THE PAIUTE INDIAN TRIBE OF UTAH

440 North Paiute Drive • Cedar City, Utah 84721 • (435) 586-1112

RESOLUTION NO. 2019-40

PAIUTE INDIAN TRIBE OF UTAH TRIBAL COUNCIL RESOLUTION TO SET HEARING FOR DELVERN PIKYAVIT

WHEREAS, the Paiute Indian Tribe of Utah ("Tribe") is a federally recognized Indian tribe under 25 U.S.C. § 761, et seq., organized under the Tribe's Constitution, as ratified by the Tribe on June 11, 1991, and approved by the Secretary of the Interior on July 15, 1991, and amended by the Tribe on August 12, 1997, and approved by the Secretary of the Interior on September 30, 1997, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, pursuant to Article IV and Article V of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is the official governing body of the Tribe; and

WHEREAS, pursuant to Article V, Section 1 of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is vested with all executive and legislative powers of the Tribe; and

WHEREAS, pursuant to its inherent sovereignty as an Indian Tribe and Article V, Section 1 of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and,

WHEREAS, Paiute Indian Tribe of Utah Ordinance 2009-1 Section 6 entitled "Tribal Council Standards of Conduct" provides for standards of conduct to which the Tribal Council must conform; and

WHEREAS, the Tribal Council Standards of Conduct Section 6 "Procedure to Investigate Tribal Council Members" provides that the Tribal Council may waive an investigation of violations of the Standards of Conduct by Tribal Council members; and

WHEREAS, the Tribal Council has received a complaint against Tribal Council Member Delvern Pikyavit, attached to this Resolution as Exhibit A; and

WHEREAS, the Tribal Council met in executive session on April 16, 2019 and reviewed the complaint against Delvern Pikyavit.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council by this Resolution has determined that the allegations within the complaint fall within the scope of the Tribal Council Standards of Conduct Ordinance, and that, if those alleged facts are true, they would support a determination of unethical and / or improper conduct; and

BE IT FURTHER RESOLVED that the Tribal Council hereby waives the investigation of Delvern Pikyavit pursuant to the Standards of Conduct Section 6(B)(5); and

BE IT FURTHER RESOLVED, this Tribal Council will meet on May 1, 2019 in [open meeting or executive session] to hear the charges against Delvern Pikyavit and reach a final determination on the allegations and decide by motion what sanction to impose.

CERTIFICATION

I hereby certify that the foregoing Resolution was fully considered by the Tribal Council at a duly called meeting in Cedar City, Utah, at which a quorum was present and that the same was passed by a vote of __2__ in favor, __1__ opposed, __1__ abstained, and __1__ absent this _____day of _____, 2019.

Tamra Borchardt-Slayton, Chairperson

ATTEST:

Carol Garcia, Tribal Council Secretary

The Paiute Indian Tribe of Utah
440 N Paiute Drive
Cedar City, UT 84721

THE PAIUTE INDIAN TRIBE OF UTAH TRIBAL COUNCIL Complainant, vs. DELVERN PIKYAVIT, Vice-Chairman of Kanosh Band Respondent	**COMPLAINT FOR REMOVAL** Case No.: 2019-40 Judge: Judge Reynolds

COMPLAINT FOR REMOVAL

The PAIUTE INDIAN TRIBE OF UTAH TRIBAL COUNCIL brings this action under the Paiute Indian Tribe of Utah Constitution, Tribal Council Standards of Conduct, ORDINANCE 2009-01, Tribal Council Rules of Procedure, The Paiute Indian Tribe of Utah Confidentiality Agreement, and The Paiute Indian Tribe of Utah Ethics Ordinance. The Tribal Council brings this matter because the Respondent has continued to violate Tribal Laws that are enacted to ensure the Respondent acts within their duty of loyalty and good faith as a Tribal Council Member.

PARTIES, JURISDICTION, AND VENUE

1. Complainant, the PAIUTE INDIAN TRIBE OF UTAH is a federally recognized tribe. Complainant's reservation is located in Iron County, Utah.

2. The Respondent, DELVERN PIKYAVI, is the Vice-Chairperson for the Kanosh Band. The Kanosh Band of Paiutes is one of the federally recognized bands comprising the Paiute Indian Tribe of Utah, a federally recognized tribe.

3. This complaint is brought against Respondent in their official capacity, and for official actions taken, as the governing body of the Paiute Indian Tribe of Utah, and not in their personal capacity.

4. The incidents, acts, and omissions giving rise to this Complaint occurred in Iron County, Utah.

5. The Tribal Council has jurisdiction over the parties and the subject matter hereof and venue is proper.

GENERAL ALLEGATIONS

1. The Paiute Indian Tribe of Utah ("PITU") is a federally recognized tribe with federal trust lands located in Iron, Kanosh, Beaver, Sevier, and Washington counties. The Koosharem, Kanosh, Indian Peaks, and Shivwits federal status was terminated in 1954, and the Paiute people lost a majority of their land base and suffered dire socioeconomic conditions. In 1980, the United States Congress passed legislation that restored the PITU's status as a federally recognized tribe. The PITU administrative office is located in Cedar City, Utah. The current PITU governing body is the PITU Tribal Council.

2. The Paiute Indian Tribe of Utah ("Tribe") is a federally recognized Indian tribe under 25 U.S.C. § 761, *et seq*., organized under the Tribe's Constitution, as ratified by the Tribe on

June 11, 1991, and approved by the Secretary of the Interior on July 15, 1991, and amended by the Tribe on August 12, 1997, and approved by the Secretary of the Interior on September 30, 1997, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

3. Pursuant to Article IV and Article V of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is the official governing body of the Tribe and is vested with all executive and legislative powers of the Tribe.

4. The Tribal Council Rules of Procedure was adopted by previous tribal councils and utilized by the current Tribal Council, with amendments taking place on September 12, 2018 by majority vote.

5. The Paiute Indian Tribe of Utah Tribal Council Standards of Conduct was passed by Ordinance 2009-01, by majority vote on June 3, 2009.

6. The Paiute Indian Tribe of Utah Ethics Ordinance was approved May 5, 1984 and last amended April 5, 2004, by majority vote.

7. The Paiute Indian Tribe of Utah Confidentiality Agreement is a standard agreement that has been adopted by previous Tribal Councils and utilized by this current Tribal Council.

8. The Paiute Indian Tribe of Utah Election Ordinance was passed on May 5, 2015 by majority vote of the Tribal Council.

FIRST CAUSE OF ACTION
Tribal Council Standards of Conduct
The Paiute Indian Tribe of Utah Restoration Act
The Paiute Indian Tribe of Utah Constitution
March 11, 2019 Meeting
Background Checks for Tribal Council Members Resolution

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Background Checks for Tribal Members" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.

2. The Respondent violated the Tribal Council Standards of Conduct Section 5(H)(" Violating the Tribe's laws', Ordinances, resolutions, rules, regulations or policies"). The Respondent knew that The Paiute Indian Tribe of Utah Constitution, Article XIV Elections, Section 6 and Section 12 of the Election Ordinance provides for certifications of candidates for office by a Tribal election board. The Respondent knowingly misleads and broke Tribal Law by allowing a resolution to state: "BE IT FURTHER RESOLVED: that any resolutions of the council to the contrary are hereby superseded."

SECOND CAUSE OF ACTION
Tribal Council Standards of Conduct
The Paiute Indian Tribe of Utah Restoration Act

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Amendment of Legal Counsel Engagement and Directive" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.

2. Respondent violated the Tribal Council Standards of Conduct Section 4(H)(" Council Member shall maintain a workplace free of discrimination, harassment, violence, and intimidation, and that is drug-free, as required by law. Tribal Government officials, including Council Members, shall not tolerate any form of threatening or abusive behavior under the Tribe's Zero-Tolerance Policy. ") The resolution entitled "Amendment of Legal Counsel Engagement and Directive" states: "WHERE AS: It has come to the attention of Tribal Council Members that the Chairperson has directed legal counsel for the Tribe contrary to Tribal law and Tribal interests, without authorization of Tribal Council, as required by the Constitution, Tribal Council Rules of Procedure and Tribal Council Standards of Conduct."

The Respondent knew the statement was misleading and the Chairperson's conduct does not violate Tribal Law and there are currently no restrictions on how the Tribal Chairperson is allowed to discuss issues with the Tribe's legal counsel. The documents cited have no validity because they do not mention how to contact legal counsel and the statement made can be viewed threatening and intimidating and creates substantial harm to the professional character of the Tribal Chairperson and tribal legal counsel. The Tribal Council is aware of all contact with legal services and does review and approve legal invoices that detail what was discussed and who it was discussed with, every month.

THIRD CAUSE OF ACTION
Tribal Council Standards of Conduct
The Paiute Indian Tribe of Utah Restoration Act
The Paiute Indian Tribe of Utah Constitution
Tribal Council Rules and Procedure
March 11, 2019 Meeting
Recognition of Complaint and Investigation of Tribal Chairperson

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Recognition of Complaint and Investigation of Tribal Chairperson" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in

violation of Tribal Law.

2. Respondent violated the Tribal Council Standards of Conduct Section 6("Procedure to Investigate Tribal Council Members") when the Respondent knowingly discarded the Tribal Council Standards of Conduct Section 6 and did not provide the required initial review in an executive session. If an executive session was held without the knowledge of all the Tribal Council members, such meeting knowingly violated Tribal Council Rules and Procedure Section I(4) ("Any business which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the Council present consent thereto and all the members absent file their written consent.") The Respondent knowingly broke Tribal Law by not following the outlined process, not having an executive meeting, violating tribal law and violating the due process of the Tribal Chairperson.

3. The resolution entitled "Recognition of Complaint and Investigation of Tribal Chairperson" required the Chairperson to disclose all her emails and directed the Tribal IT department "to obtain such correspondence directly from the Chairperson's computer to ensure that no evidence is spoiled, for immediate distribution to each member of the Tribal Council." The language cited above are inconsistent with Tribal Council Standards of Conduct and do not follow the process that is outlined and is in direct violation of tribal law.

4. The Paiute Indian Tribe of Utah Constitution Article IV-Tribal Council Section 1(f) provides that "In the event a Council Member is unable to attend a council meeting, the Vice-Chairperson of the affected band may attend, be counted for purposes of forming a quorum and voting, Provided, that the band chairperson has designated in advance in writing that the vice-chairperson is acting as his or her representative at said meeting. This resolution shall not constitute an exception to Article XII- Recall, Removal and Forfeiture as found in this

constitution."

5. The vote that took place violated Tribal Law because each person that voted was a Vice-Chairperson of a band.

FOURTH CAUSE OF ACTION
Tribal Council Standards of Conduct
The Paiute Indian Tribe of Utah Restoration Act
The Paiute Indian Tribe of Utah Constitution
March 11, 2019 Meeting
Approval of Written Notice of Removal and Setting of Removal Hearing Under the Constitution
Article XII, Section 2

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Recognition of Complaint and Investigation of Tribal Chairperson" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.

2. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of

"Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by disregarding Tribal Council Standards of Conduct Section 6("Procedure to Investigate Tribal Council Member"). The Respondent did not follow the process outlined in tribal law. The Respondent is making a mockery of the process and attempted to supersede the Respondents authority by maneuvering an illegal move in a public meeting to diminish the character of the Tribal Chairperson and not affording the Tribal Chairperson their due process, which is a violation of Tribal Law.

FIFTH CAUSE OF ACTION
Tribal Council Standards of Conduct
March 11, 2019 Meeting

1. Respondent violated the Tribal Council Standards of Conduct Section 2("Council Members shall maintain the highest standards of honesty, integrity, fairness, and impartiality in their conduct as Council Members, and shall avoid any action which would adversely reflect on the Tribal Council or the Tribe. Council members shall take action in the best interests of the Tribe and the Tribal Membership, not in their personal interest and not serve special interests inside or outside of the Tribe. Although Council Members are elected to represent the five constituent bands, Council Members are expected to act in the best interest of the Tribe as a whole, and to represent the interests of all the Bands equitably. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this Ordinance may constitute "neglect of duty" or "willful misconduct" as those terms are used in Article XII, Section 2 of the Constitution.")

2. The Respondent made it apparent based on what transpired in the open meeting that they violated Tribal Law by passing illegal resolutions and suspending the chairperson without following the Tribal Council Standards of Conduct.

REQUEST

1. Based on the information provided in an open meeting, the Complainant requests that the Tribal Council not conduct any further investigation and proceed directly to a hearing pursuant to Tribal Council Standards of Conduct Section 6(B)(5)(" If the Tribal Council does not request an independent investigation, then the Chairperson shall have a hearing date not less than ten and not more than 45 days from the date of the initial review period").
2. Complainant requests that the hearing conducted by Tribal Council be held in an open meeting as now that precedent has been set.