



**NAVAJO
NATION**

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FRANK J. DAYISH, JR.
PRESIDENT

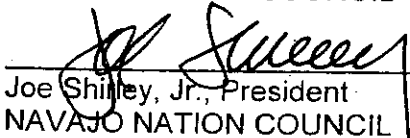
FRANK J. DAYISH, JR.
VICE PRESIDENT

NOV 05 2003

MEMORANDUM

TO: Lawrence Morgan, Speaker
NAVAJO NATION COUNCIL

Members,
NAVAJO NATION COUNCIL

FROM: 
Joe Shirley, Jr., President
NAVAJO NATION COUNCIL

SUBJECT: **RESOLUTION CO-72-03, ADOPTING COMPREHENSIVE
AMENDMENTS TO 7 N.N.C. SECTIONS 101-853, "COURTS
AND PROCEDURE"**

I hereby give notice that I will not veto the foregoing resolution. I commend the Judiciary Committee and the Navajo Nation Council for their extensive work in developing this legislation that further strengthens our judicial system. I must respectfully address one area of concern as set forth in the resolution as follows.

Section 204 (D) of the Title 7 amendments, states that, "any matters not addressed by Navajo Nation statutory laws and regulations, Dine bi beenahaz'aanii or by applicable federal laws and regulations, may be decided according to comity with reference to the laws of the state in which the matter in dispute may have arisen. (Emphasis supplied).

The Navajo Nation is a sovereign government with clear boundaries. The Navajo Nation existed long before the creation of the states. I submit that the Navajo Nation does not constitute the territory of any neighboring state. There are forces and individuals who advance the proposition that the Navajo Nation is part of the territory of Arizona, New Mexico and Utah. For example, one justice of the United States Supreme Court has stated in Navajo Nation v. United States, that Indian reservations are part of state territory. We must as a sovereign not accept that theory. With this background, I do not believe that the Navajo Nation courts should be limited or restricted to considering the state law of the particular state that surrounds the Nation where the dispute may have arisen.

I urge the Judiciary Committee to immediately review this particular restriction and recommend an amendment at the next session of the Council to strike that language. The Navajo Nation courts should be able to look at any state law that it deems appropriate in resolving any dispute coming before it that is not addressed under Navajo Nation statutory laws and regulations, Dine bi beenahaz'aanii or by applicable federal laws and regulations.

xc: Frank Dayish, Jr., Vice President
Louis Denetsosie, Attorney General
Raymond Etcitty, Jr., Chief Legislative Counsel
Robert Yazzie, Chief Justice

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Adopting Comprehensive Amendments to 7 N.N.C.
Sections 101-853, "Courts and Procedure"

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation pursuant to 2 N.N.C. §102(A); and
2. The Judiciary Committee is established as a standing committee of the Navajo Nation Council with oversight responsibility for the Judicial Branch of the Navajo Nation and empowered to initiate, recommend, support and sponsor legislation to improve the Navajo Nation judicial system, pursuant to 2 N.N.C. §§571 and 574(A) and (I); and
3. By Resolution CO-69-58, the Navajo Tribal Council established the courts of the Navajo Nation and abolished Navajo Tribal Courts of Indian Offenses, thereby changing the courts from Courts of the U.S. Department of the Interior to Courts of the Navajo Nation; and
4. The vast majority of the current provisions of Title Seven of the Navajo Nation Code, "Courts and Procedure", were collected, compiled and codified as part of a comprehensive piece of legislation referred to as the Judicial Reform Act of 1985 (CD-94-85) but many provisions were enacted prior to 1985; and
5. Title Seven of the Navajo Nation Code is in need of overall updating and refinement to more accurately reflect the structure of the Navajo Nation government as it has evolved since 1985, to better address the current needs and expectations of the Navajo people and other participants in the Navajo Nation judicial process, to improve the Navajo Nation judicial system, and to further assert and exercise the inherent sovereign power of the Navajo Nation; and
6. By Resolution JCO-15-03 (attached hereto as Exhibit B), the Judiciary Committee of the Navajo Nation Council recommends that the Navajo Nation Council adopt the proposed amendments to Title Seven of the Navajo Nation Code, attached hereto as Exhibit A; and

7. It is in the best interest of the Navajo Nation and Navajo people to amend Title Seven of the Navajo Nation Code as set forth in Exhibit A.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby adopts comprehensive amendments to 7 N.N.C. §§101 - 853, "Courts and Procedure", attached hereto as Exhibit A, to become effective immediately.

2. All cases pending at the time of enactment of these amendments to Title Seven of the Navajo Nation Code shall continue to follow the applicable governing provisions of Title Seven that were in effect at the time of filing of the case.

3. The Navajo Nation Council hereby recognizes all court rules of procedure and evidence currently used in the courts as effective rules of the courts until December 31, 2004, notwithstanding the requirements of the former and amended 7 N.N.C. §601. However, any and all court rules of procedure and evidence not adopted in accordance with 7 N.N.C. §601(A) and (B) by December 31, 2004 shall be deemed null and void and of no effect in the courts 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 same was passed by a vote of 71 in favor, 2 opposed and 0 abstained, this 24th day of October 2003.

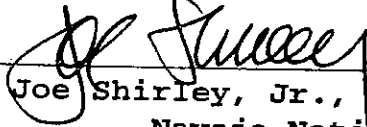

Lawrence T. Morgan, Speaker
Navajo Nation Council

27 Oct 03
Date

Motion: Willie Tracey
Second: Leonard Chee

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of NOV 05 2003 2003.



Joe Shirley, Jr., President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (10), for reason(s) expressed in the attached letter to the Speaker.

Joe Shirley, Jr., President
Navajo Nation

Title 7

Courts and Procedure

CHAPTER	SECTION
1. Definitions	101
3. Judicial Branch	201
5. Procedure	601

Chapter 1. Definitions

SECTION

- 101. Signature defined
- 102. Navajo Nation Council defined
- 103. District Courts defined

§ 101. Signature defined

The term "signature" as used herein in this Title shall be defined as the written signature, official seal, or the witnessed thumb print or mark of any individual.

HISTORY

CD-94-85, December 4, 1985
CJA-1-59, January 6, 1959

§ 102. Navajo Nation Council defined

The term "Navajo Nation Council," as used herein in this Title shall be construed to refer to the Navajo Nation Council, as defined in 2 N.N.C. §101.

HISTORY

CD-94-85, December 4, 1985
CJA-1-59, January 6, 1959

§ 103. District Courts defined

The term "District Courts" as used herein in this Title shall include the District Courts, the Family Courts of the Navajo Nation, and any divisions thereof established by the Navajo Nation Council.

HISTORY

CAU-46-89, August 16, 1989
CD-94-85, December 4, 1985

Chapter 3. Judicial Branch

Subchapter 1. Generally

SECTION

- 201. Establishment; composition
- 202. Seals of Courts
- 203. Copies of laws *Reserved*
- 204. Law applicable
- 205. Record of proceedings
- 206. Cooperation of Navajo Nation, federal and state employees
- 207. Action against provider of an alcoholic beverage

Subchapter 3. District Courts

- 251. Appointment Composition
- 252. Family Courts *Reserved*
- 253. Jurisdiction-Generally
- 253a. Long-Arm Civil Jurisdiction and Service of Process Act
- 254. Territorial jurisdiction
- 255. Writs or orders
- 256. Temporary or preliminary injunctive relief
- 257. Sovereign immunity of the Navajo Nation

Subchapter 4. Special Division of Window Rock District Court

- 291. Establishment
- 292. Composition

Subchapter 5. Supreme Court

- 301. Composition and location
- 302. Jurisdiction-Generally
- 303. Writs or orders

Subchapter 7. Justices and Judges

Article 1. Generally

- 351. Salaries
- 352. Removal from office
- 353. Retirement
- 354. Qualifications for judicial appointment
- 355. Appointment; term of office

EXHIBIT A

356. Probation

357. Evaluation

Article 2. Chief Justice

371. Administrative duties

372. Acting Chief Justice

Subchapter 9. Clerks and Bailiffs Judicial Branch Personnel Policies

401. Clerks and bailiffs-Appointment

402. Duties and authority

403. Salary and grade

404. Application of Judicial Branch personnel policies and procedures

Subchapter 10. Navajo Nation Peacemaking Division (Hózhóójí Naat'áanii)

409. Establishment

410. Purposes

411. Responsibility and authority

412. Personnel

413. Legislative oversight

414. Amendments

Subchapter 11. Judicial Conduct Commission

421. Establishment

422. Purposes and powers

423. Composition and personnel

424. Legislative oversight

Subchapter 1. Generally

§ 201. Establishment; composition

A. ~~There is established the a~~ Judicial Branch within of the Navajo Nation government.

B. The Judicial Branch of the Navajo Nation government shall consist of the District Courts, the Supreme Court of the Navajo Nation, and such other Courts as may be created by the Navajo Nation Council.

C. The Judicial Branch of the Navajo Nation shall also consist of such additional Judicial Branch divisions, departments, offices or programs that further the purposes of the Courts as may be created, subject to amendment or abolishment, by the Judiciary Committee through adoption of their plans of operation.

EXHIBIT A

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 202. Seals of Courts

The Courts of the Navajo Nation shall each adopt a seal which shall be used to authenticate their respective judgments and other papers. The form of the seals and regulations for their use shall be specified by rules of court adopted and placed in effect as provided in 7 N.N.C. § 601.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 203. Copies of laws *Reserved*

~~Each Court of the Navajo Nation shall be provided with copies of applicable federal, Navajo Nation and state laws and regulations.~~

HISTORY

~~CD-94-85, December 4, 1985~~

~~CJA-1-59, January 6, 1959~~

§ 204. Law applicable

~~A. In all cases the Courts of the Navajo Nation shall apply any laws of the United States that may be applicable and any laws or customs of the Navajo Nation not prohibited by applicable federal laws.~~

~~B. Where any doubt arises as to the customs and usages of the Navajo Nation the court may request the advice of counselors familiar with these customs and usages.~~

~~C. Any matters not covered by the traditional customs and usages or laws or regulations of the Navajo Nation or by applicable federal laws and regulations, may be decided by the Courts of the Navajo Nation according to the laws of the state in which the matter in dispute may lie.~~

A. In all cases the courts of the Navajo Nation shall first apply applicable Navajo Nation statutory laws and regulations to resolve matters in dispute before the courts. The Courts shall utilize Diné bi beenahaz'áanii (Navajo Traditional Customary, Natural or Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations. The courts shall also utilize Diné bi beenahaz'áanii whenever Navajo Nation statutes or regulations are silent on matters in dispute before the courts.

B. To determine the appropriate utilization and interpretation of Diné bi beenahaz'áanii, the court shall request, as it deems necessary, advice from Navajo individuals widely recognized as being knowledgeable about Diné bi beenahaz'áanii.

C. The courts of the Navajo Nation shall apply federal laws or regulations as may be applicable.

D. Any matters not addressed by Navajo Nation statutory laws and regulations, Diné bi beenahaz'áanii or by applicable federal laws and regulations, may be decided according to comity with reference to the laws of the state in which the matter in dispute may have arisen.

EXHIBIT A

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 205. Record of proceedings

A. Each Court of the Navajo Nation shall keep a record of all proceedings of the Court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, ~~by whom conducted~~ the name of the presiding Judge, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

B. A record of all proceedings shall be kept at the appropriate Court and shall be available for public inspection unless prohibited by order of the Court for good cause or by applicable laws.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 206. Cooperation of Navajo Nation, federal and state employees

A. No employee or official of the Navajo Nation, federal or state governments shall obstruct, interfere with or control the functions of any Court of the Navajo Nation or attempt to influence such functions in any manner except as permitted by federal Navajo Nation laws or regulations or in response to a request for advice or information from the Court.

B. Navajo Nation ~~E~~ employees of the federal government, particularly those who are engaged in social service, law enforcement, health and educational work, shall assist the Court, upon its request, in the preparation and presentation of the facts in the case and in the proper disposition of the case.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

~~§ 207. Action against provider of an alcoholic beverage~~

~~A. Any person who has been injured or damaged by an intoxicated person, or as a consequence of the intoxication of any person, may maintain an action in the Courts of the Navajo Nation against any person, individual, partnership, association or corporation selling or furnishing liquor or intoxicating beverages for consumption within the Navajo Indian Country if such liquor or intoxicating beverage was a cause of the intoxication.~~

~~B. Damages under this section shall include all damages to person or property, including, but not limited to, damages for wrongful death, personal injury and loss of income, and shall include loss of support, companionship, service and affection resulting from the death of a spouse, a minor child or the parent or guardian of a minor child.~~

~~C. In addition to any remedy available through subsection (A) above, the prosecutor of the Navajo Nation is authorized to maintain an action for the benefit of an injured party under this section at the request of or after notice to such injured party.~~

~~D. Nothing in this section shall be construed to impose civil liability on any person as a consequence of:~~

EXHIBIT A

~~1. The bona fide sale or furnishing of liquor or intoxicating beverages for scientific, sacramental, medicinal or mechanical purposes, or~~

~~2. The transportation of liquor or intoxicating beverages in un-opened containers and, where applicable, containers with unbroken federal tax stamps, through Navajo Indian Country on any highway, roadway or railway right-of-way in conformance with 18 U.S.C. § 1154.~~

HISTORY

CD-94-85, December 4, 1985

CJA-10-78, January 24, 1978

Subchapter 3. District Courts

§ 251. Appointment Composition

A. The District Courts of the Navajo Nation shall consist of such judges as shall be recommended by the Judiciary Committee of the Navajo Nation Council, appointed by the President of the Navajo Nation, with confirmation and confirmed by the Navajo Nation Council.

B. The District Courts of the Navajo Nation shall be located in such Judicial Districts of the Navajo Nation as are developed by the Judicial Branch, approved by the Judiciary Committee, and provided for in the Navajo Nation operating budget.

HISTORY

CD-94-85, December 4, 1985

CD-88-78, §§ 2, 3, December 20, 1978

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 252. Family Courts Reserved

~~The Family Courts of the Navajo Nation shall have original exclusive jurisdiction of all cases involving domestic relations, probate, adoption, paternity, custody, child support, guardianship, mental health commitments, mental and/or physical incompetence, name changes, and all matters arising under the Navajo Nation Children's Code.~~

HISTORY

CAU-46-89, August 16, 1989

§ 253. Jurisdiction--Generally

A. The District Courts of the Navajo Nation shall have original jurisdiction over:

- A 1. Crimes. All violations of laws of the Navajo Nation committed within its territorial jurisdiction. All offenses in the Navajo Nation Criminal Code (17 N.N.C. § 101 et seq.) whereby any person commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. The Navajo Nation Courts shall also have jurisdiction

EXHIBIT A

over any member of the Navajo Nation who commits an offense against any other member of the Navajo Nation wherever the conduct which constitutes the offense occurs.

B 2. Civil Causes of Action. All civil actions in which the defendant: (1) is a resident of Navajo Indian Country; ; or (2) has caused an action or injury to occur within the territorial jurisdiction of the Navajo Nation.

C 3. Miscellaneous. All other matters ~~over which jurisdiction has been heretofore, vested in the "Navajo Tribal Court of Indian Offenses", or which may hereafter be placed within the jurisdiction of the District Courts by the Navajo Nation Council provided by Navajo Nation statutory law, Diné bi beenahaz'áanii, and Navajo Nation Treaties with the United States of America or other governments. All causes of action recognized in law, including general principles of American law applicable to courts of general jurisdiction.~~

B. The Family Courts of the Navajo Nation shall have original exclusive jurisdiction over all cases involving domestic relations, probate, adoption, paternity, custody, child support, guardianship, mental health commitments, mental and/or physical incompetence, name changes, and all matters arising under the Navajo Nation Children's Code.

HISTORY

CD-94-85, December 4, 1985

CF-19-80, February 13, 1980

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 253a. Long-Arm Civil Jurisdiction and Service of Process Act

A. Definitions. As used in this Act, the term "person" includes an individual, executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of the Navajo Nation and whether or not organized under the laws of the Navajo Nation. The term includes all persons, natural or fictitious, of any kind.

B. Personal jurisdiction based on enduring relationship or status. A Court of the Navajo Nation may exercise personal and subject matter jurisdiction over a person domiciled in, organized under the laws of, or maintaining his, her, or its place of business in the Navajo Nation as to any cause of action or claim for relief. A Court of the Navajo Nation may exercise personal jurisdiction over any member of the Navajo Nation regarding that person's status as a member of the Navajo Nation for activities outside this jurisdiction which affect any other member of the Navajo Nation. A Court of the Navajo Nation may exercise civil jurisdiction over any person who assumes tribal relations with Navajos and the Navajo Nation by marriage, adoption, guardianship or ~~an affectionate or other~~ enduring relationship with Navajos.

C. Personal jurisdiction based on conduct. A Court of the Navajo Nation may exercise personal and subject matter jurisdiction over any non-member who consents to jurisdiction by commercial dealings, residence, employment, written or implied consent, or any action or inaction which causes injury which affects the health, welfare, or safety of the Navajo Nation or any of its members located within the territorial jurisdiction of the Navajo Nation, or any other act which constitutes the assumption of tribal relations and the resulting express or implied consent to jurisdiction. A Court of the Navajo Nation may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action

EXHIBIT A

for relief arising from the person's:

1. Transacting any business in the Navajo Nation;
2. Contracting at any place to supply services or things within the Navajo Nation;
3. Causing tortious injury by any act or omission within the Navajo Nation;
4. Causing tortious injury in the Navajo Nation by an act or omission outside the Navajo Nation if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in the Navajo Nation;
5. Having an interest in, using, or possessing real property in the Navajo Nation, including the actual occupancy or lease of trust land, allotted land, fee land, or any other land within Navajo Indian country;
6. Contracting to insure any person, property or risk located within the Navajo Nation;
7. Causing an act which creates an environmental hazard or degradation of the air, waters, flora, fauna, cultural artifact, or other resource of the Navajo Nation;
8. Selling alcohol to any person who enters the Navajo Nation and who causes an injury in the Navajo Nation under the influence of alcohol; or
9. Any action or inaction outside this jurisdiction which causes actual injury or damage within the Navajo Nation, where such injury or damage was reasonably foreseeable.

D. Service of process outside the Navajo Nation. When the exercise of personal jurisdiction is authorized by this Act, service of process may be made outside the Navajo Nation, and where such service is not reasonably feasible, service may be made by any means which is likely to give the defendant actual notice of the pendency of an action.

E. Inconvenient forum. When a Navajo Nation Court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any condition that may be just.

F. Other basis of jurisdiction unaffected. A Court of the Navajo Nation may exercise jurisdiction on any other basis authorized by law, including the inherent and treaty jurisdiction of the Navajo Nation.

G. Manner and proof of service.

1. When the law of the Navajo Nation authorizes service outside the Navajo Nation, the service, when calculated to give actual notice, may be made:

- a. By personal delivery in the manner prescribed for service within the Navajo Nation;
- b. In the manner prescribed by the law of the place in which service is made in an action in any of its courts of general jurisdiction;
- c. By any form of mail addressed to the person to be served and requiring a signed receipt;
- d. As directed by a foreign authority in response to a letter rogatory; or
- e. As directed by the Court.

2. Proof of service outside the Navajo Nation may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the Navajo Nation, the order pursuant to which service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee satisfactory to the court and showing that the service was reasonably calculated to give actual notice.

H. Individuals to be served; special cases. When the law of the Navajo Nation requires that in order to effect service one or more designated individuals be served, service outside the Navajo Nation under this Act must be made upon the designated individual or individuals.

EXHIBIT A

I. Assistance to tribunals and litigants outside the Navajo Nation.

1. A Court of the Navajo Nation may order service upon any person who is domiciled or can be found within the Navajo Nation of any document issued in connection with a proceeding in a tribunal outside the Navajo Nation. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the Navajo Nation and shall direct the manner of service. Otherwise, no process which is not process issued by a Navajo Nation Court or administrative tribunal with jurisdiction over the cause may be served within the Navajo Nation, and the Navajo Nation denies consent to admission to the Navajo Indian country to any state official or process server for the service of process unless the same is done under this Section.

2. Service in connection with a proceeding in a tribunal outside the Navajo Nation may be made within the Navajo Nation only with an order of a Navajo Nation Court.

3. Service under this section does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the Navajo Nation.

4. A Navajo Nation Court may decline to order service of process where a tribunal outside the Navajo Nation lacks jurisdiction over the action, where the application is fraudulent, or where the action violates the public policy of the Navajo Nation.

J. Other provisions of law unaffected. This Act does not repeal or modify any other law of the Navajo Nation permitting any other procedure for service of process.

HISTORY

CJA-02-01, January 24, 2001

§ 254. Territorial jurisdiction

A. The territorial jurisdiction of the Navajo Nation shall extend to Navajo Indian Country, defined as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of dependent Navajo Indian communities, all Navajo Indian allotments, all land owned in fee by the Navajo Nation, and all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians.

B. The Courts of the Navajo Nation may also exercise jurisdiction over any action for probate, domestic relations, child custody, adoption and Navajo Nation benefits and services, in which a party is a Navajo resident of the Hopi-Partitioned Lands.

HISTORY

CJA-11-00, January 28, 2000

CD-94-85, December 4, 1985

CJY-57-85, July 25, 1985

CMY-28-70, May 7, 1970

§ 255. Writs or orders

The District Courts shall have the power to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 256. Temporary or preliminary injunctive relief

No District Court of the Navajo Nation shall enter an order for temporary or preliminary injunctive relief in any proceeding in which there is no appearance by the defendant, unless:

- A. The District Court judge certifies in writing as to the specific irreparable harm which would occur were the temporary relief not to be ordered; and
- B. The legal counsel for the plaintiff certifies by affidavit as to the reasonable efforts which have been made to locate the defendant or defendant's legal counsel to notify him or her of the hearing on preliminary or temporary injunctive relief.

HISTORY

CD-94-85, December 4, 1985

CF-19-80, February 13, 1980

§ 257. Sovereign immunity of the Navajo Nation

Jurisdiction of the District Courts of the Navajo Nation shall not extend to any action against the Navajo Nation without its the Navajo Nation's express consent. Any action against the Navajo Nation shall comply with the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., and any other law providing the Navajo Nation with immunity from suit.

HISTORY

CD-94-85, December 4, 1985

CF-19-80, February 13, 1980

Subchapter 4. Special Division of Window Rock District Court

§ 291. Establishment

There is established the Special Division of the Window Rock District Court.

HISTORY

CMA-11-89, March 10, 1989

CMA-8-89, March 1, 1989

§ 292. Composition

A. The Special Division of the Window Rock District Court shall consist of three judges or retired judges or retired justices, who shall be assigned in such manner and for such terms as is provided in this section, for the purpose of appointing special prosecutors pursuant to 2 N.N.C. §§ 2021 - 2024.

B. Judges of the Special Division shall be appointed for terms of two years each, which terms shall commence on the date of the enactment of this section, and thereafter on the date of every other anniversary of the enactment of this section.

C. The Chief Justice of the Navajo Nation shall designate and assign three judges or retired judges or retired justices to the Special Division for each successive two-year term. At least two of the judges shall be active permanent judges of District Courts of the Navajo Nation. The third judge may be either an active permanent judge of the Navajo Nation or a retired judge or retired justice of the Navajo Nation.

EXHIBIT A

Unless there are an insufficient number of active permanent judges from at least two District Courts, not more than one judge or retired judge may be assigned to the Special Division from a particular District (or preceding trial) Court. The Chief Justice shall designate one of the judges to be the presiding judge of the Special Division.

D. Judges of the Special Division may only be removed during their terms upon their resignation, or by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council. Any vacancy in such division shall be filled only for the remainder of the two-year period for which such vacancy occurs and in the same manner as initial appointments to such division were made.

E. Except as provided under subsection (F) of this section, assignment to the Special Division shall not bar any other judicial assignment during the term of assignment to such division.

F. No judge of the Special Division shall be eligible to participate in any judicial proceeding concerning a matter which involves a special prosecutor appointed by the Division while such special prosecutor is serving in that office, or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office.

G. Within five calendar days of the enactment of this section, the Special Division shall be created pursuant to subsection (C) of this section.

HISTORY

CMA-11-89, March 10, 1989

CMA-8-89, March 1, 1989

Subchapter 5. Supreme Court

§ 301. Composition and location

A. The Supreme Court of the Navajo Nation shall consist of the Chief Justice of the Navajo Nation and two Associate Justices of the Supreme Court.

B. The Supreme Court of the Navajo Nation shall sit at be located in Window Rock, Navajo Nation (Arizona).

C. The Supreme Court of the Navajo Nation may sit and conduct hearings outside of the Navajo Nation in accordance with policies established for the conduct of hearings outside the Navajo Nation.

HISTORY

CD-94-85, December 4, 1985

CMY-39-78, May 4, 1978

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 302. Jurisdiction--Generally

The Supreme Court shall have jurisdiction to hear appeals from final judgments and other final orders of the District Courts of the Navajo Nation and such other final administrative orders as provided by law. The Supreme Court shall also have jurisdiction over original extraordinary writs. The Supreme Court shall be the Court of final last resort.

HISTORY

CD-94-85, December 4, 1985
CJA-5-59, January 9, 1959
CO-69-58, October 16, 1958

§ 303. Writs or orders

The Supreme Court shall have the power to issue any writs or orders:

- A. ~~n~~Necessary and proper to the complete exercise of its jurisdiction; or
- B. ~~t~~To prevent or remedy any act of any Court which is beyond such Court's jurisdiction; or
- C. ~~t~~To cause a Court to act where such Court unlawfully fails or refuses to act within its jurisdiction.

HISTORY

CD-94-85, December 4, 1985
CJA-5-59, January 9, 1959
CO-69-58, October 16, 1958

Subchapter 7. Justices and Judges

Article 1. Generally

§ 351. Salaries

A. Salaries for Justices and Judges of the Courts of the Navajo Nation shall be established at the following base levels and negotiable thereon: by the Judiciary Committee of the Navajo Nation Council, and in setting rates of compensation, the Committee shall take into consideration:

- 1. Probationary District Court Judges ————— \$25,000 per year
- 2. District Court Judges ————— \$30,000 per year
- 3. Probationary Associate Justice ————— \$30,000 per year
- 4. Associate Justices ————— \$35,000 per year
- 5. Probationary Chief Justice ————— \$45,000 per year
- 6. Chief Justice ————— \$55,000 per year

1. The Navajo Nation Classification and Pay Plan;

2. The need to attract outstanding Navajo candidates to the judiciary;

3. The need to attract or compensate Justices or Judges who are graduates of a school of law or who have extensive experience in law or judging;

4. Comparable salaries of Justices and Judges in the region; and

5. Any other objective criteria relevant to judicial compensation.

B. The probationary period for District Court Judges, the Chief Justice and Associate Justices shall be two years from the date of appointment by the President of the Navajo Nation.

C. Judges who have completed the probationary period, if subsequently promoted, need not be subject to the probationary provision as described in subsection (B) of this section.

HISTORY

CD-94-85, Exhibit D, December 4, 1985
CO-53-81, October 22, 1981
CF-6-76, February 19, 1976

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CJN-35-61, June 27, 1961
CJN-40-59, June 10, 1959
CJA-5-59, January 9, 1959
CO-69-58, October 16, 1958

§ 352. Removal from office

A. The Chief Justice of the Navajo Nation, or the Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if, in the opinion of the Chief Justice, or the Judiciary Committee; determines there is reasonable cause exists to believe the Justice or Judge to be guilty of has engaged in malfeasance or misfeasance in office, serious neglect of duty, or has become mentally or physically incompetent unable to perform the duties of his office, or if the justice or judge has been convicted of a felony in a state or federal court since entering upon duty. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.

B. The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines there is substantial evidence that the Justice or Judge willfully or negligently made significant misrepresentations or omissions about his or her qualifications on his or her application for the judicial position. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.

B C. Such A recommendation for removal under subsections (A) or (B) above shall be presented promptly to the Navajo Nation Council by proposed resolution, and the Justice or Judge whom it is sought to be removed from office shall be accorded given an opportunity to appear before the Navajo Nation Council and present evidence in his or her own defense. The Navajo Nation Council is not bound by the formal Rules of Evidence in its considerations or deliberations. Thereafter such Justice or Judge may be removed from office by a two-thirds vote of all the full membership of the Navajo Nation Council.

D. Documented and conclusive evidence that a Justice or Judge has been convicted of a felony in state or federal court since taking office, or that a Justice or Judge has been convicted of any tribal criminal offense which is also identified as a Major Crime in 18 U.S.C. § 1153 since taking office, shall result in the removal of such Justice or Judge by resolution of the Judiciary Committee of the Navajo Nation Council.

HISTORY

CD-94-85, December 4, 1985
CJA-5-59, January 9, 1985
CO-69-58, October 16, 1958

§ 353. Retirement

A. Definitions. The following definitions shall apply for purposes of this Section:

1. Judiciary Committee means the Judiciary Committee of the Navajo Nation Council.
2. Navajo Nation Judge as used in this Section shall include the Chief Justice of the Navajo Nation, all Associate Justices of the Navajo Nation Supreme Court, and all Trial Judges of the

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Navajo Nation District Courts and Family Courts.

3. Judges' Retirement Plan means:

- a. Either duly approved and established provisions directly applicable to Judges contained within the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its successor; or
- b. A duly approved and established Navajo Nation Judges' Retirement Plan document.

B. Eligibility.

1. Judges beginning service after the effective date of this Section:

- a. A Navajo Nation Judge beginning service after the effective date of this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may retire and receive retirement benefits only in accordance with the Judges' Retirement Plan and only after meeting the vesting, retirement age and other eligibility requirements of the Judges' Retirement Plan.
- b. The provisions of this Section specifically applicable to Navajo Nation Judges beginning service before the effective date of this Section are not applicable to Judges beginning service after the effective date of this Section.

2. Judges beginning service before the effective date of this Section:

- a. The vesting, retirement age, and other eligibility requirements specifically identified in this Section as applicable to Navajo Nation Judges beginning service before the effective date of this Section shall be incorporated into and applied through the Judges' Retirement Plan.

- b. A Navajo Nation Judge beginning service before the effective date of this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may retire after having served a total of eight (8) or more years in office. A Navajo Nation Judge beginning service before the effective date of this Section who retires before reaching the age of 55 years pursuant to Subsection (B), but not due to disability, shall not receive retirement benefits until the Judge has reached the age of 55 years.

- c. A Navajo Nation Judge beginning service before the effective date of this Section who retires or resigns with less than a total of eight (8) years in office shall not be eligible for retirement benefits under this Section.

3. A Navajo Nation Judge who intends to retire shall compile all the necessary paperwork and forward it to the Chief Justice. If the Chief Justice finds from the paperwork that the Judge meets the requirement for retirement, the Chief Justice shall give preliminary approval to the retirement request and forward the paperwork to the Navajo Nation Retirement Program for concurrence and processing of retirement benefits pursuant to the Judges' Retirement Plan.

4. A Navajo Nation Judge's total years of service for purposes of calculating eligibility for retirement benefits shall begin with the date of confirmation by the Navajo Nation Council and include all years served as a Navajo Nation probationary Judge and as a permanent Judge.

C. Removal; effect on retirement benefits.

1. The Navajo Nation Council may, upon recommendation of the Judiciary Committee, remove from office a permanent Navajo Nation Judge for inability to perform judicial duties due to permanent mental or physical disability. The Chief Justice shall recommend removal to the Judiciary Committee. A Navajo Nation Judge removed under Subsection (C) shall receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan.

2. A Navajo Nation Judge who has been removed from office for malfeasance, misfeasance,

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or misconduct serious neglect of duty, or criminal conviction as set forth in 7 N.N.C. § 352, shall not be eligible for retirement benefits under this Section and but shall not have the status of retired Judge.

D. Permanent disability; eligibility.

1. A Navajo Nation Judge may retire if the Judge has become permanently disabled from performing his or her duties of office. "Permanently disabled" means the permanent inability of the Judge, by reason of physical or mental incapacity, to perform any substantial part of his or her ordinary duties as a Navajo Nation Judge. A Navajo Nation Judge who retires under Subsection (D) shall receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan.

2. A Navajo Nation Judge who intends to retire under Subsection (D) shall compile all the necessary paperwork and forward it to the Chief Justice for review. The Chief Justice shall recommend to the Judiciary Committee whether the Judge is eligible to retire under Subsection (D). The Judiciary Committee shall recommend to the Retirement Plan Administration Committee or its successor whether the Judge is eligible to retire under Subsection (D). The Retirement Plan Administration Committee or its successor shall have final authority to determine whether a Navajo Nation Judge is eligible to retire under the disability provisions of the Retirement Plan.

3. The Retirement Plan Administration Committee or its successor, with the concurrence of the Judiciary Committee, may develop nondiscriminatory procedures for evaluating the continuing disability of a Navajo Nation Judge retired under Subsection (D). The retirement benefits of a Navajo Nation Judge retired under Subsection (D) shall be suspended for failure to comply with such procedures in a timely fashion or if the disability no longer meets the criteria of Subsection (D).

4. The retirement benefits of a Navajo Nation Judge who retires under Subsection (D) shall be suspended during any time such Judge engages in the practice of law in any way, including the teaching of law.

E. Benefit levels.

1. Retirement benefits for Navajo Nation Judges beginning service after the effective date of this Section shall be established through the Judges' Retirement Plan document and administered through the Navajo Nation Retirement Program. The Judges' Retirement Plan may take into consideration the American Bar Association Standards relating to judicial retirement.

2. Retirement benefits for Judges beginning service before the effective date of this Section shall be incorporated into the Judges' Retirement Plan document and administered through the Navajo Nation Retirement Program. Such benefits shall be equivalent to the Section 353 in effect during the Judge's service.

3. A retired Navajo Nation Judge who is receiving retirement benefits pursuant to this Section shall not simultaneously receive salary, wages and/or stipends for work performed from those employers participating in the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its successor.

4. A Navajo Nation Judge's retirement benefits shall not be diminished except as specifically identified under subsections (D) and (E).

F. Pro Tempore service. The Chief Justice may recall a retired Navajo Nation Judge to service as a

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Navajo Nation Judge pro tempore. The retired Judge recalled to service shall be reimbursed only for reasonable expenses related to such service. A Navajo Nation Judge who has retired due to disability or has been removed pursuant to Subsection (C) shall not be eligible for recall to service.

G. Plan document. The Judges' Retirement Plan shall:

1. Incorporate the applicable amended subsections of Section 353;
2. Incorporate provisions for the continued payment of retirement benefits which have vested or will vest under the former Section 353; and
3. Include a Judges' retirement trust fund to pay judges their retirement benefits.

H. Authority. The Budget and Finance Committee, upon positive recommendation of the Judiciary Committee and the Retirement Plan Administration Committee, shall have the authority to approve the initial Judges' Retirement Plan document and any subsequent amendments. This authority shall not be deemed to alter or amend the Retirement Plan Administration Committee's or the Navajo Nation Retirement Program's authority to administer the Judges' Retirement Plan or the Budget and Finance Committee's authority to administer the underlying trust fund.

I. Effective dates. Except for amended Subsections (B), (C), (D) and (E), these amendments to 7 N.N.C. § 353 shall become effective upon enactment. Subsections (B), (C), (D) and (E) shall become effective after a final Navajo Nation Judges' Retirement Plan has been recommended by the Judiciary Committee and the Retirement Plan Administration Committee and approved by the Budget and Finance Committee and the Judges retirement trust fund fully funded by the Navajo Nation Council. For purposes of this subsection, fully funded shall mean funded to a level sufficient to satisfy the funding requirements of the Employees Retirement Insurance Security Act if such Act was applicable to the Judges Retirement Plan.

HISTORY

CJA-04-03, January 29, 2003

CJY-60-00, July 21, 2000

CD-94-85, December 4, 1985

CJN-33-62, June 18, 1962

CJN-35-61, June 27, 1961

CF-15-61, February 15, 1961

CJN-40-59, June 10, 1959

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 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 thirty (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 (5) 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

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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 (4) 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 Navajo culture and tradition. The applicant must be able to demonstrate:
 - a. An understanding of K'é, including the Diné clan system; and
 - b. A basic understanding of traditional Navajo religious ceremonies; and
 - c. An understanding of the traditional Navajo lifestyle.
6. **Health.** Each applicant shall produce a current statement from a licensed physician indicating that the applicant is in good mental health.
7. **Driver's License.** Each applicant shall possess a valid driver's license.
8. **No Substance Abuse or Addiction.** In addition to the requirement of obtaining a medical statement pursuant to subsection (A)(6) above, each applicant must attest that he or she does not abuse or have a harmful physical addiction to any mood altering substance.
9. **Writing Test.** Upon initial screening of applicants by the Judiciary Committee, those applicants selected shall submit to a writing test that illustrates each applicant's organizational, analytical and communicative legal writing abilities.
10. **Ethics.** Each applicant shall show that he or she has neither present nor past conflicts of interests that give the appearance of partiality or bias in cases brought in the Courts of the Navajo Nation. Each applicant must demonstrate a commitment to judicial independence and an impartial background that will indicate neutrality and fairness for proper decision making. An applicant shall not have been found in violation of:
 - a. The Navajo Nation Ethics in Government Law;
 - b. Standards of ethics or professional conduct for lawyers in any jurisdiction; or
 - c. Standards of ethics for judges or judicial codes of conduct in any jurisdiction;within a five (5) consecutive year period prior to the date the application is submitted.
11. **References.** Each applicant must be of good moral character and shall submit a minimum of four (4) current letters of reference specifically regarding his or her application for judicial appointment. At least one (1) letter of reference shall be from a regular member in good standing with the Navajo Nation Bar Association. Such letters shall outline the applicant's legal skills, motivation and employment performance, and the applicant's character and capacity for independence, honesty and impartiality.
12. **Management Ability.** Each applicant shall possess managerial and independent decision-making skills necessary for the efficient operation of a Court. Information such as the applicant's record of supervising staff, coordinating budget and personnel requirements, verbal communication and writing abilities shall be carefully considered by the Judiciary Committee.
13. **Navajo Nation Bar Association.** Each applicant shall provide proof in his or her application that he or she is presently a regular or inactive member in good standing with the Navajo Nation Bar Association and shall maintain membership in good standing throughout his or her judicial career.

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14. **Removal from office.** Navajo Nation probationary and permanent judges removed from office for any reason shall not be eligible for subsequent 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. An applicant who has earned a J.D. or LL.M. shall be preferred.

2. **Judge Applicants.** A sitting Navajo Nation District Court Judge applicant who meets all requirements for appointment to the Supreme Court shall be preferred, in accordance with the following:

a. A Navajo Nation District Court Judge (permanent or probationary) beginning service before the effective date of this Section shall be eligible for appointment to the Supreme Court irrespective of the increased minimum educational qualifications for either District Court Judges or Supreme Court Justices enumerated in this Section. Provided, however, that such District Court Judge applicant shall meet all other minimum qualifications as set forth in this Section.

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

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

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

HISTORY

CAP-28-03, April 25, 2003
CD-94-85, December 4, 1985

§ 355. Appointment; term of office

A. The President of the Navajo Nation shall appoint the Chief Justice, Associate Justices, and District Court Judges with confirmation by the Navajo Nation Council from among those applicants recommended by the Judiciary Committee of the Navajo Nation Council.

B. The Chief Justice and the Associate Justices of the Supreme Court, and the all District and Family Court Judges shall be appointed for a probationary period of two (2) years and upon permanent appointment shall serve thereafter during good behavior.

C. A probationary Chief Justice, Associate Justice or Judge shall not be recommended for permanent appointment unless he or she has successfully completed a course of training accredited for judges and he or she has received a satisfactory performance evaluation as determined by from the Chief Justice and the Judiciary Committee of the Navajo Nation Council at the conclusion of the probationary Justice's or Judge's two-year probationary term.

D. At any time during the probationary term of any Chief Justice, Associate Justice or Judge, regardless

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of the length of service of such judge, the Judiciary Committee may recommend to the President of the Navajo Nation that the probationary Justice or Judge be removed from office. The President of the Navajo Nation, pursuant to such recommendation, may shall remove such probationary Justice or Judge from office. Any Justice or Judge so removed shall not be eligible for the status of retired Judge, shall not be eligible for reappointment as a Justice or Judge, and shall not be called to sit in any case pursuant to 7 N.N.C. § 353(F).

E. At the conclusion of the two-year probationary term, the Judiciary Committee shall review the record and qualifications of each probationary Justice or Judge and shall recommend to the President whether or not each probationary Justice or Judge has satisfactorily completed the probationary term and should be appointed to a permanent position. The President shall not appoint to a permanent position any probationary Justice or Judge not recommended by the Judiciary Committee, ~~but the President, at his discretion, may appoint any judges recommended by the Judiciary Committee to permanent positions.~~ The appointments shall be submitted to the Navajo Nation Council for confirmation.

HISTORY

CJY-60-00, July 21, 2000
CD-94-85, December 4, 1985

§ 356. Probationary term

A. The probationary term for District Court Judges, the Chief Justice and Associate Justices shall be two (2) years from the date of confirmation by the Navajo Nation Council.

B. A permanent District Court Judge subsequently appointed as Chief Justice or Associate Justice shall also be subject to a two-year probationary term as described in subsection (A) of this Section.

§ 357. Evaluation

Permanent Justices and Judges shall be subject to periodic objective evaluations in accordance with Judicial Performance Evaluation Policies and Procedures approved by the Judiciary Committee of the Navajo Nation Council.

Article 2. Chief Justice

§ 371. Administrative duties

In addition to his or her judicial duties, the Chief Justice of the Navajo Nation shall ~~have the duty of supervising the work of~~ supervise all Justices and Judges of the Navajo Nation and ~~shall have the duty of administering the Judicial Branch and~~ administer the Judicial Branch in accordance with applicable standards, rules, policies or procedures. The Chief Justice shall also exercise such duties that are consistent with the Office of Chief Justice. He shall advise the President of the Navajo Nation and the Judiciary Committee of the Navajo Nation Council as to whether probationary justices and judges shall be offered permanent appointments.

HISTORY

CD-94-85, December 4, 1985
CJA-5-59, January 9, 1959
CO-69-58, October 16, 1958

EXHIBIT A

§ 372. Acting Chief Justice

A. The Chief Justice of the Navajo Nation shall designate in writing one Associate Justice of the Supreme Court to act as Chief Justice whenever the Chief Justice is absent from the territorial jurisdiction of the Navajo Nation, is on vacation, ill or otherwise unable to perform the duties of his office the Chief Justice. The Chief Justice shall delegate to the acting Chief Justice some or all of the powers of, the office of Chief Justice. The Chief Justice may at any time change his or her written designation of the Associate Justice empowered to act as Chief Justice.

B. The Chief Justice may designate in writing one permanent District Court Judge to carry out the administrative duties of the Office of Chief Justice whenever the Chief Justice and both Associate Justices are absent from the territorial jurisdiction of the Navajo Nation, ill or otherwise unable to perform the duties of the Chief Justice. The designation shall expire at a time designated by the Chief Justice or whenever withdrawn in a separate writing by the Chief Justice and, in any event, shall automatically expire in five working days after the date of designation unless renewed in writing by the Chief Justice.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

§ 373. Residence

A residence shall be furnished in Window Rock, Navajo Nation (Arizona), together with the cost of water, sewer, refuse disposal, electricity and natural gas, without charge to the sitting Chief Justice. The Navajo Nation shall not be responsible or liable for any costs or expenses associated with an alternative residence if the sitting Chief Justice declines to reside in the specific residence provided by the Navajo Nation as set forth in this Section.

§ 374. Oath of Office

The Chief Justice of the Navajo Nation shall administer the oath of office to the President, Vice President, Navajo Nation Council Delegates, and all other elected officials as provided by law. The Chief Justice may designate another Justice or Judge of the Navajo Nation to administer the oath.

Subchapter 9. Clerks and Bailiffs Judicial Branch Personnel Policies

~~§ 401. Clerks and bailiffs-Appointment~~

~~A. Each judge of the District Courts of the Navajo Nation shall, with the approval of the Chief Justice, appoint clerks and bailiffs of the Court.~~

~~B. The Chief Justice shall appoint the clerk of the Supreme Court.~~

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

EXHIBIT A

~~§ 402. Duties and authority~~

~~The clerks of the court shall have such duties and authorities as provided herein, or by rules of court adopted and placed in effect pursuant to 7 N.N.C. §601, or as may be hereafter provided by resolution of the Navajo Nation Council, or as may be hereafter delegated by the justices and judges of the Navajo Nation.~~

HISTORY

~~CD-94-85, Exhibit D, December 4, 1985~~

~~CJA-5-59, January 9, 1959~~

~~CO-69-58, October 16, 1958~~

~~§ 403. Salary and grade~~

~~A. The beginning salary and increments for clerks and bailiffs of the court shall be in accordance with the prevailing rates established by the Navajo Nation, and the positions shall be graded in accordance with the established personnel policies and procedures.~~

~~B. Those presently serving as clerks and bailiffs shall be subject to the above provisions upon their appointment and approval by the Chief justice.~~

HISTORY

~~CD-94-85, December 4, 1985~~

~~CJN-40-59, June 10, 1959~~

~~§ 404 401. Application of Judicial Branch personnel policies and procedures~~

~~All employment in positions, other than including judicial appointments, within the Judicial Branch shall be in accordance with the established governed by Judicial Branch personnel policies and procedures and Justices' and Judges' personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.~~

HISTORY

~~CD-94-85, December 4, 1985~~

Subchapter 10. Navajo Nation Peacemaking Division Program (Hózhóójí Naat'áanii)

~~§ 409. Establishment~~

~~It is hereby recognized and affirmed that there is a Navajo Nation Peacemaking Division Program (Hózhóójí Naat'áanii) within the Judicial Branch of the Navajo Nation. The Peacemaking Division Program shall be the central point of peacemaking information and coordination with the Navajo Nation Judicial Branch.~~

HISTORY

~~CO-76-01, October 17, 2001~~

EXHIBIT A

§ 410. Purposes

The purposes of the Navajo Nation Peacemaking Division Program include: to promote a non-adversarial forum for solving disputes where the parties to the dispute voluntarily agree or are referred to peacemaking; to promote peacemaking counseling services to clients of the Navajo Nation Courts; to promote peacemaking support and assistance to Navajo Nation Courts when requested to make recommendations on sentencing; to provide education and training on Navajo culture, traditions and other Navajo accepted beliefs to individuals, organizations, and communities; to provide support and technical assistance to peacemakers; to promote the research, development, and learning of Navajo culture, traditions, and other Navajo accepted beliefs in support of judicial and community programs; and provide problem solving assistance to peacemakers, Judges, Court staff, and others concerning the peacemaking process. Peacemaking is intended to promote healing and reestablish harmony among those persons participating in peacemaking.

HISTORY

CO-76-01, October 17, 2001

§ 411. Responsibility and authority

The Navajo Nation Peacemaking Division Program shall have the authority and power to undertake the following functions and duties:

- A. To conform the procedures of Hózhóójí Naat'áanii to traditional Hózhóójí Naat'áanii concepts, including K'é, clanship, and other principles of Navajo culture, traditions, and other Navajo accepted beliefs, establish standards and procedures for that process, and otherwise develop standards, principles, and procedures for the development of Hózhóójí Naat'áanii in accordance with Navajo culture, traditions, and other Navajo accepted beliefs and the laws of the Navajo Nation.
- B. To maintain a list of peacemakers and provide technical support to peacemakers to facilitate the conduct of peacemaking.
- C. To periodically evaluate the techniques of peacemakers and the peacemaking process.
- D. To authorize peacemakers to enter into funding agreements with the Judicial Branch for mileage and training.
- E. To perform such other functions and duties that are in accordance with Navajo Nation law and purposes of the Navajo Nation Peacemaking Division Program and that will promote the practice of peacemaking.

HISTORY

CO-76-01, October 17, 2001

§ 412. Personnel

The Navajo Nation Peacemaking Division Program shall be administered by a Peacemaking Division Program Coordinator. All personnel, including the coordinator, shall be subject to Navajo Nation Judicial Branch personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

HISTORY

CO-76-01, October 17, 2001

EXHIBIT A

§ 413. Legislative oversight

The Navajo Nation Peacemaking Division Program shall operate under the legislative oversight of the Judiciary Committee of the Navajo Nation Council pursuant to the powers granted that Committee in 2 N.N.C. § 571 *et seq.*. The Navajo Nation Peacemaking Division Program shall operate pursuant to a Plan of Operation approved by the Judiciary Committee of the Navajo Nation Council.

HISTORY

CO-76-01, October 17, 2001

~~§ 414. Amendments~~

~~This Subchapter may be amended from time to time by the Navajo Nation Council upon recommendation of the Judiciary Committee of the Navajo Nation Council.~~

HISTORY

CO-76-01, October 17, 2001

Subchapter 11. Judicial Conduct Commission

§ 421. Establishment

The Judicial Conduct Commission is established as an independent commission receiving administrative support and assistance from the Judicial Branch of the Navajo Nation.

§ 422. Purposes and powers

A. The purposes and powers of the Judicial Conduct Commission are:

1. To enhance public confidence in the Navajo Nation Judiciary by providing a fair, impartial and expeditious forum to hear complaints and grievances against Navajo Nation Justices and Judges involving alleged violations of the Code of Judicial Conduct, personnel policies for Justices and Judges, and any other Navajo Nation laws or policies that set standards of ethics and conduct for Justices and Judges.
2. To investigate or direct the investigation of complaints or grievances against Justices and Judges;
3. To make findings and recommend sanctions, as appropriate; and
4. To forward recommendations for suspension or removal of Justices and Judges to the Judiciary Committee and to the Chief Justice.

B. The Judicial Conduct Commission shall refer all complaints not properly before the Judicial Conduct Commission to the proper authorities, such as the Chief Prosecutor, the Ethics and Rules Office, or the Disciplinary Committee of the Navajo Nation Bar Association, as necessary.

C. The Judicial Conduct Commission shall develop and recommend its Plan of Operation, rules, policies and procedures, and operating budget, for approval by the Judiciary Committee, the Budget and Finance Committee, and the Navajo Nation Council, as necessary.

§ 423. Composition and personnel

A. Composition. The Judicial Conduct Commission shall consist of five (5) members serving staggered four (4) year terms.

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1. One (1) member shall be a sitting or retired federal or state court Justice or Judge in good standing in their respective jurisdiction selected by the Justices and Judges of the Navajo Nation Courts.

2. One (1) member shall be a retired Navajo Nation Justice or Judge in good standing with the Navajo Nation Bar Association selected by the Justices and Judges of the Navajo Nation Courts.

3. Two (2) members shall be regular or inactive members of the Navajo Nation Bar Association in good standing with no pending disciplinary proceedings against them and who have not been formally reprimanded or suspended within a four (4) consecutive year period prior to their selection, selected by the voting membership of the Navajo Nation Bar Association. The NNBA-selected members shall not be retired or removed Justices or Judges of the Navajo Nation Courts.

4. One (1) member shall be a member of the Navajo Nation public selected by the Judiciary Committee of the Navajo Nation Council from among applicants submitting letters of interest and resumes to the Judiciary Committee. The Judiciary Committee selected member shall not be a current NNBA member, nor a sitting, retired, or removed Justice or Judge of the Navajo Nation or any other jurisdiction.

B. Personnel. The Judicial Conduct Commission shall receive administrative support and assistance from the Judicial Branch of the Navajo Nation and shall hire personnel and approve Commission expenditures as provided for in the Judicial Conduct Commission Plan of Operation and the Navajo Nation operating budget.

§ 424. Legislative oversight

The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and policies and procedures recommended by the Judicial Conduct Commission and approved by the Judiciary Committee of the Navajo Nation Council.

Chapter 5. Procedure

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- 601. Court rules; authority to adopt
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- 603. Action in name of Navajo Nation; authority to bring
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- 607 621. Repossession of personal property consumer goods
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Article 2. Action against provider of an alcoholic beverage

- 631. Action against provider of an alcoholic beverage

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- 651. Right to jury trial
- 652. Lists of jurors; preparation
- 653. Number of jurors
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- 655. Challenges to jury
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- 703. Lawful debt in proceedings to distribute decedents' estates
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- 705. Writs of execution-Generally
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- 711. Property subject to execution and property exempt from execution
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Subchapter 7. Costs, Fees and Fines

- 751. Security for costs
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- 801. Appeal from final judgment or order
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- 803. Scope of the appeal
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- 853. Severability

Subchapter 1. Generally

§ 601. Court rules; authority to adopt

- A. ~~The Supreme Court of the Navajo Nation may~~ shall, after providing reasonable public notice and a meaningful opportunity to respond, adopt rules of pleading, practice, and procedure applicable to any or all proceedings in the Courts of the Navajo Nation. The Supreme Court shall specifically consult with the Attorney General of the Navajo Nation, the Chief Legislative Counsel, and the President of the Navajo Nation Bar Association prior to adopting any proposed rules of pleading, practice and procedure.
- B. ~~In addition, it may~~ The Supreme Court shall, after providing reasonable public notice and a meaningful opportunity to respond, adopt uniform rules for the admission of evidence in Navajo Nation Courts. and may require the use of standard forms for pleadings, motions and other papers filed in court by litigants, as well as for judgments, writs, and court orders. The Supreme Court shall specifically consult with the Attorney General of the Navajo Nation, the Chief Legislative Counsel, and the President of the Navajo Nation Bar Association prior to adopting any proposed uniform rules for the admission of evidence.
- C. The Supreme Court may independently adopt standard forms for pleadings, motions and other papers filed in Navajo Nation Courts by litigants.
- D. The Supreme Court may independently adopt standard forms for Navajo Nation District Court and Supreme Court judgments, writs, orders and opinions.
- B E. No rule adopted by the Supreme Court shall be effective until reviewed by the Navajo Nation Department of Justice and the Navajo Nation Bar Association and approved by the Judiciary Committee of the Navajo Nation Council unless adopted in strict compliance with the requirements of this Section.

HISTORY

CD-94-85, December 4, 1985
CJA-5-59, January 9, 1959
CO-69-58, October 16, 1958

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§ 602. Limitation of actions

A. There shall be commenced and prosecuted within two (2) years after the cause of action accrues, and not afterward, the following civil actions:

1. For personal injuries ~~done to the person of another~~. When death ensues from such injuries, such action for wrongful death shall be considered as accruing at the death of the party injured except as otherwise provided for in section 602(A)(4) and (5).

2. For trespass or ~~injury done to the property~~ damage of another, or for detaining and converting the personal property of another to one's own use.

3. For malicious prosecution, or for false imprisonment, or for injuries done to the character or reputation of another for libel or slander.

4. No cause of action accrues for personal injury or wrongful death until the party having the right to sue has discovered the nature of the injury, the cause of the injury, and the identity of the party whose action or inaction caused the injury, or until, in the exercise of reasonable diligence, in light of available knowledge and resources, the party should have discovered these facts, whichever is earlier. This Subsection applies to and revives all injured parties' claims, regardless of whether the claim may have been barred in the absence of this Subsection.

5. Notwithstanding any provision of law to the contrary, an action to recover damages for property damage, personal injury or wrongful death caused by contact with, or exposure to, any substance causing injury resulting from the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within the property shall be commenced and prosecuted:

a. Within three (3) years of the date when the party having the right to sue has discovered the injury, the cause of the injury, and the identity of the person liable for the injury, or within three (3) years of the time when, in light of the knowledge and resources available and of reasonable diligence, the party should have discovered these facts, whichever is earlier.

b. This Subsection applies to and revives all injured parties' claims, regardless of whether the claims may have become barred in the absence of this Subsection, provided further, that no claim to recover such damages for injury prior to the date of this amendment will be barred on the basis of any law, until two (2) years after the date of this amendment.

B. There shall be commenced and prosecuted within three (3) years after the cause of action accrues, and not afterward, the following actions:

1. For debt where the indebtedness is not evidenced by a contract in writing.

2. Upon stated or open accounts other than mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, but no item of a stated or open account shall be barred so long as any item thereof has been incurred within three (3) years immediately prior to the bringing of an action thereon.

3. For relief on the ground of fraud or mistake, which cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

C. There shall be commenced and prosecuted within four (4) years after the cause of action accrues, and not afterward, actions by one partner against a co-partner or co-partners for settlement of the partnership account, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, and the cause of action shall be considered as having accrued upon a cessation of the dealings in which they were interested together.

D. There shall be commenced and prosecuted within five (5) years after the cause of action accrues,

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and not afterward, all probate actions.

D E. Civil actions for which no limitation is otherwise prescribed shall be brought within five (5) years after the cause of action accrues, and not afterward.

E F. If an action is not barred by existing law, the time fixed in an amendment of such law shall govern the limitation of the action. If an amendment to existing law would bar an action previously not barred by existing law, such action may be brought within one (1) year from the time the amendment takes effect, and not afterward.

F G. If a person entitled to bring an action is at the time the cause of action accrues under disability of minority, mental incapacity or imprisonment, the period of disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the time after removal of the disability which is allowed to others. The period of limitation shall not, however, be extended by the tacking or connection of one disability with another already commenced, notwithstanding any supervening disability.

G H. When a person dies in whose favor or against whom there is a cause of action, the limitation of the action ceases to run until twelve (12) months after the death, unless a personal representative of the deceased person's estate is sooner qualified, in which case the limitation shall cease to run only until such qualification.

H I. When an action is barred by limitation, no acknowledgment of the justness of the claim or of liability therefor made subsequent to the time it becomes due shall be admitted in evidence to take the action out of the operation of the law, unless the acknowledgment is in writing and signed by the party to be charged hereby.

HISTORY

CAP-40-01, April 20, 2001

CD-94-85, December 4, 1985

CF-1-82, February 2, 1982

CJ-51-56, July 19, 1956

§ 603. Action in name of Navajo Nation; authority to bring

~~A. The President of the Navajo Nation or such person as he shall designate is authorized to bring an action in the name of the Navajo Nation, in any case where the Navajo Nation is a plaintiff, in the Courts of the Navajo Nation.~~

~~B. Actions brought to enforce the criminal, labor, tax, or environmental laws of the Navajo Nation, may only be brought by the government of the Navajo Nation or any agency thereof.~~

A. All actions or the defense of all actions in the name of the Navajo Nation shall be brought by the Attorney General of the Navajo Nation or his or her designee.

B. The attorney for any party claiming to sue or defend in the name of the Navajo Nation or on behalf of the Navajo Nation shall be required to submit proof of his or her authority.

HISTORY

CD-94-85, December 4, 1985

CF-19-80, February 13, 1980

CJ-51-56, July 19, 1956

§ 604. Notice and opportunity to appear

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No judgment shall be given on any suit unless the defendant has ~~actually received~~ been served notice in accordance with the applicable Court rules of such suit and given ample opportunity to appear in Court in his/her defense. Evidence of the provision and receipt of notice shall be kept as part of the record in the case.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 605. Witnesses

A. The several Judges of the Courts of the Navajo Nation shall have the power to issue subpoenas for the attendance of witnesses either on their own motion or upon motion of any of the parties to the case, which subpoena shall bear the signature of the clerk of the Court issuing it. Failure to obey such subpoena shall be deemed ~~an offense~~ to be a contempt and punishable according to applicable laws. Service of such subpoenas shall be by a regular commissioned Navajo Nation Police Officer or by a person appointed by the Court for that purpose.

B. Witnesses who testify voluntarily may be paid by the party calling them. If the Court so orders, their actual expenses incurred in the performance of their function shall be assessed as a cost awarded to the prevailing party.

C. Witnesses attending Court under subpoenas shall be entitled to the same fees as jurors.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 606. Legal counsel; right of representation; unauthorized practice of law

A. Legal counsel shall be allowed to appear in any proceedings before the Courts of the Navajo Nation provided that the legal counsel is a member in active status and in good standing of the Navajo Nation Bar Association. Every defendant in a criminal case shall have the right to representation by legal counsel and in the event he has no such representation, he may proceed without legal counsel or a legal counsel may be appointed by the Judge.

B. Only persons who are members in good standing of the Navajo Nation Bar Association shall provide legal representation in the Courts of the Navajo Nation, quasi-judicial, legislative, and administrative law forums, and other legal services within the territorial jurisdiction of the Navajo Nation. Persons who are not members in active status and in good standing of the Navajo Nation Bar Association and who provide legal representation or other legal services within the territorial jurisdiction of the Navajo Nation, and who are not duly associated with members in good standing of the Navajo Nation Bar Association, shall be deemed to be conducting the unauthorized practice of law, and shall be subject to civil and/or criminal sanctions under Navajo Nation law.

C. Persons conducting the unauthorized practice of law shall be subject to civil penalties, including ~~the disgorgement of~~ triple the amount of all legal fees, costs, and other funds paid to them by persons to whom they have purported to provide legal representation or other legal services, a civil fine in the amount of five hundred (\$500) per occurrence, and, if not a member of the Navajo Nation, will be subject to exclusion from the Navajo Nation.

D. Judges of the Navajo Nation Courts, administrative law judges, hearing officers, and the presiding

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officials of quasi-judicial or legislative bodies shall have the authority to determine, relative to matters heard before them, whether a person is a member in active status and in good standing of the Navajo Nation Bar Association, or duly associated with members in active status and in good standing of the Navajo Nation Bar Association, and the power to impose any of the civil sanctions set forth in Subsection (C) above.

E. Persons conducting the unauthorized practice of law shall be liable for both actual and consequential damages suffered by persons with whom they have contracted for the provision of legal representation or other legal services. Civil actions alleging the unauthorized practice of law shall be brought in the District Courts of the Navajo Nation.

HISTORY

CAP-38-00, April 20, 2000
CD-94-85, December 4, 1985
CJA-1-59, January 6, 1959

§ 607. Extradition

Any person lawfully arrested for violating Navajo Nation criminal law(s) or detained by Navajo Nation Court order shall not be released to any other jurisdiction, including the federal government, except pursuant to formal extradition procedures as set forth in 17 N.N.C. § 1951 et seq.

Subchapter 2. Statutory Causes of Action

Article 1. Repossession

§ 607 621. Repossession of personal property consumer goods

A. The personal property of Navajo Indians consumer goods (goods regularly used or bought for use for personal, family or household purposes, including vehicles and mobile homes) of individuals possessed under credit agreements shall not be taken from the territorial jurisdiction of the Navajo Nation under the procedures of repossession by any person, or agent of any person, except in strict compliance with the following: this Section. Self-help repossession is prohibited on the Navajo Nation. Unsuccessful attempts to repossess in violation of this Section shall also constitute a violation of this Section.

A. Written consent to remove the property from the territorial jurisdiction of the Navajo Nation shall be secured from the Navajo purchaser at the time repossession is sought. The written consent shall be retained by the creditor and exhibited to the Navajo Nation police officer or official upon proper demand.

B. Where the Navajo purchaser refuses to sign said written consent to permit removal of the property from the jurisdiction of the Navajo Nation, the property shall be removed only by order of a District Court of the Navajo Nation in an appropriate legal proceeding.

B. Any person desiring to repossess consumer goods pursuant to any credit agreement where the goods are security for a debt, or other arrangement involving credit, must first obtain the written and informed consent of the debtor at the time the repossession is sought. The written consent must be retained by the creditor or the creditor's agent and exhibited to any law enforcement or other Navajo Nation official upon demand. No written consent obtained by fraud shall be deemed valid, and no repossession

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obtained by the enticement of the debtor or individual in possession to a place where self-help repossession is permitted shall be valid. Only the debtor can give a valid consent to repossession.

C. Where a debtor under this Section fails or refuses to give informed and written consent to a repossession, repossession may be effected only by a judgment of a Navajo Nation District Court in an appropriate proceeding.

D. Transactions between merchants properly secured under the Navajo Uniform Commercial Code (5A N.N.C. § 9-101 et seq.) are not transactions for consumer goods. Transactions between merchants are exempt from the process set forth in Subsections (A), (B) and (C). Neither consent to repossession nor judicial process are required to repossess goods obtained in a transaction between merchants.

E. For purposes of this Section, the term "merchant" is defined in the Navajo Uniform Commercial Code, 5A N.N.C. § 2-104, as may be amended.

HISTORY

CD-94-85, December 4, 1985

CF-26-68, February 7, 1968

§ 608 622. Violation-Penalty

A. Any nonmember of the Navajo Nation, ~~except persons authorized by federal law to be present on Navajo land,~~ found to be in willful violation of 7 N.N.C. § 607 621 may be excluded from the territorial jurisdiction of the Navajo Nation in accordance with the procedure set forth in 17 N.N.C. §§ 1901-1906.

B. Any business whose employees are found to be in willful violation of 7 N.N.C. § 607 621 may be denied the privilege of doing business within the territorial jurisdiction of the Navajo Nation. Any business that uses agents or others to repossess property in willful violation of § 621 and avoids entering the Navajo Nation may be denied the privilege of advertising in Navajo Nation media, including newspapers, radio stations, and television channels, and no such business shall have the privilege of enforcing any contract within the Navajo Nation. No state judgment obtained by such a business may be enforced in the Navajo Nation. It shall be an affirmative defense to any action in debt or contract or to enforce a foreign judgment that the plaintiff was in willful violation of § 621 or has engaged in a pattern or practice of violations of that Section.

C. Any person who violates any provision of 7 N.N.C. § 607 621 shall be guilty of a crime, and upon conviction shall be punished by subject to a fine of not less than \$100 5,000. In addition, the person found in violation of this Subsection shall pay the fine set forth in 7 N.N.C. § 623, or a minimum of \$5,000 in liquidated damages as restitution to the debtor. The restitution shall be paid at the same time or before the fine.

HISTORY

CD-94-85, December 4, 1985

CF-26-68, February 7, 1968

§ 609 623. Civil liability

A. Any person who violates 7 N.N.C. § 607 621 and any business whose employee violates such section is deemed to have breached the peace of the Navajo Nation, and shall be civilly liable to the purchaser debtor for any loss caused by the failure to comply with 7 N.N.C. §§ 607-609 621-623.

B. If the personal property repossessed is consumer goods (goods used or bought for use primarily for

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personal, family or household purposes), the purchaser The debtor has the right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

C. Purchaser Debtor means the person who owes payment or other performance of an obligation secured by personal property consumer goods, whether or not the Navajo purchaser debtor owns or has rights in the personal property consumer goods.

D. A Court may award punitive damages for any repossession that is willful, fraudulent, or unconscionable.

E. No foreign judgment may be enforced permitting a repossession or replevin in substantial violation of 7 N.N.C. § 621 or obtained to evade its provisions.

HISTORY

CD-94-85, December 4, 1985

CJN-53-69, June 4, 1969

§ 610 624. Severability

If any provision or clause of 7 N.N.C. §§ ~~607, 608 or 609~~ 621, 622 or 623, or application thereof to any person or any business or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, and to this end, the provisions of the sections are declared to be severable.

HISTORY

CD-94-85, December 4, 1985

CJN-53-69, June 4, 1969

Article 2. Action against provider of an alcoholic beverage

§ 631. Action against provider of an alcoholic beverage

A. Any person who directly gives, sells, or otherwise provides liquor or any alcoholic beverage to any other person shall be strictly liable for any personal injuries, property damage, means of support to any third person (or to the spouse, child(ren) or parent(s) of that third person), or to a person who may bring an action for wrongful death where:

1. The person who obtained the liquor or alcoholic beverage consumed the same; and
2. The consumption of the liquor or alcoholic beverage was a proximate cause of the injury, death or property damage.

B. For the purposes of this Section, if it is found that the person who obtained the liquor or alcoholic beverage causes injuries or property damage as a result of the consumption of the liquor or alcoholic beverage within a reasonable period of time following his or her first obtaining the liquor or alcoholic beverage, it shall create a rebuttable presumption that the person consumed the liquor or alcoholic beverage provided to him or her by the person who gave, sold or otherwise provided the liquor or alcoholic beverage.

C. If a person having rights or liabilities under this Section dies, the rights or liabilities provided by this Section survive to or against that person's estate.

D. An action based upon a cause of action under this Section shall be commenced within five (5) years after the date of injury or property damage.

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E. Nothing in this Section precludes any cause of action or additional recovery against the person causing the injury.

Subchapter 3. Jury

§ 651. Right to jury trial

In any criminal or civil case, but not in any domestic relations, decedent's estate, equitable proceeding, or miscellaneous case, as set out in 7 N.N.C. §253, any party shall, upon demand, be entitled to jury trial on any issue of fact.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

Tribal Council Resolution 1921-1951, Res. p. 212, December 19, 1945.

§ 652. Lists of jurors; preparation

~~The Chief Justice of the Navajo Nation shall cause lists of eligible jurors to be prepared from time to time:~~

The Judicial Branch shall prepare lists of eligible jurors from time to time. Such lists shall constitute a fair cross-section of the Judicial District where jury trials will be held.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 653. Number of jurors

In any case, a jury shall consist of six residents of the Judicial District in which the trial is held, selected from the list of eligible jurors.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 654. Eligibility of jurors

Any person residing within the territorial jurisdiction of the Navajo Nation over the age of 18 years, of at least ordinary intelligence, and not under judicial restraint, shall be eligible to be a juror.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

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§ 655. Challenges to jury

Any party to the case may exercise no more than three peremptory challenges, and shall have an unlimited number of challenges for cause.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

Note. Slightly reworded.

§ 656. Instructions to jury

The Judge shall instruct the jury in the law governing the case. Jury instructions may be selected by the Judge from instructions prepared and presented by the parties.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 657. Verdict of jury

The jury shall bring a verdict for the plaintiff or the defendant. In civil cases, a verdict may be rendered by a majority vote of the jury. In criminal cases, a verdict shall be by a unanimous vote of the jury.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 658. Jurors' fees

A. Every person who is required to attend Court for selection or service as a juror shall be entitled to a reasonable fee not to exceed actual expenses incurred for attendance and reasonable compensation for mileage to and from his home to Court not to exceed the rate established for Navajo Nation employees for each separate day he is required to be present in court provided funds therefore are appropriated by the Navajo Nation Council.

B. The party demanding a jury trial in a civil action may be required to prepay the mileage and compensation of jurors, and other costs of a jury trial. Prepayment of such costs shall not be required if the party is proceeding in forma pauperis or if prepayment would deny that person the right to a trial by jury.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

Subchapter 5. Judgment and Execution

EXHIBIT A

§ 701. Judgment-Form and contents

- A. ~~The judgment in all civil cases, judgment shall consist of~~ be an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or directing the performance of some other an act for the benefit of the injured party, directing that a party refrain from taking action with regard to the injured party, or a declaration of rights of the moving party parties.
- B. Where the injury was inflicted ~~was as~~ the result of ~~carelessness of a party~~ negligence, the judgment shall fairly compensate the injured party for ~~the his or her injuries or loss he has suffered.~~ The Court shall consider the comparative fault of the parties in making an award of damages.
- C. Where the injury was inflicted deliberately, intentionally, willfully, wantonly, recklessly, unconscionably, or as the result of gross negligence inflicted, the judgment may impose additional penalties in the form of punitive damages in favor of the injured party or in favor of the Navajo Nation. Where punitive damages are awarded, there may be additional award of damages to the Navajo Nation for patterns and practices of conduct in violation of public policy or egregious conduct contrary to clear public policy.
- D. ~~Where the injury was inflicted as the result of accident, or where both the plaintiff and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered.~~

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 702. Rendition

The Judge shall render judgment in accordance with the verdict of the jury and existing law.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 703. Lawful debt in proceedings to distribute decedents' estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of the Navajo Nation to distribute decedents' estates.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 704. Payment from Individual Indian Moneys *Reserved*

Whenever a Court of the Navajo Nation shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment within the time set for payment by the court, and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the superintendent shall certify to the Secretary of the Interior the record of the case and the

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~~amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party.~~

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 705. Writs of execution-Generally

The party in whose favor a money judgment is given by the Courts of the Navajo Nation may at any time within five (5) years after entry thereof have a writ of execution issued for its enforcement. Provided, however, there shall be no limitation to the issuance of writs of execution for judgments for the payment of child support. No execution, however, shall issue after the death of the judgment debtor, with the exception that judgments for the payment of child support shall survive against the estate of the judgment debtor. A judgment creditor may have as many writs of execution as are necessary to effect collection of the entire amount of the judgment.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

§ 706. Issuance; contents

A writ of execution shall be issued by the Clerk of Court and addressed to any regular commissioned Navajo Nation Police Officer and shall direct him to seize and deliver to the Clerk of Court sufficient unrestricted and nonexempt personal property of the debtor to pay the judgment and costs of sale. The writ shall specify the particular unrestricted and nonexempt property to be seized.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

§ 707. Return

Within 90 days of his receipt of the writ of execution, the police officer shall return it to the Clerk of Court with the property he has seized, or with a written explanation of why he the property cannot be delivered such property.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

§ 708. Appraisal of property seized

Immediately upon receipt of the property seized under a writ of execution, the Clerk of Court shall cause it to be appraised item by item by three ~~disinterested residents of the Judicial District, one to be selected by the plaintiff, one by the defendant and one by the Clerk,~~ and all to be admonished by the Clerk an appraiser selected by the plaintiff and defendant to make an impartial appraisement. If either

EXHIBIT A

the plaintiff or and defendant or both fail to select agree on an appraiser, the Clerk shall make the selection. If a majority of the appraisers cannot agree on an appraisal of any item of seized property within 48 hours of their appointment, the Clerk may appoint new appraisers. The appraiser shall submit the appraisal to the Clerk of Court and send copies of the same to the plaintiff and defendant.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

§ 709. Notice and public sale of property seized; proceeds; bill of sale

- A. Within seven (7) days of appraisal of property seized under a writ of execution, the Clerk of Court shall post in public places at least two notices of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale. The clerk shall also notify the judgment debtor of the time and place of sale, by means of first class mail if the judgment debtor's address is known, or by means of publication if such address is not known.
- B. The sale shall be held within a reasonable time after posting, in the same Judicial District in which the Court rendering the judgment of foreclosure is located.
- C. The Clerk shall sell the property publicly, to the highest bidder for cash, but for not less than the appraised price. He The clerk may sell it the property by item or in bulk, at his or her discretion.
- D. The Clerk shall pay into court the expenses of sale and any unpaid court costs of either party from the proceeds of sale, and shall pay the balance up to the full amount of the judgment (less unpaid court costs of plaintiff) to the plaintiff. Any excess shall be paid to the defendant.
- E. The Clerk shall deliver a bill of sale to the buyer upon request.
- F. Procedures for execution, storage and sale shall be in accordance with Court rules.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956.

§ 710. Private sale of property seized; delivery of unsold property to plaintiff or return to defendant

- A. If the Clerk is unable to sell the property seized under a writ of execution for its appraised value, he or she may hold it for ~~14~~ fourteen (14) days after the date of the attempted sale, during which time he or she shall sell it to the first person offering him the appraised value in cash.
- B. The Clerk may at any time, however, after an unsuccessful attempted public sale and before an actual sale, upon request of the plaintiff and payment of all costs, deliver the property to him the plaintiff and credit the appraised value thereof against the judgment debt. If the appraised value is greater than the debt he the Clerk shall not deliver the property to the plaintiff until the plaintiff pays the defendant in cash for such excess value.
- C. At the end of ~~14~~ fourteen (14) days if the property remains unsold and unclaimed by the plaintiff the Clerk shall return it to the defendant.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

EXHIBIT A

§ 711. Property subject to execution and property exempt from execution

~~A. Except as provided in subsection (B) of this section, only the following property shall be subject to execution and all other property shall be exempt from execution:~~

~~1. Livestock in excess of 75 sheep units, the debtor to have the right to select which animals not in excess of 75 sheep units he wishes to keep, and any other personal property of the debtor in excess of the value of \$5000, the debtor to have the right to select which property not in excess of the value of \$5000 he wishes to keep;~~

~~2. Any chattel, legal title to which is in the plaintiff or upon which the plaintiff holds a lawful lien, provided the writ of execution specifies the chattel;~~

~~B. The property declared exempt by subsection (A) of this section is not exempt from execution or sale in an auction brought or judgment recovered for the purchase price of the property so long as the property remains in the possession of the original purchaser.~~

A. The following property shall be exempt from execution:

1. One motor vehicle;

2. Personal effects and clothing of a reasonable value as determined by the Court;

3. Tools or equipment for a trade or profession of a reasonable value as determined by the Court;

4. Health or medical equipment required by the judgment debtor to maintain health;

5. An interest in a home where the judgment debtor resides of a reasonable value as determined by the Court;

6. A reasonable subsistence amount of livestock as determined by the Court;

7. Bona fide religious, ceremonial or sacred items and paraphernalia, and family heirlooms, as agreed to by the parties or determined by the Court.

B. All other property shall be subject to execution and sale.

C. A court may issue writs of garnishment upon the wages or monies of a judgment debtor held by third parties, subject to adoption of a Navajo Nation garnishment statute and associated rules, and further subject to limitations upon wage executions in federal law.

D. A judgment debtor may challenge the seizure of property for sale as being exempt under Subsections (A)(2), (3), (4), (5), (6) or (7) in objections filed with the Court following the seizure of that property under § 706.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

§ 712. Execution prior to judgment

A. Any chattel, legal title to which is in the plaintiff, or upon which the plaintiff holds a lawful lien may be taken into custody and delivered to the Clerk upon a writ of execution issued prior to judgment, upon motion of the plaintiff, for good cause shown and upon posting bond or making a cash deposit in an amount determined by the Court to be sufficient to compensate the defendant for any damages he may suffer as a result of wrongful execution. Plaintiff shall deposit such additional sum as the Court may fix to cover costs of the execution and of the maintenance of the property while in custody.

B. Any chattel seized upon a writ of execution issued prior to judgment shall be appraised immediately

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~~after receipt by the Clerk, as provided in 7 N.N.C. §708, but may not be sold prior to a judgment in favor of the plaintiff without consent of the defendant, unless it appears to the Court to be perishable property. All proceeds of a sale of perishable property shall be held by the Clerk until after the judgment is rendered or the case is dismissed.~~

~~C. If judgment is for the defendant, the Clerk shall return the chattel to him, or, if it has been sold, the full proceeds of the sale.~~

A. Prejudgment attachments are prohibited.

B. Despite the prohibition in § 712(A), a Court may, upon notice and an opportunity to be heard by the person who possesses the property, enter appropriate orders to prevent the destruction, removal, transfer, or disposition of the property which is the subject of the suit or the property which may be subject to a writ of execution.

C. Where the action involves the ongoing payment of monies to the plaintiff or defendant making a cross- or counterclaim, the court may require the payment of such monies to the Court pending the outcome of the action.

HISTORY

CD-94-85, December 4, 1985

CJ-51-56, July 19, 1956

Subchapter 7. Costs, Fees and Fines

§ 751. Security for costs

In all civil suits a party may be required to deposit with the Clerk of the Court a fee or other security in a reasonable amount to cover costs and other disbursements in the case, such amount to be determined by the Supreme Court rules.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 752. Assessment of costs

The Court may assess the costs of the case against the party or parties against whom judgment is given. Such costs may consist of the expenses of voluntary witnesses and witnesses attending Court under subpoenas, fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the proceeding as the Court may order.

HISTORY

CD-94-85, December 4, 1985

CJA-1-59, January 6, 1959

§ 753. Fees and fines; collection and disposition

A. Fees, and fines, and assessments (as permitted by law) shall be collected by the Courts of the Navajo Nation, in amounts set by Court rules.

B. Fees, and fines, and assessments (as permitted by law) shall be disposed of regularly deposited into the the Unreserved, Undesignated Funds Balance of the Navajo Nation.

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HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

Subchapter 9. Appeals

§ 801. Appeal from final judgment or order

A. ~~Every person aggrieved by any final judgment or other final order of a District Court of the Navajo Nation, or such other final administrative orders as provided by law and desiring to appeal shall within 30 days after the day such judgment or order is rendered appeal to the Supreme Court stating fully the grounds for appeal. The appeal shall be made in writing and shall conform to the Navajo Rules of Appellate Procedure. No oral requests for appeal shall be accepted.~~

B. ~~The Supreme Court shall accept or deny the appeal and assign it for hearing before the Supreme Court.~~

Every person aggrieved by a final judgment or order of a District Court, or the order of an administrative agency where the law provides for an appeal to the Supreme Court, shall file a notice of appeal in accordance with the applicable rules of appellate procedure within thirty (30) days from the date of the judgment or order, or as otherwise provided by law.

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

§ 802. Stay of execution *Reserved*

~~At any time after an appeal has been properly filed in the Supreme Court, the trial judge or the Chief Justice may grant a stay of execution of any judgment or order of the District Court pending final decision in the case, conditioned upon posting of a bond by the appellant or his giving such other reasonable undertaking as the judge or Chief Justice may require.~~

HISTORY

CD-94-85, December 4, 1985

CJA-5-59, January 9, 1959

CO-69-58, October 16, 1958

§ 803. Scope of the appeal

Appeals shall be limited to the issues of law raised in the record on appeal.

HISTORY

CD-94-85, December 4, 1985

§ 804. Proceedings on appeal

A. The Chief Justice of the Supreme Court shall preside at all proceedings before the Supreme Court. If the Chief Justice is unable to preside for whatever reason, he or she shall designate in writing a

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presiding Justice from the Associate Justices.

B. The Chief Justice of the Supreme Court may designate in writing any District Court Judge of the Courts of the Navajo Nation to sit on an appeal panel if the Chief Justice or an Associate Justice is unable to serve for whatever reason.

HISTORY

CD-94-85, December 4, 1985

Subchapter 11. Rules of General Construction

§ 851. Construction

This Title shall be so construed as to effectuate its general purposes and in such a manner as to assure judicial independence, the right of access to fair and independent remedies, the observance of Diné bi beenahaz'áanii, and the protection of the rights guaranteed by the Navajo Nation Bill of Rights.

HISTORY

CD-94-85, December 4, 1985

§ 852. Repeals Amendment

~~Any provision of the Navajo Nation Code previously adopted, or any resolution of any committee of the Navajo Nation Council or Navajo Nation Council resolution previously adopted, which is inconsistent with this title, is hereby repealed.~~

This Title may be amended by $\frac{2}{3}$ vote of the full membership of the Navajo Nation Council at a regular session of the Navajo Nation Council, upon favorable recommendation by the Judiciary Committee of the Navajo Nation Council.

HISTORY

CD-94-85, December 4, 1985

§ 853. Severability

If any provision of this Title or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions or applications of this Title which can be given effect without the invalid provision or application and to this end, the provisions of this Title are severable.

HISTORY

CD-94-85, December 4, 1985