

**RESOLUTION OF THE  
JUDICIARY COMMITTEE OF THE  
NAVAJO NATION COUNCIL**

Adopting the Navajo Nation Supreme Court Case Disposition Policy

**WHEREAS:**

1. The Judiciary Committee of the Navajo Nation Council is established to improve the administration of justice on the Navajo Nation by ensuring an independent judiciary free from political influence in its deliberative process that remains accountable and responsible to the Navajo Nation for its administrative and operational activities pursuant to 2 N.N.C. §572(A), as amended by Navajo Nation Council Resolution CJA-04-01; and

2. The Judiciary Committee of the Navajo Nation Council exercises oversight responsibility for the Judicial Branch of the Navajo Nation by 2 N.N.C. §574(A), and is empowered to review and approve policies, procedures, and regulations necessary for the administration and operation of the Judicial Branch including, but not limited to, travel policies, retirement policies, and personnel policies for Judicial Branch employees, justices, and judges pursuant to 2 N.N.C. §574(L), as amended by Resolution CJA-04-01; and

3. The Navajo Nation Supreme Court Case Disposition Policy is promulgated to support the administrative and supervisory authority granted by the Navajo Nation Council to the Chief Justice of the Navajo Nation under 7 N.N.C. §371 (1995), which provides in pertinent part: In addition to his judicial duties, the Chief Justice of the Navajo Nation shall have the duty of supervising the work of all justices and judges of the Navajo Nation and shall have the duty of administering the Judicial Branch; and

4. This policy is based on longstanding common practices at the Supreme Court regarding case research, writing, management and assignment. This policy is now adopted as a written procedure to aid in the orderly and efficient disposition of cases. It establishes clear expectations and internal procedures for the management of cases; and

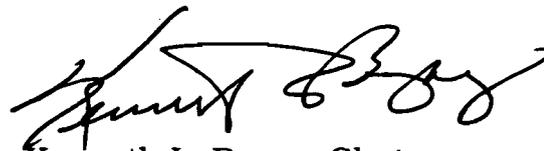
5. The policy was reviewed and adopted by the Chief Justice and Associate Justices of the Navajo Nation Supreme Court.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Judiciary Committee of the Navajo Nation Council has reviewed and discussed the Navajo Nation Supreme Court Case Disposition Policy (Exhibit "A").
2. The Judiciary Committee of the Navajo Nation Council hereby approves the Navajo Nation Supreme Court Case Disposition Policy.
3. The Navajo Nation Supreme Court Case Disposition Policy shall be subject to immediate implementation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor, 0 opposed, and 0 abstained, this 13th day of January, 2002.



Kenneth L. Begay, Chairperson  
Judiciary Committee

Motion: Peter Watchman  
Second: Joe Dennison, Jr.

Navajo Nation Supreme Court  
Case Disposition Policy  
(Amended-January 13, 2003)

I. Introduction

All appeals are governed by the criminal and civil appellate procedures of the Navajo Nation. This policy for the Navajo Nation Supreme Court covers case research, writing, management and assignment and is based on longstanding common practices at the Supreme Court. This policy is now adopted as a written procedure to aid in the orderly and efficient disposition of cases. The intent of this policy is to establish clear expectations and internal procedures for the management of cases from the beginning to the end of appeals. The Supreme Court Justices and Staff shall meet bi-weekly as coordinated by the Law Clerk to discuss pending cases, case management, opinions, orders, and other Supreme Court business as may be deemed necessary.

II. Case Management and Assignment

A. Filing

A Supreme Court appeal begins with the filing of a Notice of Appeal. When the Notice of Appeal is filed, the matter is immediately given a docket number by the Court Clerks. At this point certain cases will be indicated as priority cases (such as child custody, election appeals, and writs) and these matters shall be distributed to the Justices and Law Clerk promptly. More specifically, priority cases should be distributed within the same working day and regular cases within two working days. Once a docket number is assigned, the Court Clerks will record all official activity on a docket sheet.

The record and transcript are due 30 days from the date the Notice of Appeal is filed. The Associate Justices, with the assistance of the Law Clerk(s) shall review all filings and records for defects as early as possible to avoid unnecessary work of staff, law clerks, and Justices. The two Associate Justices will assume equal responsibility for such tasks. One Associate Justice will be assigned appellate cases given even docket numbers and the other will be assigned to appellate cases given odd docket numbers. When necessary, one Justice may work on a file initially assigned to the other Associate Justice if the initially assigned Justice is absent and the assignment calls for immediate resolution. Orders dealing with procedural issues shall be prepared by a Justice or Law Clerk and personally circulated by the Law Clerk for approval and immediate

signature of the Justices. The Court Clerks shall issue signed orders within 24 hours, or by the end of the next business day.

B. Cases Awaiting Briefs

The Notice of Docketed Appeal initiating submission of appellate briefs, as required by Rule 10(b) of Navajo Rules of Civil Appellate Procedure, shall be issued immediately by the Supreme Court Clerk, but no later than one working day from the filing of the record. In criminal appeals, the brief is filed with the Notice of Appeal under Rule 2(a) of the Navajo Rules of Appellate Procedure. During the briefing stage, which generally lasts 45 days, the Justices shall monitor whether briefing procedural requirements are met and provide recommended resolutions on any pending motions. The initial case assignment using the even- and odd-numbered distribution will continue through the filing of the briefs. At this stage, simple orders to address issues such as extensions, motions to dismiss, and other procedural matters shall be prepared by a Justice or Law Clerk and personally circulated by the Law Clerk for approval and immediate signature of the Justices.

C. Preliminary Review

The Justices will review cases and make recommendations to the other Justices, following the even- and odd- numbered distribution. This review includes whether probable cause for the appeal exists, whether oral argument is necessary, and whether the case should be disposed of by an opinion, order, or memorandum decision. A form shall be available to aid in recording these recommendations (Attached as Exhibit A). The Preliminary Review shall be completed within 60 days from the time the final brief is filed. After a Preliminary Review Form is completed, the Law Clerk shall put the case on the agenda for discussion at the next biweekly meeting of the Justices.

D. Opinions, Orders, and Memorandum Decisions

In recommending whether the case should be decided by an order, opinion, or memorandum decision, the Justices should consider the following factors: whether there are issues of first impression, whether a new issue of Navajo law has arisen, whether the issue involves the public interest of the Navajo Nation, and the factors listed in Rule 22(b) of the Navajo Rules of Civil Appellate Procedure.<sup>1</sup> If the recommendation of the

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<sup>1</sup> Often, a new issue can be spotted simply by reviewing the issues raised and legal authorities or points of law argued by the parties

form of the decision is undecided, a Justice may bring the issue to a Justices' Meeting for discussion and decision.

E. Written Decisions

The Justices and Law Clerk shall hold a meeting on each case to discuss the issues raised and the need for oral argument. At such meetings, and after a preliminary review is completed, the Chief Justice will make all assignments for opinion-writing duties. For purposes of case management and performance measures, each Justice, Law Clerk, and legal assistant shall record time spent on a case. The attached form (Exhibit B) shall be available. A written decision shall be issued in 90 days or less from the date of the preliminary review unless oral argument is held or unless exceptional circumstances require more time. The 90-day time limit applies to all cases. However, at the agreement of the Court, the 90 days will not strictly apply to cases involving complex facts and issues. Those cases shall be finished in a reasonable time, but not more than 60 additional days.

F. Hearings Held

After the preliminary review is completed, oral arguments may be scheduled in cases where the Justices need to question the parties to clarify the issues presented in the case. If oral arguments are needed, the Justices shall set the schedule for them at the next biweekly meeting. Once oral arguments have been held, the Justices shall deliberate on the same day.<sup>2</sup> However, Justices shall collectively set a deadline for the final disposition, which shall be within a reasonable time, given the complexity of the case and within 90 days of the hearing unless there are exceptional circumstances requiring more time.

G. Review of Written Opinions, Orders, & Memorandum Decisions

When a written opinion, order, or memorandum decision has been drafted, it shall be given a draft number and dated. Thereafter, each and every revision shall be numbered and dated. The original copy shall go to the Court Clerk, who will have the Law Clerk attach cited cases, rules, or statutes, and distribute copies to each Justice and the Law Clerk. The Justices and Law Clerk shall have a 10-working-day deadline to review, edit, and make comments on both initial and subsequent drafts, unless there are exceptional circumstances requiring more time. Depending upon the extent of revisions as may be suggested by the Justices, the opinion

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<sup>2</sup> Deliberate: To weight, ponder, discuss, regard upon, consider. To examine and consult in order to form an opinion. *Black's Law Dictionary, Sixth Edition (1991)*.

shall either be finalized and signed or placed on the agenda to discuss the points of law, the application of the law, and the analysis of the issues presented at the next biweekly Justices' Meeting. In addition to the Justices and Law Clerk, the Court Clerk shall assist in proofreading drafts for clerical errors.

#### H. Case Inventory

To ensure speedy justice, the Navajo Nation Supreme Court shall work to reduce any unnecessary case inventory. In order to achieve this, the Court shall finish its oldest cases before completing newer cases wherever possible. The Supreme Court Clerk shall prepare monthly reports on the status of appellate cases including a breakdown of cases in the different stages of the appellate process.

### III. Researching, Writing, and Editing

#### A. Researching

Justices assigned to write an opinion, order, or memorandum decision on a case shall have the primary responsibility for any research that is necessary. Research on issues presented to the Supreme Court shall take into consideration the fundamental laws of the Navajo Nation (including traditional Navajo values and principles), case law, statutes, administrative rules, treatises, and other sources. The Court shall have access to legal research resources and the services of the Supreme Court Law Clerk(s). Requests for research from Law Clerk(s) may be made verbally or in writing.

#### B. Law Students Working For The Supreme Court

During the summer and the academic school year, the Court may make full use of law students who are working in an internship, externship, or volunteer program with the Judicial Branch if they work on location in the Supreme Court's Window Rock offices.<sup>3</sup> These students may research and write bench memoranda and draft opinions on specific Supreme Court cases. Law student research shall be presented to the Justices and Law Clerk(s) in the form of a bench memorandum.<sup>4</sup> While a bench memorandum may provide the student's recommended outcome, each of

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<sup>3</sup> Volunteers may be law students who are not associated as interns or externs, law school graduates, attorneys or tribal court advocates, paralegals, law professors and instructors, and judges from other courts.

<sup>4</sup> A bench memorandum is a written analysis of the factual and legal issues of both sides of a case. The purpose of a bench memorandum is to identify issues in a case, locate legal resources, and provide analysis of the issues.

the Justices shall make their own independent decisions. Like any other citizen, law students employed in the Supreme Court offices may have access to public records such as appellate case files, but such law students may also have access to the otherwise confidential deliberations of the Court. Law students working for the Supreme Court shall be bound by the Code of Judicial Conduct and will be given orientation with special attention on confidentiality and conflicts of interest. Bench memoranda and other law student work products may not be used as writing samples until such time as a final decision has been issued.

C. Law Students Participating In Law School Clinical Programs

Law students providing assistance to the Supreme Court who are participating in law school clinical or similar academic programs shall only research and write bench memoranda but not draft opinions on specific cases. Law students, like any other citizen, may access the public records of the Court, which include Supreme Court case files. The Supreme Court shall not provide such students with confidential information regarding the deliberations of the Court. Law students are bound by the same Code of Judicial Conduct applicable to the justices and law clerk(s), and shall be given orientation with special attention and training to be focused on confidentiality and conflicts of interest. Bench memoranda and other law student work products may not be used as writing samples until such time as a final decision has been issued.

D. Legal Experts

In addition to legal assistance from the Law Clerk(s) and law students the Justices may consult with legal experts<sup>5</sup> in a variety of ways. The Justices, Law Clerk(s), and Court Clerks may receive continuing education and training from legal experts. This may be done both at conferences and seminars and by seeking the individual consultation of experts. Such education and training shall not involve the discussion of pending Navajo Nation Supreme Court cases.

Although the court does not normally do so, it may consult with legal experts on specific points of law, so long as no case specific facts are revealed to the expert. The court may obtain the advice of a disinterested expert on the law applicable to a specific proceeding before the court if all

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<sup>5</sup> Those people meeting one or more of the following categories may be used as legal experts: 1) law professors widely recognized as specializing in the area that advice is sought; 2) attorneys or advocates who are recognized members in good standing of any bar association and who are widely recognized as specializing in the area that advice is sought.

parties to the case are notified in writing as to the identity of the person consulted and the substance of the advice, and are given a reasonable opportunity to respond. The Court's preferred method to obtain legal advice from a legal expert is to invite the submission of amicus curiae briefs, which shall conform to the usual standards set for notice and response.

E. Consultation on Navajo Common Law

The Supreme Court may consult with certified peacemakers or persons widely recognized within the Navajo Nation or within the region where they practice as possessing knowledge and wisdom in the practice of traditional Dine law, including traditional law, customary law, natural law, and common law. The parties to a case shall be notified of the consultation and given an opportunity to respond.

F. Writing

The Navajo Nation Supreme Court shall be ultimately responsible for its opinions, orders, and memorandum decisions. To accommodate different writing and editing styles, the method of writing shall be left to the discretion of each Justice. The Justices may seek the assistance of the Law Clerk at any time during the writing process. In addition, the Law Clerk shall draft documents by assignment from one or all of the Justices.

G. Editing

Opinions may go through numerous revisions before being issued and published to ensure grammatical and legal accuracy and conciseness. The revision process applies to unpublished orders and memorandum decisions as well. The final product shall be thorough, accurate, and concise. Draft opinions must be thoroughly reviewed before finalization by the Justices.<sup>6</sup>

H. Publication of Opinions

Final opinions, signed by the Justices, shall be issued immediately and made available to the public, the Navajo Nation Bar Association, and for publication on websites, in the official Navajo Reporter, and the Indian

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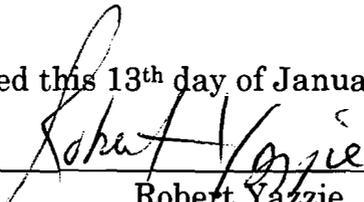
<sup>6</sup> This revision process is critical because the Supreme Court's opinions add to the body of Navajo case law that governs the Navajo Nation and are made available to the public. Establishing law for the Navajo Nation is a sacred duty and cannot be handled lightly. Furthermore, the federal and state courts and law schools carefully review Supreme Court cases. They are also published on the Internet, allowing them to be available worldwide.

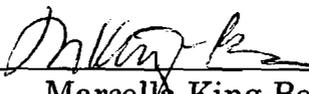
Law Reporter. The release of copies of opinions shall be at the expense of the person making the request.

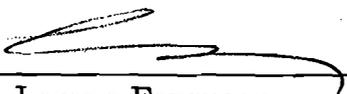
#### IV. Amendments

The foregoing policy will be amended from time to time as necessary and with the approval of the Judiciary Committee of the Navajo Nation Council.

Approved and adopted this 13<sup>th</sup> day of January 2003.

  
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Robert Yazzie  
Chief Justice of the Navajo Nation

  
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Marcella King-Ben  
Associate Justice

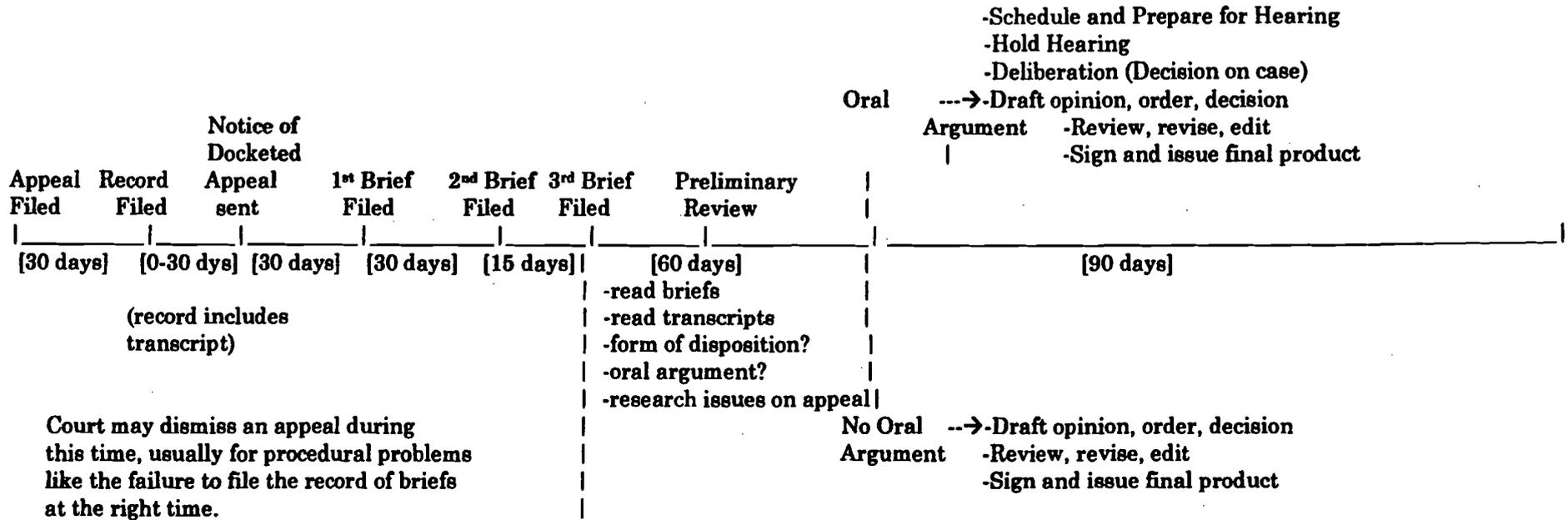
  
\_\_\_\_\_  
Lorene Ferguson  
Associate Justice

Navajo Nation Supreme Court  
Preliminary Review Form

1. Date \_\_\_\_\_
2. Case No. \_\_\_\_\_
3. Case Name \_\_\_\_\_
4. Justice Reviewing Case : \_\_\_\_\_
5. Probable Cause for Appeal? Yes / No
6. Recommend Oral Argument? Yes / No
7. Recommended Disposition? Order / Opinion / Memorm. Decision  
\_\_\_\_\_  
\_\_\_\_\_
8. Recommend Discussion before Writing? Yes / No  
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9. What are the main issues?  
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## Appeals Timeline



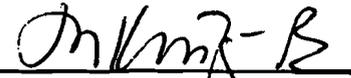
1. **Definition of Backlog at the Supreme Court:** A case that is still pending before the court, 9 months after Notice of Docketed Appeal is issued, unless extensions have been granted.

2. **Accelerated Timeline**

Certain appellate cases, which are governed by statute and/or Rule 27 of the Navajo Rules of Civil Appellate Procedure, are dealt with immediately. These cases include election appeals, writs (for example, habeas corpus), and cases involving child custody or adoption issues.

Approved and Adopted 11/21/02:

  
 Chief Justice Yazzie

  
 Associate Justice King-Ben

  
 Associate Justice Ferguson