

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL—FIRST YEAR, 2015

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND NAVAJO NATION
COUNCIL; AMENDING NAVAJO NATION CODE TITLE 7 BY REQUIRING NAVAJO
NATION SUPREME COURT CHIEF JUSTICE TO HOLD A JURIS DOCTOR DEGREE

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation Council established the Law and Order Committee (LOC) as a Navajo Nation standing committee and as such empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments. 2 N.N.C. §§ 164 (A) (9), 600 (A), 601 (B) (14) (2012) *see also* CO-45-12.
- B. The Navajo Nation Council established the Naabik'iyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee. 2 N.N.C. §§ 164 (A) (9), 700 (A) (2012) *see also* CO-45-12.
- C. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. § 164 (A) (2012) *see also* CO-45-12.
- D. Chinle Agency Council, Whippoorwill Chapter, Hardrock Chapter and Forest Lake Chapter all passed resolutions supporting the Title 7 amendment; all Navajo Nation Supreme Court justices must hold a Juris Doctor (J.D.) degree. EXHIBIT "A."
- E. The Tribal Law and Order Act of 2010 expanded the authority of tribal courts under the Indian Civil Rights Act of 1968 to include the imposition of prison sentences of up to three years or fines up to fifteen thousand dollars (\$15,000) or both; but only if the judge presiding over the criminal proceeding has sufficient legal training to preside over the proceedings and is licensed to practice

law by any jurisdiction in the United States. 25 U.S.C. §1302(b)-(c).

- F. While Navajo Nation Supreme Court justices do not directly preside over criminal proceedings, they do hear appeals of criminal proceedings and it is necessary that Navajo Nation Supreme Court justices be qualified to hear and rule on all types of cases that may come before them in order to fulfill the mission of the Navajo Nation Supreme Court to "hear cases on appeal and render a final judgment based on law, equity and tradition". CD-94-85.
- G. In the interest of improving the quality of the administration of justice in the Navajo Nation; in fulfilling the promise that the Supreme Court would hear and decide cases before them based on law, equity and tradition; and in ensuring that the Navajo Nation is able to exercise its sovereignty to the greatest extent allowed under federal law; to ensure that only the most qualified persons are appointed to the Navajo Nation's highest judicial offices at the Navajo Nation Supreme Court.
- H. The Navajo Nation Council recognized in Diyin Bits'áádée Beehaz'áanii that they will "use their experience and wisdom to always act in the best interest of the people ...ensure the rights and freedoms of the generations yet to come...[and] enact policies and laws to address the immediate and future needs..." 1 N.N.C. § 203 (A) and (D) (2009).
- I. The Navajo Nation finds that individuals with formal legal training are best qualified to make decisions on the interpretation of the Navajo Nation's laws and their application to those disputes brought before the Navajo Nation's highest judicial body; that only justices so qualified may preside over criminal proceedings that may impose the maximum sentences and fines allowed under federal law; and that the administration of justice in the Navajo Nation will be improved by ensuring that all future Navajo Nation Supreme Court justices carry such credentials.

Section Two. Amendments to Title 24 of the Navajo Nation Code

The Navajo Nation amends Navajo Nation Code Title 7 section 354 (B)(1), as follows:

NAVAJO NATION CODE ANNOTATED
TITLE 7. COURTS AND PROCEDURE
CHAPTER 3. JUDICIAL BRANCH
SUBCHAPTER 7. JUSTICES AND JUDGES
ARTICLE 1. GENERALLY

§354. Qualifications for judicial appointment

B. Supreme Court. The standards and qualifications applicable to judicial appointments to the District Courts of the Navajo Nation shall apply to all judicial appointments to the Supreme Court of the Navajo Nation with the following variations:

1. Education. Each applicant for judicial appointment to the Supreme Court shall have earned, at a minimum, a four-year Bachelor's degree from an accredited institution of higher education. The Chief Justice of the Supreme Court shall have earned a Juris Doctor (J.D.) degree. ~~An applicant who has earned a J.D. or LL.M. shall be preferred.~~

Section Three. Effective Date

The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B).

Section Four. Codification

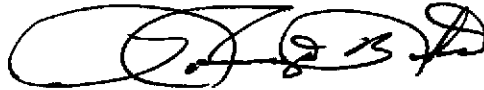
The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section Five. Savings Clause

Should any portion of the amendment enacted herein be determined invalid by the Navajo Nation Supreme Court, or the District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions not determined invalid shall remain in law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 1 opposed, this 20th day of October 2015.



LoRenzo Bates, Speaker
Navajo Nation Council

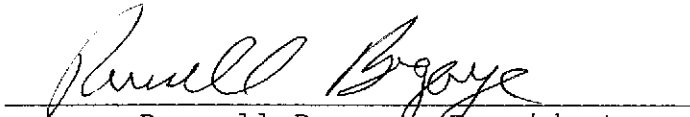
Oct. 26. 2015

Date

Motion: Honorable Seth Damon
Second: Honorable Mel R. Begay

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 1st day of November 2015.



 Russell Begaye, President
 Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2015 for the reason(s) expressed in the attached letter to the Speaker.

 Russell Begaye, President
 Navajo Nation

LEGISLATIVE SUMMARY SHEET

Tracking No. 0031-15

DATE: January 29, 2015

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI', AND NAVAJO NATION COUNCIL; AMENDING NAVAJO NATION CODE TITLE 7 BY REQUIRING NAVAJO NATION SUPREME COURT JUSTICES TO HOLD A JURIS DOCTOR DEGREE

PURPOSE: The purpose of the resolution is to require Navajo Nation Supreme Court justices to hold a Juris Doctor degree.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 12:43pm 1/29/15
Posting End Date: 2/3/2015
Eligible for Action: 2/4/2015

Law & Order Committee

THENCE

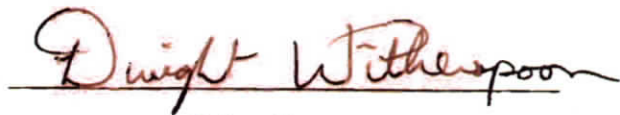
Naa'biik'iyáti' Committee

THENCE

Navajo Nation Council

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PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL—FIRST YEAR, 2015
INTRODUCED BY



Prime Sponsor

TRACKING NO. 0031-15

AN ACT
RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND NAVAJO NATION
COUNCIL; AMENDING NAVAJO NATION CODE TITLE 7 BY REQUIRING
NAVAJO NATION SUPREME COURT JUSTICES TO HOLD A JURIS DOCTOR
DEGREE

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation Council established the Law and Order Committee (LOC) as a Navajo Nation standing committee and as such empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments. 2 N.N.C. §§ 164 (A)(9), 600 (A), 601 (B)(14) (2012) *see also* CO-45-12.
- B. The Navajo Nation Council established the Naabik'iyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'iyáti' Committee. 2 N.N.C. §§ 164 (A)(9), 700 (A) (2012) *see also* CO-45-12.
- C. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. § 164 (A) (2012) *see also* CO-45-12.

- 1 D. Chinle Agency Council, Whipporwill Chapter, Hardrock Chapter and Forest Lake
2 Chapter all passed resolutions supporting the Title 7 amendment; all Navajo Nation
3 Supreme Court justices must hold a Juris Doctor (J.D.) degree. EXHIBIT A.
- 4 E. The Tribal Law and Order Act of 2010 expanded the authority of tribal courts under the
5 Indian Civil Rights Act of 1968 to include the imposition of prison sentences of up to
6 three years or fines up to fifteen thousand dollars (\$15,000) or both; but only if the judge
7 presiding over the criminal proceeding has sufficient legal training to preside over the
8 proceedings and is licensed to practice law by any jurisdiction in the United States. 25
9 U.S.C. §1302(b)-(c).
- 10 F. While Navajo Nation Supreme Court justices do not directly preside over criminal
11 proceedings, they do hear appeals of criminal proceedings and it is necessary that
12 Navajo Nation Supreme Court justices be qualified to hear and rule on all types of cases
13 that may come before them in order to fulfill the mission of the Navajo Nation Supreme
14 Court to “hear cases on appeal and render a final judgment based on law, equity and
15 tradition”. CD-94-85.
- 16 G. In the interest of improving the quality of the administration of justice in the Navajo
17 Nation; in fulfilling the promise that the Supreme Court would hear and decide cases
18 before them based on law, equity and tradition; and in ensuring that the Navajo Nation is
19 able to exercise its sovereignty to the greatest extent allowed under federal law; to
20 ensure that only the most qualified persons are appointed to the Navajo Nation’s highest
21 judicial offices at the Navajo Nation Supreme Court.
- 22 H. The Navajo Nation Council recognized in Diyín Bits’áádéé Beehaz’áanii that they will
23 “use their experience and wisdom to always act in the best interest of the people
24 ...ensure the rights and freedoms of the generations yet to come...[and] enact policies
25 and laws to address the immediate and future needs...” 1 N.N.C. § 203 (A) and (D)
26 (2009).
- 27 I. The Navajo Nation finds that individuals with formal legal training are best qualified to
28 make decisions on the interpretation of the Navajo Nation’s laws and their application to
29 those disputes brought before the Navajo Nation’s highest judicial body; that only
30 justices so qualified may preside over criminal proceedings that may impose the

1 maximum sentences and fines allowed under federal law; and that the administration of
2 justice in the Navajo Nation will be improved by ensuring that all future Navajo Nation
3 Supreme Court justices carry such credentials.

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5 **Section Two. Amendments to Title 24 of the Navajo Nation Code**

6 The Navajo Nation amends Navajo Nation Code Title 7 section 354 (B)(1), as follows:

7
8 **NAVAJO NATION CODE ANNOTATED**
9 **TITLE 7. COURTS AND PROCEDURE**
10 **CHAPTER 3. JUDICIAL BRANCH**
11 **SUBCHAPTER 7. JUSTICES AND JUDGES**
12 **ARTICLE 1. GENERALLY**

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14 **§354. Qualifications for judicial appointment**

15 ***

16 B. Supreme Court. The standards and qualifications applicable to judicial appointments to the
17 District Courts of the Navajo Nation shall apply to all judicial appointments to the Supreme
18 Court of the Navajo Nation with the following variations:

19 1. Education. Each applicant for judicial appointment to the Supreme Court must hold a
20 Juris Doctor (J.D.) degree from an ABA accredited law school. shall have earned, at a
21 minimum, a four-year Bachelor's degree from an accredited institution of higher
22 education. An applicant who has earned a J.D. or LL.M. shall be preferred.

23 ***

24 **Section Three.**

Effective Date

25 The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B).

26 **Section Four. Codification**

27 The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall
28 be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall
29 incorporate such amended provisions in the next codification of the Navajo Nation Code.

30

1 **Section Five. Savings Clause**

2 Should any portion of the amendment enacted herein be determined invalid by the Navajo
3 Nation Supreme Court, or the District Court of the Navajo Nation, without appeal to the Navajo
4 Nation Supreme Court, those portions not determined invalid shall remain in law of the Navajo
5 Nation.

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Resolution No. CAP-0115-004

RESOLUTION OF CHINLE AGENCY COUNCIL

SUPPORTING AND REQUESTS THE NAVAJO NATION COUNCIL TO AMEND 7 N.N.C. SUBSECTION 354 (B) TO REQUIRE THAT ~~FUTURE~~ NAVAJO NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND BE STATE LICENSED ATTORNEYS IN GOOD STANDING.

Whereas:


1. The Chinle Agency Council is hereby established under the Executive Branch of the Navajo Nation Government pursuant to Intergovernmental Resolution No. IGRS-251-01 and 26 N.N.C. Local Governance Act approved by the Navajo Nation Council Resolution CAP-34-98;
2. The Purpose of the Chinle Agency Council shall be to address significant issues and concerns for it 16 member Chapters and to advocate and promote community projects and collaborate with county, state, Federal, private entities and other local governments;
3. The Tribal Law and Order Act of 2010, P.L. 111-211, expanded the authority of tribal Courts under the Indian Civil Rights Act of 1968, 25 U.S.C. §1302, to include the imposition of prison sentences of up to 3 years or fines of up to \$15,000 or both; but only if the judge presiding over the criminal proceeding has sufficient legal training to preside over the proceeding and is licensed to practice law by any jurisdiction in the United States. *See* 25 U.S.C. §1302(b)-(c); and
4. While Navajo Nation Supreme Court justices do not directly preside over criminal proceedings, they do hear appeals of criminal proceedings and it is necessary that Navajo Nation Supreme Court justices be qualified to hear and rule on all types of cases that may come before them in order to fulfill the mission of the Navajo Nation Supreme Court to "hear cases on appeal and render a final judgment based on law, equity and tradition"; and
5. It is necessary, therefore, in the interests of improving the quality of the administration of justice in the Navajo Nation; in fulfilling the promise that the Supreme Court would hear and decide cases before them based on law, equity and tradition; and in ensuring that the Navajo Nation is able to exercise its sovereignty to the greatest extent allowed under federal law; to ensure that only the most qualified persons are appointed to the Navajo Nation's highest judicial offices at the Navajo Nation Supreme Court; and
6. The Navajo Nation hereby finds that individuals with formal legal training and who hold licenses to practice law in good standing from any State are best qualified to make decisions on the interpretation of the Navajo Nation's laws and their application to those disputes brought before the Navajo Nation's highest judicial body; that only judges so qualified may preside over criminal proceedings that may impose the maximum sentences and fines allowed under federal law; and that the administration of justice in the Navajo Nation will be improved by ensuring that all ~~future~~ Navajo Nation Supreme Court Justices carry such credentials.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Chinle Agency Council Supports And Requests the Navajo Nation Council To Amend 7N.N.C. Subsection 354 (B) To Require That ~~Future~~ Navajo Nation Supreme Court Justices Hold A Juris Doctor Degree And Be State Licensed Attorneys In Good Standing. Also, Hearing Officers (ONTA)
2. Have CIB, Fluent in Navajo, and Elected.

CERTIFICATION

WE HEREBY certify that the a foregoing resolution was duly considered by the Chinle Agency Council at a duly called regular meeting at the Nazlini, Arizona at which a quorum was present and that same was passed by a vote of 32 in favor, 0 opposed and 2 abstained, this 17th day of January 2015.



Aaron Yazzie, Chinle Agency Council President

M: Caroline Bemore
87. Mitchell Bull



Whippoowill Chapter
P.O. Box 279 Pinon, AZ 86510
Phone: (928)725-3728/3727
Fax: (928)725-3745
<http://whippoowill.nndes.org>



~~~~~  
*Jennifer Begay-Chapter President\*Elroy Bahe.-Chapter Vice President\*Loretta Begay-Chapter Sec/Treasurer\*Dwight Witherspoon,-Council Delegate*

**RESOLUTION  
OF THE WHIPPOORWILL CHAPTER  
RESOLUTION NO. WC-15-061**

**THE WHIPPOORWILL CHAPTER HEREBY REQUESTS THE NAVAJO NATION COUNCIL TO AMEND 7N.N.C SUBSECTION 354 (B) TO REQUIRE THT FUTURE NAVAJO NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND BE STATE LICENSED ATTORNEYS IN GOOD STANDING.**

**WHEREAS:**

1. Pursuant to 26 N.N.C., Section 3 (A) the Whippoowill Chapter is a duly recognized certified Chapter of the Navajo Nation Government, as listed at 11 N.N.C., part 1, Section 10; and
2. The Navajo Nation Council Resolution CS-34-98 enacted the Navajo Nation Local Governance Act and codified it under Title 26 of the Navajo Nation Code; and
3. Pursuant to Title 26 N.N.C., Section B-1&2, the purpose of the Local Governance Act is to recognize at the local level and to delegate to chapter government with respect to local matters consistent with Navajo Laws including custom and tradition and to make decisions over local matter; and
4. The Tribal Law and Order Act of 2010, P.L. 111-211, expanded the authority of Tribal Courts under the Indian Civil Rights Act of 1968, 25 U.S.C. Section 1302, to include the imposition of prison sentences of up to 3 years or fines of up to \$15,000 or both; but only if the judge presiding over the criminal proceeding has sufficient legal training to preside over the proceeding and is licensed to practice law by any jurisdiction in the United States. See 25 U.S.C Section 1302(b)-(c); and
5. While Navajo Nation Supreme Court Justice do not directly preside over criminal proceedings, they do hear appeals of criminal proceeding and it is necessary that Navajo Nation Supreme Court justice be qualified to hear and rule on all types of cases that may come before them in order to fulfill the mission of the Navajo Nation Supreme Court to "hear cases on appeal and render a final judgment based on law, equity and tradition"; and
6. It is necessary, therefore, in the interests of improving the quality of the administration of justice in the Navajo Nation; in fulfilling the promise that the Supreme Court would hear and decide cases before them based on law, equity and traditions; and in ensuring that the Navajo Nation is able to exercise its sovereignty to the greatest extent allowed under federal law; to ensure that only the most qualified persons are appointed to the Navajo Nation's highest judicial officers at the Navajo Nation Supreme Court; and
7. The Navajo Nation hereby finds that individuals with formal legal training and who hold licenses to practice law in good standing from any State are best qualified to make decisions on the interpretations of the Navajo Nation's laws and their application to those disputes brought before the Navajo Nation's highest judicial body; that only judges so qualified may preside over criminal proceedings that may impose the maximum sentences and fines allowed under federal law; and that the administration of justice in the Navajo Nation will be improved by ensuring that all future Navajo Nation Supreme Court Justice carry such credentials.

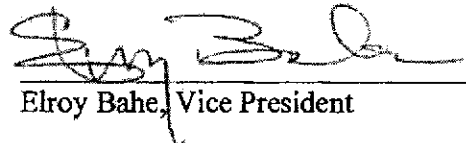
**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Whippoorwill Chapter hereby requests the Navajo Nation Council to amend 7 N.N.C. Subsection 354 (B) to require that future Navajo Nation Supreme Court Justice hold a Juris Doctor degree and be state licensed attorneys in good standing.

**CERTIFICATION**

We hereby certify that the foregoing resolution was duly considered by the Whippoorwill Chapter at a duly called meeting in Whippoorwill, Navajo Nation, Arizona which quorum was present that same was passed by a vote of 22 in favor 0 opposed and 3 abstained on this 18<sup>th</sup> day of January, 2015.

  
Jennifer Begay, President

  
Elroy Bahe, Vice President

  
Loretta Begay, Secretary/Treasurer

  
Dwight Witherspoon, Council Delegate



## **FOREST LAKE CHAPTER**

**P.O. BOX 441  
HIGHWAY NAVAJO ROUTE 41  
PINON ARIZONA 86510-0441  
PHONE: 928-677-3252 if busy 928-677-3347  
FAX: 928-677-3320**

Council Delegate, Dwight Witherspoon  
President, Helena Begay  
Vice-President, Fern Benally  
Secretary/Treasurer, Brenda White  
Grazing Representative, Irene Begaye  
Community Services Coordinator, Ella Mae Benally

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**BEN SHELLY  
PRESIDENT**

**REX L. JIM  
VICE PRESIDENT**

### **RESOLUTION OF THE FOREST LAKE CHAPTER RESOLUTION NO. FLC-15-01-13**

**THE FOREST LAKE CHAPTER HEREBY REQUESTS THE NAVAJO NATION COUNCIL TO AMEND 7N.N.C. SUBSECTION 354 (B) TO REQUIRE THAT FUTURE NAVAJO NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND BE STATE LICENSED ATTORNEYS IN GOOD STANDING.**

**WHEREAS:**

1. The Navajo Nation Council Resolution CS-34-98 enacted the Navajo Nation Local Governance Act and codified it under Title 26 of the Navajo Nation Code; and
2. Pursuant to Title 26 NNC, Section B-1&2, the purpose of the Local Governance Act is to recognize at the local level and to delegate to chapter government with respect to local matters consistent with Navajo Laws including custom and tradition and to make decisions over local matter; and
3. The Tribal Law and Order Act of 2010, P.L. 111-211, expanded the authority of tribal Courts under the Indian Civil Rights Act of 1968, 25 U.S.C. §1302, to include the imposition of prison sentences of up to 3 years or fines of up to \$15,000 or both; but only if the judge presiding over the criminal proceeding has sufficient legal training to preside over the proceeding and is licensed to practice law by any jurisdiction in the United States. *See* 25 U.S.C. §1302(b)-(c); and
4. While Navajo Nation Supreme Court justices do not directly preside over criminal proceedings, they do hear appeals of criminal proceedings and it is necessary that Navajo Nation Supreme Court justices be qualified to hear and rule on all types of cases that may come before them in order to fulfill the mission of the Navajo Nation Supreme Court to "hear cases on appeal and render a final judgment based on law, equity and tradition"; and
5. It is necessary, therefore, in the interests of improving the quality of the administration of justice in the Navajo Nation; in fulfilling the promise that the Supreme Court would hear and decide cases before them based on law, equity and tradition; and in ensuring that the Navajo Nation is able to exercise its sovereignty to the greatest extent allowed under federal law; to ensure that only the most qualified persons are appointed to the Navajo Nation's highest judicial offices at the Navajo Nation Supreme Court; and

- The Navajo Nation hereby finds that individuals with formal legal training and who hold licenses to practice law in good standing from any State are best qualified to make decisions on the interpretation of the Navajo Nation's laws and their application to those disputes brought before the Navajo Nation's highest judicial body; that only judges so qualified may preside over criminal proceedings that may impose the maximum sentences and fines allowed under federal law; and that the administration of justice in the Navajo Nation will be improved by ensuring that all future Navajo Nation Supreme Court Justices carry such credentials.

**NOW THEREFORE BE IT RESOLVED THAT:**

**The Forest Lake Chapter Hereby Requests The Navajo Nation Council To Amend 7N.N.C. Subsection 354 (B) To Require That Future Navajo Nation Supreme Court Justices Hold A Juris Doctor Degree And Be State Licensed Attorneys In Good Standing.**

**CERTIFICATION**

We hereby certify that the foregoing resolution was duly considered by the Forest Lake Chapter at a duly called meeting in Forest Lake, Navajo Nation, Arizona which quorum was present that same was passed by vote of 25 in favor 0 opposed and 10 abstained on this 15<sup>th</sup> day of January, 2015.

Kimberly Smith  
Motion

Debbie Mike  
Second

[Signature]  
Helena Begay, Chapter President

[Signature]  
Brenda White, Secretary/Treasurer

[Signature]  
Fern Benally, Vice-President

[Signature]  
Dwight Witherspoon, Council Delegate

[Signature]  
Irene Begaye, Grazing Representative

**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0588-11

**DATE:** September 19, 2011

**TITLE OF RESOLUTION:** AN ACTION RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI AND NAVAJO NATION COUNCIL; AMENDING 7 N.N.C. §354(B) TO REQUIRE THAT FUTURE NAVAJO NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND BE STATE LICENSED ATTORNEYS IN GOOD STANDING

**PURPOSE:** The purpose of this resolution is to require future Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree and be state licensed attorneys in good standing.



5-DAY  
COMMENT PERIOD  
Start: 20 SEPT 2011  
End: 24 SEPT 2011  
Signature: [Signature]

LAW AND ORDER  
COMMITTEE

THENCE


1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION

2 22<sup>nd</sup> NAVAJO NATION COUNCIL -- First Year, 2011

NABIK'ÍYÁTI' COMMITTEE

3 INTRODUCED BY

THENCE

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5  
6 (Prime Sponsor) (Russell Begaye)

NAVAJO NATION COUNCIL

7  
8 TRACKING NO. 0388-11

9 AN ACTION

10 RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND NAVAJO NATION  
11 COUNCIL; AMENDING 7 N.N.C. §354(B) TO REQUIRE THAT FUTURE NAVAJO  
12 NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND  
13 BE STATE LICENSED ATTORNEYS IN GOOD STANDING

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15 BE IT ENACTED:

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17 **Section 1. Findings and Purpose**

18 1. Following a vote by the People to reduce the size of the Navajo Nation Council from  
19 88 to 24 members, the Navajo Nation Council reorganized itself to accommodate a smaller  
20 number of delegates, including the creation of the Law and Order Committee of the Navajo  
21 Nation Council, which assumed those authorities previously granted to the Judiciary  
22 Committee of the Navajo Nation Council.

23 2. Pursuant to 2 N.N.C. §601(B)(5)(b), (B)(6) and (B)(14), the Law and Order  
24 Committee of the Navajo Nation Council has the authority to "review and make  
25 recommendations to the Navajo Nation Council" on "[l]egislation requiring Council  
26 approval to accomplish or impact the Committee purposes", including the purpose at 2  
27 N.N.C. §600(C)(1) to improve the administration of justice on the Navajo Nation; and the  
28 authority "[t]o determine, with the approval of the Navajo Nation Council, qualifications to  
29 be required of judges and justices of the Navajo Nation"; and the authority "[t]o review and  
30

1 make recommendations to the Navajo Nation Council on proposed amendments to and  
2 enactments in the Navajo Nation Code”.

3 4. The Judicial Reform Act of 1985, CD-94-85, established the Supreme Court of the  
4 Navajo Nation; and at Whereas Clause 13, stated that the Supreme Court would “hear cases  
5 on appeal and render a final judgment based on law, equity and tradition”.

6 5. The Tribal Law and Order Act of 2010, P.L. 111-211, expanded the authority of tribal  
7 Courts under the Indian Civil Rights Act of 1968, 25 U.S.C. §1302, to include the  
8 imposition of prison sentences of up to 3 years or fines of up to \$15,000 or both; but only if  
9 the judge presiding over the criminal proceeding has sufficient legal training to preside  
10 over the proceeding and is licensed to practice law by any jurisdiction in the United States.  
11 *See* 25 U.S.C. §1302(b)-(c).

12 6. While Navajo Nation Supreme Court justices do not directly preside over criminal  
13 proceedings, they do hear appeals of criminal proceedings and it is necessary that Navajo  
14 Nation Supreme Court justices be qualified to hear and rule on all types of cases that may  
15 come before them in order to fulfill the mission of the Navajo Nation Supreme Court to  
16 “hear cases on appeal and render a final judgment based on law, equity and tradition”.

17 7. It is necessary, therefore, in the interests of improving the quality of the  
18 administration of justice in the Navajo Nation; in fulfilling the promise that the Supreme  
19 Court would hear and decide cases before them based on law, equity and tradition; and in  
20 ensuring that the Navajo Nation is able to exercise its sovereignty to the greatest extent  
21 allowed under federal law; to ensure that only the most qualified persons are appointed to  
22 the Navajo Nation’s highest judicial offices at the Navajo Nation Supreme Court.

23 8. The Navajo Nation hereby finds that individuals with formal legal training and who  
24 hold licenses to practice law in good standing from any State are best qualified to make  
25 decisions on the interpretation of the Navajo Nation’s laws and their application to those  
26 disputes brought before the Navajo Nation’s highest judicial body; that only judges so  
27 qualified may preside over criminal proceedings that may impose the maximum sentences  
28 and fines allowed under federal law; and that the administration of justice in the Navajo  
29 Nation will be improved by ensuring that all future Navajo Nation Supreme Court Justices  
30 carry such credentials.

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**Section 2. Amendment to 7 N.N.C §354**

The Navajo Nation Council hereby enacts an amendment to 7 N.N.C. §354 as follows:

\*\*\*\*

**TITLE 7. NAVAJO NATION GOVERNMENT  
CHAPTER 7. JUSTICES AND JUDGES  
ARTICLE 1. GENERALLY**

\*\*\*\*

**§ 354. Qualifications for judicial appointment**

A. District Courts. The following standards and qualifications shall apply to all judicial appointments to the District Courts of the Navajo Nation:

1. Member of Navajo Nation and Age. An applicant shall be an enrolled member of the Navajo Nation and shall be over 30 years of age.
2. Criminal Convictions. An applicant shall not have any felony or other conviction of an offense identified as a Major Crime in 18 U.S.C. § 1153 in any jurisdiction. An applicant shall not have any misdemeanor convictions in any jurisdiction within a five consecutive year period prior to the date the application is submitted.
3. Education. Each applicant shall have earned, at a minimum, an Associate of Arts or Science degree from an accredited institution of higher education. An applicant who has earned a higher educational degree shall be preferred, with particular preference being given to a law degree (J.D. or LL.M.).
4. Experience. Each applicant shall have at least four years direct work experience in a law related area and shall have a working knowledge of Navajo and applicable federal and state laws. Those applicants with experience working with the Navajo Nation Courts or with state and federal courts shall be preferred.
5. Knowledge of Navajo Language, Culture and Tradition. Each applicant must be able to speak both Navajo and English, and have some practical knowledge of the fundamental laws of the Diné. The applicant must be able to demonstrate:

- 1           a. An understanding of K'é, including the Diné clan system; and
- 2           b. A basic understanding of traditional Navajo religious ceremonies; and
- 3           c. An understanding of the traditional Navajo lifestyle.
- 4       6. Health. Each applicant shall produce a current statement from a licensed
- 5           physician indicating that the applicant is in good mental health.
- 6       7. Driver's License. Each applicant shall possess a valid driver's license.
- 7       8. No Substance Abuse or Addiction. In addition to the requirement of obtaining a
- 8           medical statement pursuant to Subsection (A)(6) above, each applicant must attest
- 9           that he or she does not abuse or have a harmful physical addiction to any mood
- 10          altering substance.
- 11       9. Writing Test. Upon initial screening of applicants by the Judiciary Committee,
- 12          those applicants selected shall submit to a writing test that illustrates each
- 13          applicant's organizational, analytical and communicative legal writing abilities.
- 14       10. Ethics. Each applicant shall show that he or she has neither present nor past
- 15          conflicts of interests that give the appearance of partiality or bias in cases brought
- 16          in the Courts of the Navajo Nation. Each applicant must demonstrate a
- 17          commitment to judicial independence and an impartial background that will
- 18          indicate neutrality and fairness for proper decision making. An applicant shall not
- 19          have been found in violation of:
- 20           a. The Navajo Nation Ethics in Government Law;
- 21           b. Standards of ethics or professional conduct for lawyers in any jurisdiction; or
- 22           c. Standards of ethics for judges or judicial codes of conduct in any jurisdiction;
- 23          within a five consecutive year period prior to the date the application is submitted.
- 24       11. References. Each applicant must be of good moral character and shall submit a
- 25          minimum of four current letters of reference specifically regarding his or her
- 26          application for judicial appointment. At least one letter of reference shall be from
- 27          a regular member in good standing with the Navajo Nation Bar Association. Such
- 28          letters shall outline the applicant's legal skills, motivation and employment
- 29          performance, and the applicant's character and capacity for independence, honesty
- 30          and impartiality.

- 1 12. Management Ability. Each applicant shall possess managerial and independent  
2 decision-making skills necessary for the efficient operation of a Court.  
3 Information such as the applicant's record of supervising staff, coordinating  
4 budget and personnel requirements, verbal communication and writing abilities  
5 shall be carefully considered by the Judiciary Committee.
- 6 13. Navajo Nation Bar Association. Each applicant shall provide proof in his or her  
7 application that he or she is presently a regular or inactive member in good  
8 standing with the Navajo Nation Bar Association and shall maintain membership  
9 in good standing throughout his or her judicial career.
- 10 14. Removal from office. Navajo Nation probationary and permanent judges  
11 removed from office for any reason shall not be eligible for subsequent judicial  
12 appointment.
- 13 B. Supreme Court. The standards and qualifications applicable to judicial appointments  
14 to the District Courts of the Navajo Nation shall apply to all judicial appointments to  
15 the Supreme Court of the Navajo Nation with the following variations:
- 16 1. Education. Each applicant for judicial appointment to the Supreme Court shall  
17 have earned, at a minimum, a Juris Doctor (J.D.) degree, a four-year Bachelor's  
18 degree from an accredited institution of higher education. ~~An applicant who has~~  
19 ~~earned a J.D. or LL.M. shall be preferred.~~
- 20 2. State License. In addition to being a member, and maintaining membership in  
21 good standing with, the Navajo Nation Bar Association, applicants for judicial  
22 appointment to the Supreme Court shall be required to have and maintain in good  
23 standing a license to practice law from any state.
- 24 23. Judge Applicants. A sitting Navajo Nation District Court Judge applicant who  
25 meets all requirements for appointment to the Supreme Court shall be preferred,  
26 in accordance with the following:
- 27 a. A Navajo Nation District Court Judge (permanent or probationary) beginning  
28 service before the effective date of this Section shall be eligible for  
29 appointment to the Supreme Court irrespective of the increased minimum  
30 educational qualifications for either District Court Judges or Supreme Court

1 Justices enumerated in this Section. Provided, however, that such District  
2 Court Judge applicant shall meet all other minimum qualifications as set forth  
3 in this Section.

4 b. A Navajo Nation District Court Judge (permanent or probationary) beginning  
5 service after the effective date of this Section shall not be eligible for  
6 appointment to the Supreme Court unless he or she meets all minimum  
7 qualifications for Supreme Court Justices as set forth in this Section.

8 C. These minimum qualifications and educational requirements shall not affect the status  
9 of probationary or permanent Justices or Judges beginning service before the  
10 effective date of this Section.

11 D. Each applicant shall be objectively evaluated, selected, appointed and confirmed  
12 based solely on their qualifications for the particular judicial position at issue and  
13 without regard to political affiliation or association.

14 \*\*\*\*

15  
16 **Section 3. Effective Date**

17 The amendment enacted herein shall be effective pursuant to 2 N.N.C. §221 (B), and  
18 CD-68-89, Resolved Clause 6.

19  
20 **Section 4. Codification**

21 The provisions of the Act which amend or adopt new sections of the Navajo Nation  
22 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative  
23 Counsel shall incorporate such amended provisions in the next codification of the Navajo  
24 Nation Code.

25  
26 **Section 5. Saving Clause**

27 Should any provision of this Act be determined invalid by the Navajo Nation  
28 Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo  
29 Nation Supreme Court, those provisions of the Act which are not determined invalid shall  
30 remain the law of the Navajo Nation.

**LEGISLATIVE BRANCH  
NAVAJO NATION**

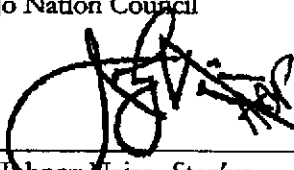


**HONORABLE JOHNNY NAIZE**  
*Speaker, 22<sup>nd</sup> Navajo Nation Council*

September 19, 2011

**MEMORANDUM**

**TO :** *Honorable Members*  
Law and Order Committee  
Nabik'iyati' Committee  
Navajo Nation Council

**FROM :**   
\_\_\_\_\_  
Hon. Johnny Naize, *Speaker*  
22<sup>nd</sup> Navajo Nation Council

**SUBJECT :** **ASSIGNMENT OF LEGISLATION**

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Law and Order Committee, Nabik'iyati' Committee and the Navajo Nation Council:

Legislation No. 0388-11

RELATING TO LAW AND ORDER, NABIK'IYATI' AND NAVAJO NATION COUNCIL;  
AMENDING 7 N.N.C. §354 (B) TO REQUIRE THAT FUTURE NAVAJO NATION  
SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND BE STATE  
LICENSED ATTORNEYS IN GOOD STANDING

As the Committee assigned to consider the legislation, Legislation No. 0388-11 must be placed on the Law and Order Committee, Nabik'iyati' Committee and the Navajo Nation Council's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0388-11

XC: Hon. Ben Shelly, *President*  
The Navajo Nation  
Harrison Tsoic, *Attorney General*  
Mark Grant, *Controller*  
Honorable Russell Begaye, Council Delegate (*Prime Sponsor*)


Office of Legislative Counsel  
Telephone: (928) 871-7166  
Fax #: (928) 871-7576



Johnny Naize  
Speaker of the Navajo Nation Council

**MEMORANDUM**

To: The Honorable Russell Begaye  
Shiprock Chapter

From :   
Ron Haven, Attorney  
Office of Legislative Counsel

Date : September 19, 2011

Re : **Proposed Council Resolution Amending the Qualifications of Supreme Court Justices**

You requested legislation to amend the qualifications of Supreme Court Justices to include requiring a Juris Doctor degree and that they hold a state license. As you know, Mr. Brian Quint, former staff attorney with Office of Legislative Counsel, released a draft copy of the legislation in July 2011. I have retrieved this draft and I am forwarding it to you (with minor additions not affecting the substance as originally drafted). As Mr. Quint previously advised, please review the proposed bill and let us know your comments.

Thank you for your attention.

xc : Edward McCool, Acting Chief Legislative Counsel

11-404-1



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0388-11 SPONSOR: Russell Begave

**TITLE: An Action Relating to Law and Order; Naa'bik'iyati' and Navajo Nation Council; Amending 7 N.N.C. §354(B) To Require That Future Navajo Nation Supreme Court Justices Hold a Juris Doctor Degree and be State Licensed Attorneys in Good Standing**

**Date posted: September 20, 2011**

**Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)**

**Written comments may be mailed to:**

**Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7590**

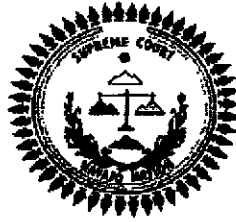
**Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.**

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

# JUDICIAL BRANCH OF THE NAVAJO NATION

HERB YAZZIE  
Chief Justice of the Navajo Nation

Eleanor Shirley, Associate Justice




## Supreme Court

P.O. Box 520 ♦ Window Rock, Arizona 86515  
Telephone 928-871-7669 ♦ Fax 928-871-6761

### MEMORANDUM

To: Jarvis Williams, Acting Executive Director  
Office of Legislative Services

Fr:   
Herb Yazzie, Chief Justice

Date: September 23, 2011

Re: Pending Legislation No. 0388-11; Amendments to 7 N.N.C. § 354(B)

Below are my comments regarding the proposal that Navajo Nation Supreme Court Justices be required to have an active state law license and graduate from a law school. While such requirements may seem calculated to ensure competence in the Court, I submit that they will achieve the opposite. In our struggle to create a unique tribal jurisprudence, we have sought to distinguish ourselves from the state and federal systems. More and more, we have relied on our unique sovereign perspectives on dispute resolution, law and public order. We oversee a living tribal justice system reflecting the importance of our tribal community, not a borrowed state or federal system in which our culture is merely anthropological speculation.

Firstly, I would add my concurrence to the recommendation of our Judicial Branch Human Resources Director that this legislation be delayed until the Navajo Nation Bar Association has completed a survey of its members to determine how many speak the Diné language; have knowledge of Diné traditions, customs and culture sufficient to base a unique Navajo jurisprudence on that knowledge; and are state-licensed practicing attorneys. I concur for the reasons he has set forth in his comment.

Secondly, I strongly question reliance on the Tribal Law and Order Act of 2010 that was used as support for the proposed change in Supreme Court qualifications. The Judicial Branch was part of an inter-tribal workgroup on the TLOA invited to make recommendations to the Senate drafters. Many of our recommendations were adopted in the final Act. See <http://www.navajocourts.org/restorativejustice.htm>. As a leading participant

in this group, I can attest that an initial desire by the drafters that tribal judges be state bar-licensed was abandoned in recognition that tribal bar memberships such as the NNBA are sufficient. The acknowledgement of bar licenses in "all jurisdictions" flows from the treatment of tribes as sovereign entities exercising sovereign powers in keeping with the Congressional policy of Indian Self-Determination. Furthermore, the "legal training" in the TLOA refers to the competency of the "presiding judge" in the application of our own sovereign criminal laws.

In short, there is no TLOA requirement that a tribal judge at any level be state-barred or possess a J.D. In fact, the emphasis is on the exercise of inherent sovereign authority.

In his comments, our Human Resources Director pointed out the positive reception by legal scholars to our recent opinion in *John Doe BF v. Diocese of Gallup*, including an affirmation that this Court continues to fulfill its leadership role in the area of tribal court adjudication. This Court takes seriously its gatekeeping role and has not tolerated the constantly shifting and erratic manner with which federal common law has curtailed our inherent sovereign authority, criminal and civil, over matters arising on our own land. We have also held our own government including ourselves to account for the Diné people and future generations.

I would note that members of the federal bench are not required by the U.S. Constitution to have a state bar license, and such a formal requirement may well conflict with federalism notions. I understand that the American Bar Association "suggests" that the U.S. Supreme Court and federal judges and magistrates meet certain minimum requirements that include a law degree, and good moral and practice standing in an active legal practice.

Federal judges must be well-versed in the laws that primarily apply in their jurisdictions, mainly the U.S. Constitution and federal laws. On the Navajo Nation, the laws of primary application are our sovereign tribal laws. Therefore, our judges need firstly to be well-versed in our Diné laws, traditions and customs, which are the basis of the Diné Fundamental Law and our common law. I would submit that the proposed legislation would create a candidate pool leaning toward expertise in external laws, diminished expertise in our sovereign laws, with the consequence that any line between state and tribal jurisdictions would be obfuscated. This would clearly send the wrong message to both our courts and to external jurisdictions.

We have a heightened duty to safeguard the sovereign entity of the Navajo Nation and maintain our people as a cohesive cultural group. We have a duty to ensure that the policy of tribal sovereign authority on our own terms in the Indian Self-Determination and Education Assistance Act of 1975, is sustained. The Self-Determination Act assumes that tribes will take the opportunity to develop unique tribal laws and government, based on our own terms. The branch addressed this responsibility in our 2007 Strategic Plan whereby, pursuant to Goal 4 of the plan, "we will develop a judicial system in accordance with Diné bi beenahaz' áanii that fully incorporates Navajo values and processes."

It bears reminding that most contemporary tribal courts, including the Navajo Nation, trace our roots ironically to a federal program designed to eliminate tribalism. Modern tribal justice systems had their genesis in the Courts of Indian Offenses, established in the late nineteenth century as a part of the Bureau of Indian Affairs' assimilationist program for reservations. See Vine Deloria, Jr. & Clifford Lytle, *American Indians, American Justice* 111, 112, 113-116 (1983). The colonialist objective of these courts is made clear in the description by a nineteenth century federal judge.

In 2010, the Navajo Nation Supreme Court in *EXC v. Kayenta District Court* described the importance of upholding our tribal laws, because they are "American domestic laws" that are "not only a Navajo heritage, but a heritage of the American people." No. SC-CV-07-10, slip op. at 22 (Nav. Sup. Ct. September 15, 2010). We stated:

In this day and age, the Navajo People are proud American citizens, having served in several wars, swearing oaths of loyalty to the United States in our schools, and leaving the reservation to participate in state and federal governments or take other important roles in mainstream society . . . Our laws, although indigenous and extra-Constitutional, are American domestic laws that will endure for future generations through the Federal policy of Indian self-determination. Our laws reflect our indigenous cultures and practices. They are vital to the survival of our culture, which is not only a Navajo heritage, but a heritage of the American people.

There is no doubt that the cultural approach in tribal court systems throughout the United States has been eroded and largely replaced by non-Indian jurisprudence. We, as leaders in the area of tribal court adjudication, cannot be part of that erosion.

To quote from a legal commentator:

Today, a call for cultural renewal and resurgence can be heard clearly within the court systems of American Indian tribes. Weaving strands from native culture, tribal law, Western culture, and Anglo-American law, tribal judges are producing distinct tapestries of jurisprudence. Tribal court opinions reveal efforts by their authors to imbue the evolving law with cultural meaning. As the Chief Justice of the Ho-Chunk Nation Supreme Court put it, the use of tribal traditions and customs "is an aspect of tribal judiciaries which we must nurture and strengthen. It is a method of memorializing our traditions and customs while dispensing justice. And the use of traditions and customs legitimates them for the world outside of our tribal judiciaries."<sup>1</sup>

I thank you for the opportunity to comment.

---

<sup>1</sup> Barbara Ann Atwood, "Tribal Jurisprudence and Cultural Meanings of the Family," 79 Neb. L. Rev. 577 (2000).

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.: 0388-11**

**SPONSOR: Honorable Russell Begaye**

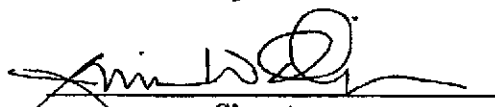
**TITLE: An Action Relating to Law and Order; Naa'bik'iyati' and Navajo Nation Council; Amending 7 N.N.C. §354(B) To Require That Future Navajo Nation Supreme Court Justices Hold a Juris Doctor Degree and be State Licensed Attorneys in Good Standing**

**POSTED: September 20, 2011**

**5 DAY Comment Period Ended: September 24, 2011**

**Digital Comments received:**

- 1. Digital comments received on Friday, September 23, 2011 from retired Associate Justice Raymond D. Austin regarding Legislation 0388-11. The comments are neutral but mention that there should be a mix of state-licensed and non-state licensed attorneys within the Navajo Supreme Court. Reasons are contained within.**
  
- 2. Digital comments received on Friday, September 23, 2011 from Stella Scott, Frye Law Firm regarding Legislation 0388-11. The comments are in support of Legislation 0388-11. Reasons are contained within.**

  
\_\_\_\_\_  
Signature  
9/26/11  
\_\_\_\_\_  
Date

**Comments on Proposed Legislation No. 0388-11**

Austin, Raymond D - (rdaustin) [rdaustin@email.arizona.edu]

**Sent:** Friday, September 23, 2011 2:03 PM

**To:** comments

**Attachments:** Comments on Proposed Legis~1.doc (35 KB)

Attached document contains my comments. Thanks.

Ray Austin

Justice Raymond D. Austin (Retired Associate Justice)  
P.O. Box 964  
Kayenta, Arizona 86033  
Email address: rdaustin@email.arizona.edu

September 22, 2011

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Comments on Proposed Legislation No. 0388-11

Title: Amending 7 N.N.C. § 354(B) to Require that Future Navajo Nation Supreme Court Justices hold a Juris Doctor Degree and be State Licensed Attorneys in Good Standing

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I don't believe that having a Navajo Nation Supreme Court comprised solely of state-licensed attorneys ensures quality in the administration of justice on the Navajo Nation. The judges who decided Halona v. MacDonald (Navajo Supreme Court, 1978) were not law school graduates, but that decision is considered a classic among decisions of American Indian nation courts. The Halona case is sometimes referred to as the Navajo Marbury v. Madison, an important U.S. Supreme Court decision. Some characteristics that are more important to the administration of Navajo justice than having attorney judges are 1) judges are fair in making decisions, 2) judges are free of political influence from the political branches of Navajo government, and 3) the Navajo people respect their courts.

Question: Should all Navajo Nation Supreme Court justices be state-licensed attorneys?

1. Is there a pool of qualified Navajo applicants? Title 7, section 354(A)(1) requires an applicant for a judge position to be an enrolled member of the Navajo Nation, and section 354(A)(5) requires an applicant to speak the Navajo language and have certain Navajo cultural knowledge. Although there is an adequate pool of enrolled Navajos who are state-licensed attorneys, the question remains whether there are enough attorneys in the pool who speak the Navajo language and have the required cultural knowledge to satisfy the proposed amendments. If the Navajo Nation wants more state-licensed attorneys on the bench, the Navajo language requirement at section 354(A)(5) may have to be removed. Removal of the language requirement, however, creates an additional problem because lack of Navajo language speakers on the Supreme Court (and trial courts) would mean less availability of Navajo cultural knowledge to court decision-making. Speaking the Navajo language is crucial to understanding Navajo cultural concepts which provide the basis for Navajo common law (customary law). Most Navajos graduating from law schools today do not speak the Navajo language and are marginal in Navajo cultural knowledge.

Having all state-licensed attorneys on the Navajo Nation Supreme Court may look good to non-Indians but would it sit well with Navajos, the people who are served by the Navajo courts. The more tribal courts look like state or federal courts, the more they are

accepted by non-Indians but that does not equate to unconditional acceptance by members of a tribe. It is far more important to have judges who speak the Navajo language and are fluent in Navajo culture on the bench than non-Navajo speaking (and lack cultural knowledge) judges because it is the use of Navajo customary law which distinguishes the Navajo courts from state and federal courts.

2. Salary. In the past, state-licensed Navajo attorneys were not willing to apply for judge positions (both Supreme Court and trial courts) because of the low salary. The Council will have to make the salary of Navajo judges (including Navajo justices) comparable to state judges to generate enough interest among state-licensed Navajo attorneys to apply for judgeships.

3. Indian Civil Rights Act (ICRA) Amendments of 2010. The enhanced sentencing provisions of the ICRA requires a tribal judge who presides over a criminal proceeding to be licensed to practice law "by any jurisdiction in the United States." 25 U.S.C. § 1302(c)(3). This provision can be interpreted to mean that a tribal court judge, who meets the "sufficient legal training" requirement to preside on criminal matters, 25 U.S.C. § 1302(c)(3)(A), can be licensed by a tribal bar association such as the Navajo Nation Bar Association. In other words, "any jurisdiction in the United States" can include Navajo jurisdiction.

Nonetheless, if "any jurisdiction" is interpreted to require state-licensed attorneys on the Navajo Nation Supreme Court, then the Navajo Nation can still fulfill that interpretation by giving the Chief Justice authority to appoint pro tempore justices for the Supreme Court to decide criminal cases where the defendant has been sentenced to more than a year of incarceration. As it is now, only a fraction of the criminal caseload before the Supreme Court fits the enhanced sentencing category of the ICRA. The state-licensed pro tempore justices can be Navajo members of the Navajo Nation Bar Association.

Conclusion: There should be a mixture of state-licensed attorneys and non-state licensed attorneys on the Navajo bench, including the Navajo Nation Supreme Court. Judges who are not attorneys, but can speak the Navajo language and know Navajo culture, are important to the development of Navajo common law and to the respect the Navajo people have for the Navajo courts. In spite of what outsiders think about Navajo justice, the Navajo courts have primary responsibility to the Navajo people, the Navajo Nation, Navajo statutory and common law, and Navajo Nation sovereignty.



**FW: Legislation No. 0388-11**

Stella Scott [sms@fryelaw.us]

Sent: Friday, September 23, 2011 3:24 PM

To: comments

I did not read the deadline for the comment period appropriately. Therefore, my comments are timely.

In addition to my comments below, I propose that Section 354(B)(3) and 354(C) be deleted entirely. In the alternative, a law trained candidate with either an JD or LLM degree should be given priority over a sitting District Court judge who does not meet the qualifications set forth in Sections 354 (B)(1) and (2).

Stella M. Scott  
Frye Law Firm, P.C.  
10400 Academy Road N.E., Suite 310  
Albuquerque, NM 87111  
Telephone: (505) 296-9400  
Facsimile: (505) 296-9401  
sms@fryelaw.us

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**From:** Stella Scott  
**Sent:** Friday, September 23, 2011 3:03 PM  
**To:** 'comments@navajo-nsn.gov'  
**Subject:** Legislation No. 0388-11

I realize the comment period for Legislation No. 388-11 has passed, but I strongly disagree with Section 354(A)(3) and Section 354(B)(3) of the proposed legislation.

With regard to Section 354(A)(3), I believe that the minimum educational level should be raised to at least a Bachelor's degree. With regard to Section 354(B)(3), why should a sitting District Court Judge, who does not have a JD degree, have preference over a candidate that possesses a JD degree?

These provisions discourage those Navajos who have gone to law school from applying for the District Court and Supreme Court justice positions. With the qualifications set so low, the Navajo Nation courts will never attract candidates who are law trained and have JD and LLM degrees.

Stella M. Scott  
Frye Law Firm, P.C.  
10400 Academy Road N.E., Suite 310  
Albuquerque, NM 87111  
Telephone: (505) 296-9400  
Facsimile: (505) 296-9401  
sms@fryelaw.us

**Treasury Circular 230 Disclosure:** To the extent this communication contains any statement regarding federal taxes, that statement was not written or intended to be used, and it cannot be used, by any person (i) as a basis for avoiding federal tax penalties that may be imposed on that person, or (ii) to promote, market or recommend to another party any transaction or matter addressed herein. **Confidentiality Notice:** If this e-mail message concerns legal matters, this communication and any attachments are attorney-client privileged and confidential, and intended for use only by the individual or entity named above as the intended recipient. If you are not the intended recipient, reading, distributing or copying this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender and delete this e-mail and any attachments. Thank you.

**LAW AND ORDER COMMITTEE  
22<sup>nd</sup> NAVAJO NATION COUNCIL**

**FIRST YEAR 2011**

**COMMITTEE REPORT**

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**NAVAJO LEGISLATIVE NO. 0388-11**

**AN ACTION RELATING LAW AND ORDER; NAA'BIKIYATI AND NAVAJO  
NATION COUNCIL; AMENDING 7 N.N.C. §354(B) TO REQUIRE THAT FUTURE  
NAVAJO NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR  
DEGREE AND BE STATE LICENSED ATTORNEYS IN GOOD STANDING.**

*(Sponsored by Russell Begaye)*

Has had it under consideration and report the same with a recommendation that it **DO  
PASS**, with no amendments

and therefore referred to **NABIK'IYATI COMMITTEE**.

Respectfully submitted,

  
Edmund Yazzie  
Presiding Chairperson

Date: September 26, 2011

The vote was 2 in favor and 1 opposed

Motion: Alton Shepherd

Second: Elmer Begay

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.: 0388-11**

**SPONSOR: Honorable Russell Begaye**

**TITLE: An Action Relating to Law and Order; Naa'bik'iyati' and Navajo Nation Council; Amending 7 N.N.C. §354(B) To Require That Future Navajo Nation Supreme Court Justices Hold a Juris Doctor Degree and be State Licensed Attorneys in Good Standing**

**POSTED: September 20, 2011**

**5 DAY Comment Period Ended: September 24, 2011**

**Digital Comments received:**

1. Digital comments received on Wednesday, September 21, 2011 from Judge Leroy Bedonie regarding Legislation 0388-11. The comments recommend that Legislation 0388-11 not pass and that the current law is sufficient. Reasons are contained within.

  
Signature  
9/26/11  
Date

**0388-11****Leroy Bedonie****Sent:** Wednesday, September 21, 2011 9:19 AM**To:** comments

Comment from Judge Bedonie. It would be a good idea to have, at least , half of the Justices have J.D. Degrees as you know by statue we are required to incorporate our "fundamental Laws" into our Decisiions. Of the Justices I was acquainted with, those that did not have J.D. Degrees were more fluent in "our traditional laws" than those that had degrees. One of our most important goals & concerns is to keep our Language & Culture alive, and if you pass this Law I feel we will begin to lose our Language & Culture sooner than the normal progression of our "Navajo lifeways".

Furher, I feel if those Justices we have are competent, that shouldn't be a reason to change and impose an educational requirement that may become an impediment than receiving results from the change. We already require now, at minimum, a Bachelor's degree.

# JUDICIAL BRANCH OF THE NAVAJO NATION

## ADMINISTRATIVE OFFICES OF THE COURTS

Post Office Box 520 • Window Rock, (Navajo Nation) Arizona 86515-0520

Telephone (928) 871-7023 • Facsimile (928) 871-6862 • Website: [www.navajocourts.org](http://www.navajocourts.org)



HONORABLE HERB YAZZIE

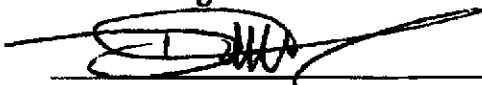
*Chief Justice of the Navajo Nation*

DARREN TUNGOVIA

*Human Resources Director*

### MEMORANDUM

**To:** Jarvis Williams, Acting Executive Director  
Office of Legislative Services

**From:**   
Darren Tungovia, Human Resources Director  
Judicial Branch of the Navajo Nation

**Date:** September 22, 2011

**Subject:** Comments on Pending Legislation No. 0388-11  
Amendments to 7 N.N.C. § 354(B)

I am submitting the below comments on proposed legislation No. 0388-11 in my capacity as the Human Resources Director for the Judicial Branch of the Navajo Nation, as the change in qualifications for incoming Supreme Court Justices directly impacts the responsibilities of my office.

**Impact on Salary.** The proposal that Supreme Court Justice applicants now be additionally required to have a J.D. and active state bar membership will require a higher salary than is presently allocated for Supreme Court Justice salaries. Presently, the salary for an Associate Justice position is \$79,684.80, which reflects the current qualifications. The attorney/law clerk salary at the Supreme Court level is 6.9% higher than this amount, reflecting the heightened qualification and experience needed for their positions. We are not budgeted to offer a higher salary for Justices commensurate with heightened qualifications; and if we do not offer a higher salary, we will get subpar applicants. Individuals who are best qualified would be able to command higher pay either within the branch or in a law firm if they choose to serve in attorney positions. Also, as attorneys, they would not have the added sensitive public exposure of serving on the appellate bench. The incoming Justices will need to receive a salary higher than the attorneys to reflect their status and qualifications.

**Possibility of Few Qualified Applicants.** While applicants for vacant Associate Justice positions are referred to the Law and Order Committee, the responsibility resides in my office to ensure that branch personnel meet the high service standards of the Supreme Court.

The Supreme Court very recently issued an opinion in *John Doe BF v. Diocese of Gallup* that brought it very positive national attention. Comments have included an observation from the renowned tribal jurist and law professor Matthew Fletcher that the opinion "demonstrates why the Navajo judicial system is a leader in tribal court adjudication." It was the independence of the Court in addressing the shortcomings of Federal Indian law as it has developed that was being celebrated. In this and other opinions, the Navajo Nation Supreme Court has resisted and provided lengthy commentary on federal common law rules that have become increasingly lopsided and unfair to tribal courts in relation to non-member jurisdiction. In so doing, this Court has applied Navajo laws and traditions in opinions to be read by the federal bench, raising our laws to the level of primary sovereign application. This is possible because the personnel who serve on the Court have knowledge of our traditions, language, and are willing to champion Dine' bedrock principles on our own terms rather than apply foreign standards. The concern is that the emphasis on state licenses will diminish the strong sense of sovereignty, on our Navajo Nation terms, that is now being championed.

The emphasis of our government in Title 7 is that Navajo sovereign laws be applied first and federal and state laws second. This means that candidates must be familiar with Navajo traditions, culture and language, and not have merely a passing familiarity. This remains true in the proposed legislation.

As Human Resources Director in the Judicial Branch, I have seen first-hand the enormous difficulty in getting qualified applicants to apply for district and Supreme Court jurist positions even under the present qualifications. I have contacted the Navajo Nation Bar Association (NNBA) for statistics on how many NNBA bar members speak Navajo and know our traditions and customs, and are also state barred, and am told that no such survey has ever been conducted.

I understand from the Navajo Nation Integrated Justice Information Sharing Project (NNIJISP) technical team members who have visited the Salt River Pima-Maricopa Indian Community that judge vacancies in that community remain unfilled for years because there are few enrolled members possessing their qualifications, which mirror those in our proposed legislation. I understand that the consequence has been near disastrous for that community.

**Tribal Law and Order Act Does Not Require State Bar Membership of Any Tribal Jurist.** The proposed legislation states that enhanced sentencing in criminal cases under the Tribal Law and Order Act of 2010 is possible if the "presiding judge" has sufficient legal training and is a licensed bar member of "any jurisdiction," including tribal bar memberships. There is no requirement for judges to possess state bar memberships. Additionally, Navajo criminal offenses arise under Navajo sovereign law, not state and federal law. The punishments and even some elements of offenses are unique to the Navajo Nation. I have reviewed and confirmed these requirements with branch attorneys in order for me to sufficiently advise the Administrative Offices of the Courts on the personnel-related component.

**Federal Justices, Judges and Magistrates Are Not Required to Be State-Barred.** I understand that there is no formal qualification that the federal bench, including the U.S. Supreme Court, possess active bar licenses or even have law degrees, and that the American Bar Association merely suggests minimum qualifications.

**Recommendations.**

1. I urge the Council to delay this legislation in order to provide an opportunity to the NNBA to survey its membership and find out exactly how many of its members would have the fully rounded qualifications under the proposed legislation to serve on the highest bench of our sovereign court, who must base its opinions under our sovereign laws, culture and traditions.
2. In order to ensure that the Court continues to issue nationally influential opinions championing tribal culture and traditions, the qualifications should be modified to permit at least one Justice to serve without a J.D. or state bar membership. This would ensure that individuals knowledgeable in sovereign culture put in an application.
3. The Judicial Branch presently gives its newly-hired attorneys up to 2 years to obtain state bar membership after they begin serving in branch attorney positions. The proposed legislation should provide the same opportunity to Supreme Court jurist applicants to ensure fairness and broaden the applicant pool.

Thank you for the opportunity to submit my comment on behalf of the Human Resources Office for the Judicial Branch of the Navajo Nation.

**NAA'BIK'IYATI' COMMITTEE REPORT**  
**22<sup>ND</sup> NAVAJO NATION COUNCIL – First Year 2011**

Mr. Speaker:

The **NAABIK'IYATI' COMMITTEE**, to whom has been assigned:

**LEGISLATION NO. 0388-11**  
Introduced by Hon. Russell Begaye

AN ACTION

Relating to Law & Order, Naa'Bik'iyati' Committee; and the Navajo Nation Council;  
Amending 7 NNC §354(B) to Require that Future Navajo Nation Supreme Court Justices  
Hold a Juris Doctor Degree and Be State Licensed Attorneys in Good Standing

has had it under consideration and reports the same with a **DO PASS** with NO AMENDMENTS;

and thence referred to the Navajo Nation Council.

**CERTIFICATION**

I, hereby certify that the foregoing legislation was duly considered by the Naa'Bik'iyati' 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 the same was passed with a vote of 7 in favor and 5 opposed this 11<sup>th</sup> day of October 2011.

  
\_\_\_\_\_  
Mr. Johnny Naize, Chairperson  
Naa'Bik'iyati' Committee

MOTION: Charles Damon  
SECOND: Dwight Witherspoon



22<sup>nd</sup> NAVAJO NATION COUNCIL

Third Year 2013

Mr. Speaker:

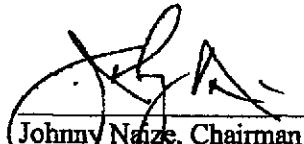
The Navajo Nation Council to whom has been assigned to:

**NAVAJO LEGISLATIVE BILL # 0388-11**

An Action Relating to Law and Order and Naabik'iyati' and the Navajo Nation Council;  
Amending 7 N.N.C. §354(b) to Require that Future Navajo Nation Supreme Court  
Justices Hold a Juris Doctor Degree and be State Licensed Attorneys in Good Standing  
Sponsor: Honorable Russell Begaye

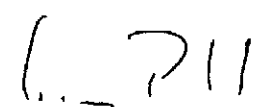
has had it under consideration and reports the same with the recommendation that it **Do  
Not Pass** with no amendment.

Respectfully submitted,

  
\_\_\_\_\_  
Johnny Naize, Chairman  
Naabik'iyati' Committee

Adopted: \_\_\_\_\_

Not Adopted: \_\_\_\_\_

  
Tom Platero, Executive Director  
Office of Legislative Services

18 October 2011

The vote was 14 in favor 6 opposed (needed 16 votes)

Motion: Honorable David Tom

Second: Honorable Dwight Witherspoon

**RESOLUTION OF CHINLE AGENCY COUNCIL**

**SUPPORTING AND REQUESTS THE NAVAJO NATION COUNCIL TO AMEND 7 N.N.C. SUBSECTION 354 (B) TO REQUIRE THAT FUTURE NAVAJO NATION SUPREME COURT JUSTICES HOLD A JURIS DOCTOR DEGREE AND BE STATE LICENSED ATTORNEYS IN GOOD STANDING.**

Whereas:

1. The Chinle Agency Council is hereby established under the Executive Branch of the Navajo Nation Government pursuant to Intergovernmental Resolution No. IGRS-251-01 and 26 N.N.C. Local Governance Act approved by the Navajo Nation Council Resolution CAP-34-98;
2. The Purpose of the Chinle Agency Council shall be to address significant issues and concerns for its 16 member Chapters and to advocate and promote community projects and collaborate with county, state, Federal, private entities and other local governments;
3. The Tribal Law and Order Act of 2010, P.L. 111-211, expanded the authority of tribal Courts under the Indian Civil Rights Act of 1968, 25 U.S.C. §1302, to include the imposition of prison sentences of up to 3 years or fines of up to \$15,000 or both; but only if the judge presiding over the criminal proceeding has sufficient legal training to preside over the proceeding and is licensed to practice law by any jurisdiction in the United States. See 25 U.S.C. §1302(b)-(c); and
4. While Navajo Nation Supreme Court justices do not directly preside over criminal proceedings, they do hear appeals of criminal proceedings and it is necessary that Navajo Nation Supreme Court justices be qualified to hear and rule on all types of cases that may come before them in order to fulfill the mission of the Navajo Nation Supreme Court to "hear cases on appeal and render a final judgment based on law, equity and tradition"; and
5. It is necessary, therefore, in the interests of improving the quality of the administration of justice in the Navajo Nation; in fulfilling the promise that the Supreme Court would hear and decide cases before them based on law, equity and tradition; and in ensuring that the Navajo Nation is able to exercise its sovereignty to the greatest extent allowed under federal law; to ensure that only the most qualified persons are appointed to the Navajo Nation's highest judicial offices at the Navajo Nation Supreme Court; and
6. The Navajo Nation hereby finds that individuals with formal legal training and who hold licenses to practice law in good standing from any State are best qualified to make decisions on the interpretation of the Navajo Nation's laws and their application to those disputes brought before the Navajo Nation's highest judicial body; that only judges so qualified may preside over criminal proceedings that may impose the maximum sentences and fines allowed under federal law; and that the administration of justice in the Navajo Nation will be improved by ensuring that all future Navajo Nation Supreme Court Justices carry such credentials.

**NOW THEREFORE BE IT RESOLVED THAT:**

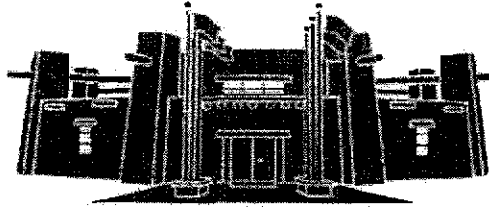
1. The Chinle Agency Council Supports And Requests the Navajo Nation Council To Amend 7N.N.C. Subsection 354 (B) To Require That Future Navajo Nation Supreme Court Justices Hold A Juris Doctor Degree And Be State Licensed Attorneys In Good Standing, and OHA Hearing Officers.
2. Have CIB, Fluent in Navajo, & Elected

**CERTIFICATION**

WE HEREBY certify that the a foregoing resolution was duly considered by the Chinle Agency Council at a duly called regular meeting at the Nazlini, Arizona at which a quorum was present and that same was passed by a vote of \_\_\_\_\_ in favor, \_\_\_\_\_ opposed and \_\_\_\_\_ abstained, this 17th day of January 2015.

---

Aaron Yazzie, Chinle Agency Council President



## MEMORANDUM

**TO:** Honorable Dwight Witherspoon  
Navajo Nation Council Delegate

**FROM:** CWEST  
Carolyn R. West, Attorney  
Office of Legislative Counsel

**DATE:** January 29, 2015

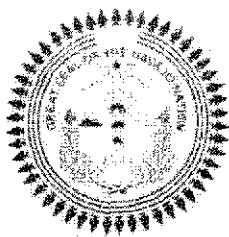
**SUBJECT:** OLC Service Request No. 15-185-1: An Action Relating to Law and Order, Naabik'íyáti', and Navajo Nation Council; Amending Navajo Nation Code Title 7 by Requiring Navajo Nation Supreme Court Justices to Hold a Juris Doctor Degree

As requested, I prepared the above-reference proposed resolution and associated legislative summary sheet. Based on existing law and review of documents submitted, the resolution drafted is legally sufficient. However, as with all legislation, the proposed resolution is subject to review by the courts in the event of challenge. You are encouraged to review the proposed resolution to ensure this is drafted to your satisfaction.

In *Shirley v. Morgan*, the Navajo Nation Supreme Court held that the Whereas and Resolved clauses in CD-68-89, Title 2 1989 amendments, operate as a "solemn" promise from the Navajo Nation Council to the People and as such the Whereas and Resolved clauses bind the hand of future Navajo Nation Councils. *Shirley v. Morgan*, SC-CV-02-10, slip op. at 25 (Nav. Sup. Ct. May 28, 2010). One resolved clause from the Title 2 1989 amendments affects the amendment you are proposing. CD-68-89 Resolved Cl. 6. The resolved clause states, "The Navajo Tribal Council further authorizes and directs that any amendment to...the 1985 Judicial Reform Act, 7 N.T.C., Section 101 et. seq., shall require two thirds (2/3) vote of the full membership of the Navajo Tribal Council...these amendments shall be presented at the regular session of the Navajo Tribal Council." *Id.*

If you are satisfied with the proposed resolution, please sign as "Primary Sponsor" and submit to the Office of Legislative Services where the proposed resolution will be given a tracking number and sent to the Office of the Speaker for assignment.


If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make.



January 29, 2015

MEMORANDUM

TO : *Honorable Members*  
Law and Order Committee  
Naa'bik'iyati' Committee  
Navajo Nation Council

FROM :   
Hon. LoRenzo C. Bates, *Speaker*  
23<sup>rd</sup> Navajo Nation Council

SUBJECT : **ASSIGNMENT OF LEGISLATION**

---

Pursuant to 2 N.N.C § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Law and Order Committee, Naa'bik'iyati' Committee and the Navajo Nation Council;

**Legislation No. 0031-15**

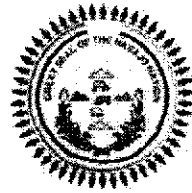
**RELATING TO LAW AND ORDER, NAA'BIK'IYATI' AND NAVAJO NATION COUNCIL; AMENDING NAVAJO NATION CODE TITLE 7 BY REQUIRING NAVAJO NATION SUPREME COURT JUSTICES TO HOLD A JURIS DOCTOR DEGREE.**

As the Committee assigned to consider the legislation, Legislation No. 0031-15 must be placed on the Law and Order Committee, Naa'bik'iyati' Committee and the Navajo Nation Council's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0031-15

xc: Hon. Ben Shelly, *President*  
The Navajo Nation  
Harrison Tsosie, *Attorney General*  
Mark Grant, *Controller*  
Dominic Beyer, *Executive Director, OMB*  
Honorable Dwight Witherspoon, Council Delegate (*Prime Sponsor*)

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0031-15

SPONSOR: Dwight Witherspoon

TITLE: An Action Relating To Law And Order, NAABIK'IYATI' And Navajo Nation Council; Amending Navajo Nation Code Title 7 By Requiring Navajo Nation Supreme Court Justices To Hold A Juris Doctor Degree

*Date posted:* January 29, 2015 at 6:43PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0031-15

SPONSOR: Honorable Dwight Witherspoon

TITLE: Relating To Law And Order, Naabik'iyati' And Navajo Nation Council; Amending Navajo Nation Code Title 7 By Requiring Navajo Nation Supreme Court Justices To Hold A Juris Doctor Degree.

Posted: January 29, 2015 at 6: 43pm

5 DAY Comment Period Ended: February 3, 2015

Digital Comments received:

|                          |                                                                                                                                                                                                           |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Comments Supporting      | <i>None</i>                                                                                                                                                                                               |
| Comments Opposing<br>(2) | <ol style="list-style-type: none"><li>1. Karen Francis, Government Relations Officer; Office of the Chief Justice.</li><li>2. Rosita A. Kelly, Director of Human Resources; NN Judicial Branch.</li></ol> |
| Inclusive Comments       | <i>None</i>                                                                                                                                                                                               |

1, 711

Executive Director  
Office of Legislative Services

2/4/2015, 8:15 am

Date/Time



0031-15

Karen Francis <karenfrancis@navajo-nsn.gov>

Mon, 2/3/2015 4:58 PM

comments <comments@navajo-nsn.gov>;

Attachments:

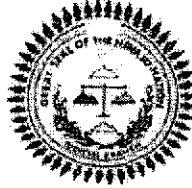
2015\_0202 Comment on Legislation No. 0031-15.pdf; 2015\_0202 HR comments on Legislation No. 0031-15.pdf;

Attached are public comments on Legislation No. 0031-15 from myself as the Government Relations Officer and from Rosita Kelly, Human Resources Director for the Judicial Branch.

Please contact me if you have any questions. Thank you.

**Karen Francis, *Government Relations Officer***  
**Office of the Chief Justice**  
**JUDICIAL BRANCH OF THE NAVAJO NATION**  
**Office: (928) 871-6920**  
**Fax: (928) 871-6761**  
**E-mail: karenfrancis@navajo-nsn.gov**  
**www.navajocourts.org**

# Judicial Branch of the Navajo Nation



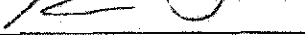
HERB YAZZIE  
*Chief Justice of the Navajo Nation*

Karen Francis  
*Government Relations Officer*

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## MEMORANDUM

To: Hon. Delegates  
23<sup>RD</sup> NAVAJO NATION COUNCIL

From:   
Karen Francis, *Government Relations Officer*  
Office of the Chief Justice  
**JUDICIAL BRANCH OF THE NAVAJO NATION**

Date: February 2, 2015

Re: Proposed Legislation No. 0031-15

The proposed amendment, Legislation No. 0031-15, is meant to require that each Justice of the Navajo Nation Supreme Court must possess a J.D. degree from an ABA accredited law school. The proposed amendment appears to be offered to show that our Supreme Court would meet the requirements of the Tribal Law and Order Act of 2010, if the Navajo Nation should choose to exercise its jurisdiction to issue increased sentences under the Act.

I submit that requiring a J.D. degree is not required by the TLOA. The Judicial Branch was part of an inter-tribal workgroup on the TLOA invited to make recommendations to the Senate drafters. Many of our recommendations were adopted in the final Act. See <http://www.navajocourts.org/restorativejustice.htm>. Rather than a requirement for formal education, the "legal training" in the TLOA refers to the competency of the "presiding judge" in the application of our own sovereign criminal laws.

The Navajo Nation Supreme Court and its justices are required first and foremost to uphold the sovereign status of the Navajo Nation and to maintain our people as a distinct Indian nation. Therefore, our judges need to be well-versed in our Diné laws, traditions and customs, which are the basis of the Diné Fundamental Law and our common law. Passage of the proposed legislation would create a candidate pool leaning toward expertise in external laws and diminished expertise in our sovereign laws.

The cultural approach in tribal court systems throughout the United States has been eroded and largely replaced by non-Indian jurisprudence. The Navajo Nation being the largest Indian sovereign with a developed court system and demonstrated reliance on traditional law should not be a part of the erosion of Indian sovereignty.

Furthermore, regarding the TLOA, I join other professionals in our Navajo justice system in asking for our leadership to carefully consider whether the Navajo Nation should implement the TLOA at this time. The Navajo Nation should not rush to implement or base its laws on a belief that TLOA will enhance the development of sovereign court systems. As a practical matter, we do not possess the necessary resources to fully implement the TLOA and to do so may actually erode our sovereignty. At a minimum, the Navajo Nation should be assured of adequate funding to operate a full justice system. Right now, the federal government has for many years not provided adequate funding the P.L. 93-638 contract system.

Moreover, the Judicial Branch was not approached for input regarding qualifications prior to introduction of the proposed legislation, nor was the branch informed when it was introduced. There have been no discussions with the leaders of the branch on this issue. There is a need to discuss how the Navajo Nation can attract qualified candidates and how the selection of judges and justices can be facilitated.

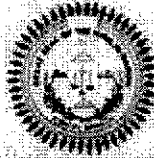
Lastly, I note that the Supreme Court receives very few criminal appeals. The Court had a caseload of three criminal appeals in Fiscal Year 2014, none in FY 2013, two in FY 2012, one in FY 2011, one in FY 2010 and two in FY 2009. This amounts to a very small percentage of the hundreds of appeals the Supreme Court receives each year.

Thank you for the opportunity to provide public comment.

# JUDICIAL BRANCH OF THE NAVAJO NATION

## ADMINISTRATIVE OFFICE OF THE COURTS

Post Office Box 520 • Window Rock (Navajo Nation), Arizona 86515-0520  
TELEPHONE: (928) 871-7023 • FACSIMILE: (928) 871-6862 • WEBSITE: [www.navajocourts.org](http://www.navajocourts.org)




HONORABLE HERB YAZZIE  
*Chief Justice of the Navajo Nation*

ROSITA A. KELLY  
*Director of Human Resources*

### MEMORANDUM

TO : Tom Platero, Executive Director  
Office of Legislative Services

FROM :   
Rosita A. Kelly, Director of Human Resources  
Navajo Nation Judicial Branch

DATE : February 2, 2015

SUBJECT : Comments on Pending Legislation No. 0031-15, Amendments to 7 N.N.C. § 354 (B)

I am submitting the following comments regarding pending Legislation No. 0031-15 which references amendments to 7 N.N.C. § 354(B). The proposed amendment will impact the Judicial Branch human resources office and create a greater challenge in recruitment of Justices.

Currently, as prescribed in 7 N.N.C. § 354(B) Supreme Court Justice positions are required to possess a bachelor's degree from an accredited institution with preference given to an applicant who has earned a Juris Doctorate Degree (JD) or a Master in Law (LLM). Even with these requirements, my office faces tremendous challenges in recruitment of qualified applicants to fill these positions. Increasing the requirement to hire only individuals who possess a JD will not only lock us into hiring only Juris Doctorates but will heighten the difficulty in recruiting efforts more.

I would bring to your attention a comparison of surrounding states. These states do not specifically require a JD degree, but they all require justices to be authorized to practice law. An explicit JD requirement would mean the exclusion of members of the Navajo Nation Bar Association who have practiced law in the Navajo courts but may not be graduates of a law school. The following are excerpts from the tri states that surround the Navajo Nation:

#### AZ State Supreme Court Justices Qualifications

"To serve on this court, a justice must be: a state resident; licensed to practice law in the state for 5 years; and at least 30 years old and under the age of 70."

#### Utah State Supreme Court Justices Qualifications

"Supreme court justices shall be at least 30 years old, United States citizens, Utah residents for five years preceding selection, and admitted to practice law in Utah."

#### NM State Supreme Court Justice Qualifications

"No person shall be qualified to hold the office of justice of the supreme court unless that person is at least thirty-five years old and has been in the actual practice of law for at least ten years preceding that person's assumption of office and has resided in this state for at least three years immediately preceding that person's assumption of office. The actual practice of law shall include a

lawyer's service upon the bench of any court of this state. The increased qualifications provided by this 1988 amendment shall not apply to justices and judges serving at the time this amendment passes or elected at the general election in 1988."

A State Supreme Court Justice is not required to possess a JD nor United States Supreme Court Justices; it seems unreasonable to require Navajo Nation Supreme Court Justices to possess a JD to serve the Navajo People. The requirement will only hinder hiring justices that have sufficient legal training.

The Supreme Court continues to operate without a third justice since October 2011. My office has received very few applicants for this position and it has remained unfilled for more than four years. We simply do not have a large number of people who possess a JD degree and meet all the other qualifications to fill the position. We also lack the funding to increase salaries to attract people who even meet the current qualifications. The last district court judge whom was confirmed for a probationary appointment is a law school graduate, but he had to take a decrease in pay to serve as a judge. This same scenario would most likely apply to future justices whom possess JD degrees.

The recommendation is to keep the law as is because the requirement for justices is already addressed and leaves some room to consider other Navajo applicants that have a bachelor's degree with sufficient legal training and that are knowledgeable about Navajo law to fill vacancies.

Thank you. If you have any questions, please contact me at (928) 871-7669.

cc: Herb Yazzie, Chief Justice, Supreme Court of the Navajo Nation  
Judicial Branch Human Resources Office File

**LAW AND ORDER COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**FIRST YEAR 2015**

**COMMITTEE REPORT**

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**Legislation # 0031-15:** An Action relating to Law and Order, NAABIK'IYATI' and The Navajo Nation Council; Amending Navajo Nation Code Title 7 by requiring Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree

Has had it under consideration and report the matter **FAILED** with no amendment:

and thereafter the matter will be referred to **NAABIK'IYATI' Committee**.

Respectfully submitted,



Edmund Yazzie Chairperson  
Law and Order Committee of the  
23<sup>rd</sup> Navajo Nation Council

Date: February 18, 2015  
Motion: Honorable Otto Tso  
Second: Honorable Jonathan Perry  
VOTE: 0-4

**NOTE: A quorum of 5 members were present**

## NAABIK'ÍYÁTI' COMMITTEE REPORT

23<sup>rd</sup> NAVAJO NATION COUNCIL--FIRST YEAR 2015

### LEGISLATION 0031-15

Introduced by the Honorable Dwight Witherspoon

**An act relating to Law and Order, Naabik'iyati and Navajo Nation Council; Amending Navajo Nation Code Title 7 by Requiring Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree**

TO THE LAW AND ORDER COMMITTEE:

The Naabik'iyáti Committee, to whom has been referred Legislation 0031-15, has had it under consideration and reports a **REFERRAL** Action back to the Law and Order Committee for further review (summary of discussion attached).

Thence **REFERRED BACK TO THE LAW AND ORDER COMMITTEE** on this 16<sup>th</sup> Day of April 2015.



Honorable LoRenzo C. Bates, Chairperson  
NAABIK'ÍYÁTI' COMMITTEE

Main Motion held by: Hon. Seth Damon

Second: Hon. Davis Filfred

Referral Motion: Hon Edmund Yazzie

Second: Hon. Otto Tso

Vote: 9-6-0

**NAABIK'ÍYÁTI' COMMITTEE REPORT**  
**23rd NAVAJO NATION COUNCIL—FIRST YEAR 2015**

**SUMMARY OF DISCUSSION**

**LEGISLATION 0031-15**  
**Introduced by the Honorable Dwight Witherspoon**

**An act relating to Law and Order, Naabik'iyati and Navajo Nation Council; Amending Navajo Nation Code Title 7 by Requiring Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree**

| QUESTIONS/CCOMMENTS                                                                                                                                                                               | RESPONSES                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Is there a reason why the District Judge qualification is not included in the proposed amendment? All judges should be treated the same. Include the whole section in the proposed amendments. |                                                                                                                                                                                                                         |
| 2. There is no reference to fluency in the English and Navajo languages. Why is it just a requirement for the President? Spell out the requirements.                                              |                                                                                                                                                                                                                         |
| 3. If a judge does not have the required JD, will that judge be qualified to sit on a case, Supreme Court case?                                                                                   |                                                                                                                                                                                                                         |
| 4. Consider that judges may have JDs, but will have no knowledge of Navajo fundamental law. That opens the door for Non-Navajos to serve as judges, who would be unbiased.                        |                                                                                                                                                                                                                         |
| 5. How many judges will be affected and will it be immediate?                                                                                                                                     | Judicial Branch is requested to provide a budget impact analysis statement                                                                                                                                              |
| 6. Savings Clause. What language can be codified to avoid the law being overturned?                                                                                                               | The law allows that the resolution will be signed by the President or the Speaker. If challenged, the legislation will still be valid. Laws are not permitted to be retroactive, so it will apply to future applicants. |
| 7. In 2011, a similar legislation, Legislation 0388-11 was considered by the Navajo Nation Council and it failed. What were the discussion points?                                                | A transcript of the Navajo Nation Council proceeding will be provided by Office of Legislative Services.                                                                                                                |
| 8. Committee Reports and Journals should clearly state why the legislation failed. Currently, the journals are to vague.                                                                          |                                                                                                                                                                                                                         |
| 9. Add all chapter resolutions as Exhibits. Make sure the resolutions are properly certified with appropriate chapter officials signatures.                                                       |                                                                                                                                                                                                                         |



**LAW AND ORDER COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**FIRST YEAR 2015**

**COMMITTEE REPORT**

Mr. Speaker,

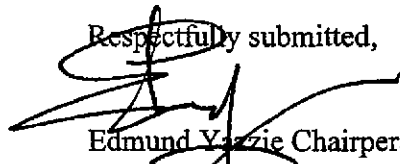
The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**Legislation # 0031-15:** An Action relating to Law and Order, NAABIK'IYATI' and The Navajo Nation Council; Amending Navajo Nation Code Title 7 by requiring Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree

Has had it under consideration and report the matter **PASS** with no amendment:

and thereafter the matter will be referred to **NAABIK'IYATI' Committee**.

Respectfully submitted,



Edmund Yezie Chairperson  
Law and Order Committee of the  
23<sup>rd</sup> Navajo Nation Council

Date: May 5<sup>th</sup>, 2015  
Motion: Honorable Otto Tso  
Second: Honorable Kee Allen Begay  
VOTE: 3-0

**NOTE: A quorum of 4 members were present**

# NAABIK'ÍYÁTI' COMMITTEE REPORT

23<sup>rd</sup> NAVAJO NATION COUNCIL---FIRST YEAR 2015

## LEGISLATION 0031-15

Introduced by the Honorable Dwight Witherspoon

An Act relating to Law and Order, Naabik'íyáti' and Navajo Nation Council; Amending Navajo Nation Code Title 7 by requiring Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree

TO THE 23<sup>RD</sup> NAVAJO NATION COUNCIL:

The Naabik'íyáti Committee, to whom has been referred Legislation 0031-15, has had it under consideration and reports a **DO NOT PASS** recommendation.

Thence **REFERRED TO THE 23<sup>rd</sup> NAVAJO NATION COUNCIL** on this 14<sup>th</sup> Day of May, 2015.



Honorable LoRenzo C. Bates, Chairperson  
NAABIK'ÍYÁTI' COMMITTEE

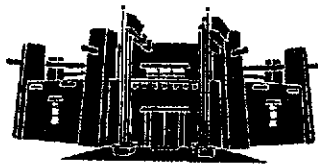
Motion: Honorable Seth Damon  
Second: Honorable Davis Filfred  
Vote: 8-9-0 FAILED

*failed* Amendment # 1

Motion: Honorable Leonard Tsosie  
Second: Honorable Otto Tso  
Vote: 5-10-0 FAILED ✓

*failed* Amendment #1

1. On page 3, lines 19-20, overstrike "~~must hold a Juris Doctorate (J.D.) degree from an ABA accredited law school~~"
2. And line 20-22, un-strike "shall have earned, at a minimum, a four year Bachelor's degree from an accredited institution of higher education"
3. And on line 22, add "One of the three Supreme Court appointments shall have earned a Juris Doctorate (J.D) degree."  
Before the words "~~An applicant who has earned a J.D. or LL.M. shall be preferred~~"



## RECORD OF NAVAJO NATION COUNCIL ACTION

23<sup>RD</sup> Navajo Nation Council—First Year 2015

### LEGISLATION 0031-15

Introduced by the Honorable Dwight Witherspoon

An Act relating to Law and Order, Naa'bi'iyati' and Navajo Nation Council; Amending Navajo Nation Code Title 7 by requiring Navajo Nation Supreme Court Justices to hold a Juris Doctor Degree

Main Motion held by: Honorable Seth Damon

Second: Honorable Mel R. Begay

Vote:

### Voting Summary

#### July 21, 2015 Referral Motion

Motion: Honorable Raymond Smith, Jr.

Second: Honorable Otto Tso

Vote: 13 in favor, 8 opposed, 0 Abstained

Legislation 0031-15 was **REFERRED** back to the Law and Order Committee, no later than 90 days, for an in-depth review.

Consider:

1. The current and proposed qualification requirements as it relates to the selection process for justices and judges
2. The February 2, 2015 memorandum from the Judicial Branch
3. The knowledge of the Navajo cultural values and its relevancy to cases before the courts; and
4. The relevancy of Legislations 0154-15 and 0156-15

A handwritten signature in black ink, appearing to read 'Lorenzo C. Bates'.

Honorable Lorenzo C. Bates, Speaker  
23<sup>rd</sup> Navajo Nation Council

**LAW AND ORDER COMMITTEE  
23<sup>rd</sup> NAVAJO NATION COUNCIL  
FIRST YEAR 2015**

**COMMITTEE REPORT**

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

Legislation # 0031-15: An Act Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending Navajo Nation Code Title 7 by Requiring Navajo Nation Supreme Court Justices to Hold a Juris Doctor Degree

Has had it under consideration as a directed referral by the Navajo Nation Council on July 21, 2015 and reports the matter **Passed** with **one (1) Amendment** and thereafter the matter will be referred to the Navajo Nation Council.

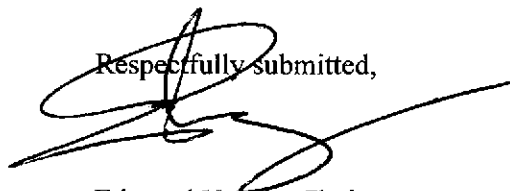
**Amendment 1:**

1. On page 3, line 19-20, overstrike, "~~must hold a Juris Doctor (J.D.) degree from an ABA accredited law school.~~";
2. And line 20-22, unstrike "shall have earned, at a minimum, a four year Bachelor's degree from an accredited institution of higher education";
3. And on line 22, add "The Chief Justice of the Supreme Court shall have earned a Juris Doctor (J.D.) degree." before "~~An applicant who has earned a J.D. or L.L.M. shall be preferred.~~"

**New Reading: (lines 19-22)**

1. Education. Each applicant for judicial appointment to the Supreme Court shall have earned, at a minimum, a four year Bachelor's degree from an accredited institution of higher education. The Chief Justice of the Supreme Court shall have earned a Juris Doctor (J.D.) degree.

Respectfully submitted,



Edmund Yazzie, Chairperson  
Law and Order Committee of the  
23<sup>rd</sup> Navajo Nation Council

Date: October 12, 2015

Amendment 1 Motion: J. Perry  
Second: O. Tso  
Vote: 2-0-1

Main Motion: J. Perry  
Second: O. Tso  
Vote: 3-0-1