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3 **BEFORE THE TRIBAL COUNCIL FOR THE CONFEDERATED TRIBES OF THE**
4 **GRAND RONDE COMMUNITY OF OREGON**
5

6 **In Re: Ethics Violation of:**) **ORDER DISMISSING ETHICS**
7) **COMPLAINT AND REGARDING**
8 REYNOLD LENO) **ATTORNEYS FEES AND COSTS**
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10 **I. BACKGROUND**

11 On February 24, 2011, Petitioner Andrew Jenness filed a sworn complaint which alleged
12 ten violations of the Grand Ronde Tribal Ethics Standards Ordinance (TESO) by Reynold
13 Leno (Leno), Grand Ronde Tribal Council Vice Chairman. Each of the violations are
14 derived from a transaction where the Vice Chairman was a customer of Round Valley LLC.
15 Round Valley is a state chartered business enterprise owned by the Confederated Tribes of
16 the Grand Ronde Community of Oregon (CTGR).
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18 The Petitioner alleges that Leno: 1) violated § 275 (e) (1) Conflicts of Interests, by
19 failing to disclose a personal financial interest in any business or transaction with any Public
20 Body; 2) violated § 275 (d) (6) Standards of Conduct, by using Tribal property for his own
21 gain; 3) violated § 275 (e) (2) Conflicts of Interests, by failing to disclose a personal
22 financial interest in a matter deliberated upon at a Tribal Council meeting and blocking
23 Petitioner’s access to the tribal enterprise records, and further participating in the decision; 4)
24 violated § 275 (e) (3) Conflicts of Interests, by failing to disclose a personal financial interest
25 in a matter deliberated upon at a Round Valley Board meeting and blocking Petitioner’s
access to the tribal enterprise records, and further participating in the decision; 5) violated §

1 275 (g) (2) Funds and Equipment, by using or authorizing the use of equipment for purposes
2 other than those officially authorized; 6) violated § 275 (d) (15) Standards of Conduct, by
3 Leno using his position to coerce a tribal enterprise employee to perform work for less than
4 market rates; 7) violated § 275 (d) (5) Standards of Conduct, by accepting discounted service
5 from a tribal enterprise resulting in Leno supporting a Tribal Council matter and decision; 8)
6 violated § 275 (d) (8) Standards of Conduct, by availing himself to discounts not available to
7 other tribal members; 9) violated § 275 (d) (17) Standards of Conduct, for the theft of tribal
8 enterprise services, therefore violating the Election Ordinance “substantial dishonesty”
9 prohibitions, and constituting gross negligence; 10) Tribal Council Ordinance, § (d) (1), oath
10 of office as alleged by the collective complaint allegations summarized above;

11 In response, the Respondent filed a Motion to Dismiss each of the above allegations, and
12 a Motion for Costs and Attorneys Fees.

13 The parties appeared before this Hearing Officer on June 27, 2011 in the Tribal Council
14 Chambers of the CTGR Administrative Building for a Pre-hearing conference to argue the
15 Respondent’s Motion to Dismiss. During that hearing the parties were ordered to provide
16 this Hearing Officer with a supplemental brief concerning the applicability of TESO to a
17 tribally owned enterprise, Round Valley, LLC and to appear for supplemental arguments.
18 Before the supplemental argument hearing, the Petitioner filed a Motion for Discovery of
19 documents concerning Round Valley, LLC, and related Tribal Council resolutions. A partial
20 order for the requested documents was granted and the Petitioner’s motion was added to the
21 hearing for supplemental arguments. The parties appeared for supplemental arguments on
22 July 22, 2011. As a result of that hearing, this Hearing Officer amended the briefing
23 schedule to provide additional time for the Petitioner to seek Tribal Council resolutions
24 concerning the applicability of TESO to Round Valley, and any amended briefing related to
25 the submission of such documents, and subsequent response time for the Respondent.

1 Petitioner provided no supplemental documents or briefing, and the Respondent noted no
2 further response was warranted.

3 II. DISCUSSION

4 A. Scope and Standard of Review

5 This Hearing Officer is required to apply tribal law, and is not bound to use of
6 evidentiary rules of procedure: “The Hearings Officer shall apply and be bound by Tribal
7 law; ... provided however, the Hearings Officer shall not be bound by formal rules of
8 evidence.” TESO § (f) (7).

9 The CTGR Tribal Court promulgated Court Rules adopting the Federal Rules of
10 Procedure, the Rules of the U.S. District Court of Oregon, and Federal Rules of Evidence.
11 See Court Notice, *Promulgation of Rules*, Tribal Court Chief Judge Katharine English (Dec.
12 21, 1998).

13 A motion to dismiss is proper under the Federal Rules of Civil Procedure, 12(b) where
14 the pleadings fail to state a claim upon which relief can be granted or if the complaint fails to
15 substantiate subject matter jurisdiction. Dismissal is proper where “it is clear that no relief
16 could be granted under any set of facts that could be proved consistent with the allegations”.
17 *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984). In other words, where the complaint
18 allegations fail to constitute a violation of the law evoked, there can be no relief provided by
19 the hearing officer, and those claims must be dismissed.

20 The Court is also obligated to review the sufficiency of a complaint upon a motion to
21 dismiss. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The complaint allegations of
22 material fact are taken as true and construed in the light most favorable to the nonmoving
23 party. *American Family Association, Inc. v. City & County of San Francisco*, 277 F.3d 1114,
24 1120 (9th Cir.2002). The court is not required to accept conclusory allegations as truthful.
25 *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992).

1 Finally, the TESO Purposes include: “.to set forth specific ethical standards governing
2 the conduct of all Tribal Officials.” TESO § (a) (2). The Background and Intent of TESO
3 determine that “...it is in the best interest of the Tribe that clear direction be given with
4 respect to ethical conduct of Tribal Officials.” TESO § (b).

5 **B. Analysis**

6 1. Applicability of TESO to tribal enterprises chartered under state law.

7 Each of the Petitioner’s allegation is derived from a core set of facts related to Leno being
8 a customer of Round Valley Construction, LLC on September 14, 2009. Neither party disputes
9 that Round Valley provided ditch clearing work (ditch work) for which they invoiced Leno for
10 \$75.37. Round Valley is a tribally owned enterprise chartered under the laws of Oregon as a
11 Limited Liability Corporation.

12 TESO’s definitions and application are intended to provide clear direction as to the
13 applicability and ethical standards of Tribal Officials. TESO’s definitions do not clearly include
14 applicability to an enterprise chartered under state law. The Petitioner argues given this
15 ambiguity that the background and intent provide guidance. As discussed above, the limiting
16 interpretations include intent to provide clear, rather than ambiguous direction.

17 The definitions apply to an Official who is elected or appointed to any public office or
18 Public Body. That definition does not clearly include a private enterprise owned by the CTGR,
19 nor that of one chartered under state law. Each of the parties contends that Round Valley is a
20 private for profit enterprise, and is chartered under state law. As a result, the business is not
21 subject to TESO as a Public Body as defined by TESO § (c) (2).

22 Each of the Petitioner’s TESO claims must fail if they are derived from activities not
23 related to a Public Body, therefore claim numbers 1-8 are dismissed.

24 2. Election Ordinance (claim 9)

1 Absent a showing of improper conduct or gross negligence of duty, there are no TESO
2 provisions granting this Hearing Officer with the authority to consider any matters, subjects or
3 individual actions in relation to the Election Ordinance. As the Petitioner's allegations of
4 improper conduct rely on a finding that the following substantiates a theft of services: 1) the Vice
5 Chairman acted with substantial dishonesty through an unlawful authorization of Round Valley
6 work; and 2) causing that work to be performed on his personal property for less than market
7 value, resulting in his own personal gain.

8 Each of the Petitioner's exhibits, even if true, fail to substantiate 1) that Leno used his
9 position as Public Official to authorized the work; and 2) that the Vice Chairman caused the
10 Round Valley work performed on his property to be billed at a rate below market value. Without
11 any other finding indicating an Election Code violation, Petitioner's claim number 9 is
12 dismissed.

13 3. Tribal Council Ordinance, Oath of Office (claim 10)

14 There are no TESO provisions granting this Hearing Officer with the authority to
15 consider any matters, subjects or individual actions in relation to the Tribal Council Ordinance,
16 or Oath of Office. Therefore Petitioner's claim number 10 is dismissed.

17 4. Costs and Attorneys Fees

18 The Respondent's Motion for Costs and Attorney Fees fails to establish the criteria for
19 award of such fees and costs.

20 TESO provides that:

21 *If the Hearings Officer finds that an allegation of unethical conduct on the part of a[n]*
22 *Official has been submitted for purposes of harassment or for other improper purposes,*
23 *or is completely without merit, the complainant shall be liable for and shall pay the fees*
24 *associated with defending against such allegation. In such case, the complainant shall*
25 *also be liable to the Tribe for the costs of the Hearings Officer. TESO §(f) (11).*

25 The Respondent asserts that the Petitioner's claims are meritless, and were brought for
improper political purposes. The Petitioner's claims were not meritless. After extensive

1 briefing and arguments neither party affirmatively demonstrated specific CTGR intent to apply
2 TESO to Round Valley as a private tribal enterprise through the chartering of Round Valley
3 under state law. No party provided example where this specific application of TESO has been
4 considered under CTGR law. The applicability of TESO to a CTGR owned and state law
5 chartered enterprise is a novel question, rather than meritless.

6 The Respondent asserts that the Petitioner's claims were brought for improper political
7 purposes. To support such claims, the Respondent includes exhibits concerning past
8 campaigning acts, and a blog by the Petitioner. The exhibits and arguments concerning the past
9 police investigations illustrate that in former campaigns, there were matters of contention
10 between the parties. But, that is insufficient to constitute an improper purpose for an award of
11 fees and costs under TESO. The same can be said for the information contained on the
12 Petitioner's blog site. Expressing specific concerns about the political accountability of those
13 representing the CTGR does not constitute improper political purposes.

14 **C. ORDER**

15 (1) Respondent's Motion to Dismiss claim numbers 1-10 contained in the Petitioner's TESO
16 Complaint is granted.

17 (2) Respondent's Motion for Attorney Fees and Costs is denied.

18
19 Ordered this 4th day of January, 2012

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Naomi Stacy
23 Hearing Officer
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25 Pendleton, OR 97801