance and against whom sanctions have been imposed by the Council shall have the right to appeal such determination.”

Despite this Court’s clear statement that the Tribal Court is the appropriate forum to hear the Chairwoman’s Complaint against the Appellees, the Tribal Court held that the appeal provision was completely severed and thus no waiver of sovereign immunity was effectuated. In so deciding, the Tribal Court employed a simplistic interpretation of this Court’s opinion regarding the validity of the appeal provisions in the Ethics Ordinance. The Tribal Court decision was contrary to Tribal Council’s intent to waive its immunity from suit and allow appeals of Ethics Ordinance sanctions.

The Tribal Court erred in dismissing the Chairwoman’s Complaint on the basis that the appeal provision in the Ethics Ordinance is completely severed and thus the Appellees are immune from suit. Therefore, the Chairwoman asks this Court to find that the Tribal Council’s immunity waiver is still effective and to overturn the Tribal Court’s decision to dismiss the Chairwoman’s Complaint.

C. The Tribal Court’s Decision Was Also in Error Because it is Well Established that Government Officials Cannot Cloak Themselves in the Tribe’s Sovereign Immunity When They Act Ultra Vires

Even if the Tribal Court was correct in finding that the severed appeal provision means there is no explicit waiver of the Tribal Council’s immunity from suit, the Tribal Court was clearly in error when it wholly failed to consider the well-established legal principles that government officials cannot hide behind the government’s immunity when those officials are acting outside the scope of their authority, contrary to law, or unconstitutionally.

1. Appellee Yucupicio Acted Outside the Scope of his Authority and Thus is Not Immune from Suit

Government officials cannot hide behind the government’s immunity to avoid

accountability for their illegal or unconstitutional actions. Ex Parte Young, 209 U.S. 123 (1908); Dugan v. Rank, 372 U.S. 609, 621-22 (1963); Santa Clara Pueblo, 436 U.S. at 59. The Ex Parte Young framework has been extended to tribal officers accused of violating federal law to permit prospective injunctive relief. Burlington Northern RR Co. v. Blackfeet Tribe of Montana, 924 F.2d 899, 901 (9th Cir. 1991) *overruled on other grounds by* Big Horn County Electric Coop. v. Adams, 219 F.3d 944 (9th Cir. 2000); Pitre v. Coughatta Tribal Council, Case No 2000-11-C-0197 (Coughatta Tribal Court).

At the heart of this legal principle is the notion that “all individuals, whatever their position in government, are subject to . . . [the] law: ‘No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.’” Davis v. Passman, 442 U.S. 228, 246 (1979) (internal quotation omitted). Legislators are as bound by the law as any other government official. Id.

When a government official acts ultra vires, they are not protected by sovereign immunity. Dugan, 372 U.S. at 621; Santa Clara Pueblo, 436 U.S. at 58. An official acts ultra vires when: (1) the act is beyond the limits of the official’s statutory authority; (2) the official is acting pursuant to an unconstitutional act, or (3) the official commits an unconstitutional act. Pena v. Gardner, 976 F.2d 469, 474 (9th Cir. 1992) (concurring opinion). Tribal government officials have been subject to the same standard when they act outside their lawful authority. *See* Hardin v. White Mountain Apache Tribe, 779 F.2d 476, 479-80 (9th Cir. 1985) (tribe’s immunity only extends to officials when acting within the scope of their valid authority); *see also* Burlington Northern RR Co., 924 F.2d at 902; Pitre, No. 2000-11-C-0197 (Coughatta 2001); Youvella v. Dallas, No. 96-AP-00002 (Hopi 1998); Satiacum v. Sternd, No. 82-1157 (Puyallup, April 23, 1982).

Furthermore, courts have the inherent and equitable power to grant relief and establish a remedy, even if it is not expressly granted by statute, when a legal right has been injured. Marbury v. Madison, 5 U.S. 137, 163 (1803); Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 392 (1971); Bush v. Lucas, 462 U.S. 367, 374 (1983). Critical to tribal self-governance, the Pascua Yaqui Tribe courts are the most appropriate forum to “vindicate” rights. 3 PYTC § 3-1-10; see Santa Clara Pueblo, 436 U.S. at 65.

Lastly, a court is not “ousted of jurisdiction because [a government official] asserts authority as such officer. To make out his defense, he must show that his authority was sufficient in law to protect him.” Pennoyer v. McConnaughy, 140 U.S. 1, 14 (1891); see also Burlington Northern & Santa Fe R.R. Co v. Vaughn, 509 F.3d 1085, 1092 (9th Cir. 2007) (stating that the relevant inquiry is only whether the plaintiff has alleged a violation of the law and seeks prospective relief).

In Santa Clara Pueblo, the United States Supreme Court upheld the *tribe’s* immunity from suit, but also stated that an officer of the pueblo was not protected by the tribe’s immunity if alleged to be acting contrary to the law. Id., at 58 (citing Puyallup Tribe v. Washington Dept. of Game, 433 U.S. 165 (1977)). In addition, the Supreme Court held that the purpose of the Indian Civil Rights Act (“ICRA”), 25 U.S.C. § 1302, was to “protect individual Indians from arbitrary and unjust actions of tribal governments.” Id., at 61 (internal quotations omitted). Lastly, the Court held that tribal forums are the most appropriate to “vindicate” rights created by the ICRA. Id., at 65.

Such is the case here. The Chairwoman has alleged that Appellee Yucupicio violated the Tribe’s law, Constitution, and the ICRA when he presided over the illegal, invalid, and unconstitutional actions of the Tribal Council. Appellee Yucupicio conducted the original ethics hearing on August 1, 2007. When he conducted the hearing he failed to follow the Ethics Ordinance, and violated the Constitution and the ICRA. Appellee Yucupicio presided over the

August 10, 2007 council meeting when he brought the resolution that purportedly suspended the Chairwoman from Tribal Council, in violation of the Ethics Ordinance. And Appellee Yucupicio presided over the September 12, 2007 council meeting when he brought the removal charges against the Chairwoman. He presided over the hearing in violation of the Ethics Ordinance. Appellee Yucupicio declared the Chairwoman removed from Tribal Council, even though there were insufficient votes to meet the constitutional requirement for removal. Appellee Yucupicio acted outside the scope of his authority when he violated both the Ethics Ordinance and the Constitution. He denied the Chairwoman due process through his conduct and actions.

In addition, Appellee Yucupicio continues to act outside the scope of his authority because he is acting pursuant to the unconstitutional and invalid actions of the Appellee Tribal Council. Appellee Tribal Council removed the Chairwoman from the Tribal Council in violation of the Ethics Ordinance and the Constitution. For these reasons, Appellee Yucupicio is not immune from suit.

2. Appellee Tribal Council Acted Unconstitutionally and the Tribal Courts Have the Constitutional and Inherent Authority to Review Tribal Council's Unconstitutional Actions

The Tribe's courts are granted the power to exercise jurisdiction over "all cases in law and equity arising under, this constitution and the laws, traditions, customs or enactments of the Pascua Yaqui Tribe consistent with the provisions of this constitution." Constitution, Art. VIII, Sec. 2; 3 PYTC §§ 1-1-10(C), 20(B). It is the Judicial Branch's power alone to decide what the law means and what the Constitution allows. 3 PYTC § 3-1-20; Constitution, Art. IV, VIII. Under a constitutional principle of checks and balances, only this Court has the power to determine whether the Tribal Council has acted within its power. *Id.*; *see also*, Marbury v. Madison, 5 U.S. 137, 177 (1803) ("it is emphatically the province and duty of the judicial department to say what the law is."). Part of this duty is to determine whether legislative action is

“repugnant to the constitution” and thus void. Id. Marbury stands for the proposition that it is the province and duty of the courts, “in a government of laws and of principle . . . to decide questions of right, not only between individuals, but between the government and individuals. . . .” Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 670 (1986) (internal quotations omitted).

The Tribal Council can exercise its powers “subject to any limitations imposed upon such powers by Federal law and this constitution.” Constitution, Art. VI, Sec. 1. The Chairwoman’s Complaint alleges that the Appellee Tribal Council acted unlawfully and unconstitutionally when it imposed sanctions against her without providing sufficient due process and in violation of the Ethics Ordinance and the Indian Civil Rights Act. The Chairwoman also alleges that Appellee Tribal Council unconstitutionally removed her from the Council because it did not have sufficient votes to meet the constitutional requirement of two-thirds majority vote. If the Tribal Council acts in an unconstitutional manner—that is, contrary to the law or the constitution—then the Tribe’s immunity cannot be allowed to protect it.

The Tribal Court has decided such issues before. In re: Matter of Council Motion February 8, 2000 regarding employment, Case No. CV-00-062, the tribal court was asked to review whether tribal council had the authority to order two former employees reinstated. The court found that it had the authority under the constitution to hear the complaint. It then held that tribal council exceeded its authority and ordered the council action rescinded. This Court is now called upon once again to determine the validity and constitutionality of tribal council actions.

While Marbury is not binding on this Court, it and its progeny should serve as a guide for this Court when developing the legal principles to assert the Judicial Branch’s constitutional and inherent authority to interpret and enforce the Tribe’s constitution and laws. That the Judicial Branch has inherent authority to provide a remedy when a legal right has been invaded cannot be in question. If the Tribal Courts do not exercise this inherent authority, the Tribal Council, tribal

officers, and tribal employees will be able to act with impunity as they all hide behind, with the Tribal Court's assent, the Tribe's sovereign immunity. If the Judicial Branch does not exercise its jurisdiction, then its constitutional power is meaningless.

In a democracy, accountability of government officials is imperative. However, other than the quadrennial election, there is no other way to hold the tribal council accountable for its unlawful and unconstitutional actions except to bring suit in court. If this is to be a "government of laws, and not of men," then the Tribal Courts must have the constitutional authority and power, regardless of the Tribe's immunity, to review alleged illegal or unconstitutional actions of the Tribal Council. The Tribal Courts must be the check against the Tribal Council's arbitrary or illegal use of its power.

The Ethics Ordinance allows for a review of the Appellees' actions against the Chairwoman. The Pascua Yaqui Tribe Constitution also gives the Tribal Courts the inherent power to review that action.

CONCLUSION

For the foregoing reasons, the Chairwoman respectfully requests this Court overturn the Tribal Court decision to dismiss the Chairwoman's Complaint, and order the Complaint reinstated.

DATED this 3rd day of April, 2008.

LEWIS AND ROCA LLP

By: 

Pilar M. Thomas

Attorneys for Appellant-Plaintiff Herminia Frias

ORIGINAL FILED VIA E-MAIL

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VIA FACSIMILE (520-879-6277) and

VIA FIRST CLASS MAIL this 3rd day of April, 2008, with:

Pascua Yaqui Tribe Court of Appeals

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Tucson, Arizona 85757

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Frias vs. Yucupicio

CA-08-006

Scanned and labeled as errata. Not clear if this was intended as an attachment to a court of appeals pleading, or is part of the trial court record.

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

Herminia Frias, Chairwoman,)
Plaintiff,)
VS.)
Peter Yucupicio, Vice Chairman,)
And Pascua Yaqui Tribal Council,)
Defendants.)

CASE NO. CV-08-002
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

On January 17, 2008, this matter came before the court on a Motion to Dismiss Action for Lack of Subject Matter Jurisdiction, filed by and through Kathleen N. Carey, on behalf of the Defendants. Appearing for the Plaintiff was Pilar Thomas.

Before the court addresses the issue of whether sovereign immunity applies to bar a suit against the Tribe in tribal court, it must determine the extent of its jurisdiction to do so. The Pascua Yaqui Constitution, Art. VIII establishes the judiciary of the Tribe and provides that the court has jurisdiction over all cases in law and equity arising under the Tribe's constitution and the laws, traditions and enactments of the Pascua Yaqui Tribe, and the court exercises jurisdiction over all persons who are parties, whether member or non-member, unless prohibited by tribal or federal law. Pascua Yaqui Tribal Code Title 20, "Civil Actions" provides that the Court has subject matter jurisdiction on any basis consistent with the inherent sovereignty of the Tribe, and the court has subject matter jurisdiction over all personal property on the reservation, pursuant to section D. Part of the court's authority derives from the constitution Art. VIII and pursuant to Title 20, Rule 101 (J) which provides that the tribal court has exclusive original jurisdiction to construe the meaning of tribal laws and to determine the legality under the Constitution and laws of the Pascua Yaqui Tribe and the Indian Civil Rights Act, or any action or enactment of the tribal Council, and the application of any such action or enactment to any person or situation.

This court has jurisdiction to hear disputes arising out of contracts between parties doing business on the reservation, or where the parties are entering into contracts, or where a contract is to be performed within the reservation. Id., at Sec. 101(6). The civil jurisdiction statute allows the court to extend its jurisdiction to corporations, partnerships, associations, and governmental entities. Id., at 101(C).

As Ex. 6, Pg. 1

1 The U.S. Supreme Court has noted under its Abstention Doctrine that it will not
2 interfere with the ability of a tribal court to determine its own jurisdiction to hear cases filed
3 in a tribal court:

4 . . . [T]he existence and extent of a tribal court's jurisdiction will require
5 careful examination of tribal sovereignty, the extent to which the sovereignty has been
6 altered, divested, or diminished, as well as a detailed study of relevant statutes,
7 Executive Branch policy as embodied in treaties and elsewhere, and administrative of
8 judicial decisions. We believe that examination should be conducted in the first
9 instance in the Tribal Court itself. Our cases have often recognized that Congress is
committed to a policy if supporting tribal self-government and self-determination.
That policy favors a rule that will provide the forum whose jurisdiction is being
challenged the first opportunity to evaluate the factual and legal bases for the
challenge.

10 *National Farmers v. Crow Tribe*, 471 U.S. 845, 856-857 (1985).

11 In *Iowa Mutual v. Laplante*, the U.S. Supreme court found that the "federal policy
12 supporting tribal self government directs a federal court to stay its hand in order to give the
13 tribal court full opportunity to determine its own jurisdiction . . . because tribal courts are best
14 qualified to interpret and apply tribal law." 480 U.S. 9, 16 (1987).

15 In *Santa Clara v. Martinez*, the U.S. Supreme Court in holding that the Indian Civil
16 Rights Act does not act as a waiver of a Tribe's sovereign immunity to be sued in federal
court, the court noted:

17 Tribal Courts have repeatedly been recognized as appropriate forums for the exclusive
18 adjudication of disputes affecting important personal and property interests of both
Indians and non-Indians. [citations omitted].

19 436 U.S.49, 64 (1978).

20
21 Sovereign immunity is jurisdictional. It automatically raises the question about a
22 tribal court's jurisdiction over the Tribe, its employees, and its entities. A claim of sovereign
23 immunity is a "jurisdictional prerequisite, which may be asserted at any state of the
24 proceedings." *U.S. v. Sherwood*, 312 U.S 584, 586-587, (1941); *Ramey Construction Co. v.*
Apache Tribe of Mescalero Reservation, 673 F.2d 315, 318 (10th Cir. 1982); *California v.*
25 *Quechen Tribe of Indians*, 595 F.2d 1153, 1154 n.1 (9th Cir.,1979).

26 *Santa Clara v. Martinez* held that a Tribe's sovereign immunity bars it from being
27 sued in federal court, and the Supreme Court held in *Kiowa Tribe v. Manufacturing*

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1 *Technologies*, that Tribes are immune from suit in state courts, absent an explicit waiver of
2 sovereign immunity by either Congress or a Tribe itself. 523 U.S. 751 (1998).

3 An example of Congress waiving a Tribe's immunity may be found at 25 U.S.C.
4 450f(c), which provides that Tribes who receive federal funding under the Indian Self
5 Determination Act must provide for a limited waiver of sovereign immunity in such federally
6 funded programs to cover any potential tort claims filed against such federally funded
7 program employees, and the insurer of such a tribal entity may not assert sovereign immunity
8 of the Tribe as a defense. 25 U.S.C. 450(f)(c)(3)(A).

8 Additionally, Tribes may waive their own immunity to subject themselves to suits in
9 federal courts. *U.S. v. Oregon*, 657 F.2d 1009 (9th Cir.).

10 The court in determining whether the Tribe is immune from suit in tribal court looks to
11 the Pascua Yaqui Constitution and tribal ordinances as to waiver of sovereign immunity. The
12 Pascua Yaqui Constitution provides, in pertinent part as follows:

13 The Pascua Yaqui Tribe and any person acting within the scope of his or her capacity
14 as an officer or employee of the Pascua Yaqui Tribe shall be immune from suit, unless
15 the Tribal Council enacts an ordinance expressly consenting to suits.

15 PYT Const. Art XXIV, **SOVEREIGN IMMUNITY**.

16 This constitutional provision is consistent with the rule established by federal case law that a
17 sovereign's express consent will give jurisdiction to a court over the sovereign, *U.S. v. King*,
18 395 U.S. 1 (1969); *U.S. V. Testan*, 424 U.S. 392 (1976). In addition, the provision above is in
19 harmony with the rule that an Indian Tribe may consent to suit. *U.S. v. Oregon*, 657 F.2d.
20 1009 (9th Cir. 1981).

20 The Court's general civil jurisdiction statutes provide:

21 Nothing in this Title shall be construed to affect a waiver of sovereign immunity
22 of the Pascua Yaqui Tribe, its enterprises, division, or other entities, or its employees
23 or officials.

23 PYTC Title 20 – Civil Actions, Jurisdiction, Sec. 101(k).

24 An example of a waiver of sovereign immunity can be found in a code section that
25 allows for a limited waiver of the Tribe's sovereign immunity by the Tribe for tort claims up
26 to two million dollars (\$2,000,000.00), §§ 14.10, 14.50, 14.60, and the statute waives the
27 Tribe's sovereign immunity in tort. PYTC, Title 6, Gaming Ordinance, § 14.90.

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1 The court finds that the Pascua Yaqui Constitution, general civil jurisdiction statutes,
2 and the ethics ordinance, in its current form, do not waive the Tribe's immunity from suit.

3 There is a strong presumption against waiver of tribal sovereign immunity.
4 *Demontiney v. U.S.*, 255 F.3d 801, 812 (9th Cir. 2001) (citing *Pan American Co. v. Sycuan*
5 *Band of Mission Indians*, 884 F.2d 416, 419 (9th Cir. 1985). Waivers are "interpreted liberally
6 in favor of the Tribe and restrictively against the claimant." *Maryland Casualty Co. v.*
7 *Citizens Nat. Bank of West Hollywood*, 361 F.2d 517, 521 (1966). In all circumstances,
8 including contract actions, overwhelming legal precedent provides that the sovereign
9 immunity of an Indian nation may not be waived by implication, but the waiver must be
10 express. *American Indian Agricultural Credit Union Consortium, Inc. v. Standing Rock Tribe*,
11 780 F2d 1374, 1378 (8th Cir. N.D. 1985). Courts generally will not infer a waiver from
12 contract terms, however detailed. *Ramey Construction Co., Inc. v. Apache Tribe of Mescalero*
13 *Reservation*, 673 F. 2d 315, 319 (10th Cir. 1982).

14 The Tribal Council has the power to enact ordinances subject to applicable federal law
15 and the Constitution to regulate activities including civil actions. It may choose to waive its
16 immunity when it negotiates contracts with entities or individuals doing business with the
17 Tribe. In this case it attempted to do so when the Council enacted the statute that provided a
18 civil remedy for any council member who wished to appeal any sanction imposed under the
19 ethics ordinance:

20 Any Council member who is found to have violated this ordinance and against whom
21 sanctions have been imposed by the Council shall have the right to appeal such a
22 determination to the Pascua Yaqui Court of Appeals. 2 PYTC § 1-2-100.

23 The Pascua Yaqui Court of Appeals found that the above provision was unconstitutional. The
24 Court of Appeals in Chairwoman *Herminia Frias v. Tribal Council of Pascua Yaqui Tribe, et*
25 *al.* (Ct. App. 2007), found:

26 A statute may not conflict with or violate the clear mandate of the Constitution.
27 Because 2 PYTC § 1-2-100 conflicts with the Constitution, it is unconstitutional and
28 thus void.

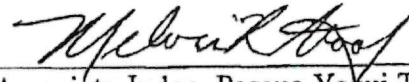
Frias v. PYT, (Ct. App.) at p. 5.

1 By the Court of Appeals taking away the remedy of appeal from the Council's decision in
2 ethics Violation cases, and based on the Tribe's sovereign immunity, the plaintiff's claim filed
3 against the Tribe should be dismissed.

4 While this result may strike some as unfair, the Court notes that the doctrine of
5 sovereign immunity has been in existence since the inception of the United States.

6 **IT IS ORDERED** that the defendant's request to dismiss the complaint based on its
7 sovereign immunity shall be granted, for good cause shown.

8 SO ORDERED THIS 17th DAY OF JANUARY, 2008.

9 
Associate Judge, Pascua Yagu Tribal Court

10 CC: Date: 01/18/08
11 Plaintiff Defendant

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Clerk

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