

RESOLUTION OF THE
JUDICIARY COMMITTEE OF THE
NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - THIRD YEAR 2009

AN ACTION
RELATING TO THE JUDICIARY; AMENDING HEARING RULES OF THE JUDICIARY
COMMITTEE OF THE NAVAJO NATION COUNCIL TO EVALUATE THE PERFORMANCE
OF PROBATIONARY JUDGES

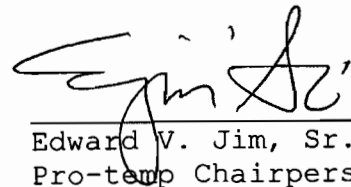
BE IT ENACTED:

1. The Navajo Nation hereby amends the Hearing Rules of the Judiciary Committee of the Navajo Nation Council to Evaluate the Performance of Probationary Judges enacted by Resolution JCJN-3-97, as set forth in the attached Exhibit A.

2. The amended Hearing Rules of the Judiciary Committee of the Navajo Nation Council to Evaluate the Performance of Probationary Judges shall become effective immediately.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Judiciary Committee of the Navajo Nation Council at a duly called Regular meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of **04** in favor and **00** opposed, this **21st** day of **May** **2009**.



Edward V. Jim, Sr.
Pro-temp Chairperson
Judiciary Committee
Navajo Nation Council

Motion: Lena Maheimer
Second: Ernest Yazzie

**HEARING RULES OF THE JUDICIARY COMMITTEE
OF THE NAVAJO NATION COUNCIL
TO EVALUATE THE PERFORMANCE OF PROBATIONARY JUDGES**

1. Purpose/Applicability

A. These Hearing Rules shall apply to the Judiciary Committee's performance evaluation hearings on probationary judges and justices at any time during the judges' or justices' probationary terms. 2 N.N.C. § 574(D)-(G) and 7 N.N.C. § 355(C)-(E). The terms "probationary judge" and "judge", as referred to throughout these rules, shall be inclusive of a probationary Chief Justice, probationary associate justice, as well as probationary judge, subject to an evaluation hearing under these rules.

B. Upon completion of a performance evaluation hearing, the Judiciary Committee ("Committee") shall determine whether the judge's probationary performance was satisfactory or unsatisfactory.

1. When the judge's two-year probationary performance is deemed satisfactory, the Committee shall recommend to the President the permanent appointment of the probationary judge.

2. When the judge's two-year probationary performance is deemed unsatisfactory, the Committee shall deny permanent appointment to the probationary judge and recommend to the President the removal of the probationary judge from office.

C. These rules shall be construed in accordance with 7 N.N.C. § 355(C)-(E), 2 N.N.C. § 574(D)-(G), *In the Matter of Certified Questions II*, 6 Nav. R. 105 (Nav. S. Ct.-1989), and other applicable laws of the Navajo Nation.

D. In the event that a probationary Chief Justice is the subject of the performance evaluation hearing, the senior permanent Associate Justice shall perform the duties of the Chief Justice as outlined in these rules. In the event there is not a permanent Associate Justice, the senior probationary Associate Justice shall perform the duties of the Chief Justice as outlined in these rules. The Director of Judicial Administration shall provide assistance to the Associate Justice authorized to perform the duties of the Chief Justice as outlined in these rules.

2. Chief Justice’s Evaluation of the Probationary Judge

The Chief Justice shall evaluate the probationary judge as required by 7 N.N.C. § 355(C).

3. Initiation of Judiciary Committee Hearing

A. Upon Completion of Two-Year Probationary Term.

1. Within 15 working days after the two-year anniversary of the confirmation of a probationary judge's appointment, the Chief Justice shall provide written notice to the Judiciary Committee that the probationary judge has concluded his/her two-year probationary term and request a Committee hearing to evaluate the two-year probationary performance of the probationary judge.

2. The Committee shall initiate, schedule, and conduct a probationary performance evaluation hearing, in accordance with these rules, on its own initiative, if the Chief Justice does not provide the above-mentioned notice to the Committee.

B. At Any Time During the Probationary Term.

1. “At any time during the probationary term of any Chief Justice, Associate Justice or Judge, the Judiciary Committee may recommend to the President of the Navajo Nation that the probationary judge be removed from office.” 7 N.N.C. § 355(D).

2. On its own initiative, or at the written request of the Chief Justice, the Committee may initiate, schedule and conduct a performance evaluation hearing to evaluate and consider removing a probationary judge from office at any time during the probationary judge's probationary term pursuant to 7 N.N.C. § 355(D).

4. Notice and Date of Hearing

Upon receiving written notice from the Chief Justice, or when calling for a hearing on its own initiative, the Committee shall promptly set a date for a hearing to evaluate the performance of the probationary judge. The Judiciary Committee shall develop a hearing schedule after receiving written notice from the Chief Justice, or after the Committee’s decision to hold the hearing. Within five working days of scheduling a hearing, the Committee shall send written notice of the hearing date, time and location, to the Chief Justice and the probationary judge.

5. Extension of Time

Prior to the hearing, the Chairperson of the Judiciary Committee may extend the hearing date upon: (1) written request of the Chief Justice or the probationary judge showing good cause for the extension; (2) request of the Judiciary Committee; or (3) good cause. A hearing shall not be extended more than 10 working days later than the originally scheduled hearing date. The Chairperson of the Judiciary Committee shall promptly provide written notice of the determination on the request, including the new hearing date, time and location, to the Chief Justice and the probationary judge. Notice of changed hearing dates shall also be provided to the Judiciary Committee, the Navajo Nation Bar Association and the general public in the same manner.

6. Judicial Evaluation Committee of the Navajo Nation Bar Association (“NNBA”)

A. Within 10 working days of scheduling a hearing, the Committee shall send written notice of the hearing date, time and location, to the Executive Director of the NNBA. A designated member of the Judicial Evaluation Committee of the NNBA shall attend the hearing and provide testimony regarding the NNBA’s evaluation of the probationary judge.

B. The Judicial Evaluation Committee shall submit the NNBA’s most current evaluation of the probationary judge in writing to the Judiciary Committee Chairperson, with copies provided to the Legislative Advisor to the Judiciary Committee, the Chief Justice and probationary judge not less than five working days prior to the hearing.

C. The Chairperson of the Judiciary Committee may issue a subpoena to compel the attendance and written evaluation documents of the NNBA, pursuant to 2 N.N.C. § 185(C) and (D).

7. Public Notice and Public Testimony

A. Notice of the hearing date, purpose, time, location and the rules governing public testimony shall be provided to the general public through publication in the Navajo Nation Council website, the Navajo Nation website, the Navajo Courts website, the Navajo Times and English and Navajo language announcements on KTNN radio immediately after scheduling the hearing. Written notice of the hearing shall be posted in a conspicuous place at the Navajo

Nation Bar Association office, the administrative offices of the Judicial Branch, the Navajo Nation Supreme Court and each district court of the Navajo Nation.

B. Notice to the public shall clearly indicate that the hearing is open to the public and public testimony is invited in accordance with these rules. Notice shall also specify that anonymous comments will not be accepted. Members of the general public who want to participate in the hearing shall submit written testimony to the Judiciary Committee Chairperson in care of the Legislative Advisor to the Judiciary Committee not less than five working days prior to the hearing. The Legislative Advisor shall provide complete and legible photocopies of the written testimony to the Chief Justice and probationary judge immediately upon receipt and prior to the hearing.

C. Testimony shall not include matters pending in litigation before the probationary judge.

D. Allegations of misconduct by the probationary judge may be heard at the discretion of the Committee. However, such allegations of misconduct shall be forwarded, if not entirely referred, to the Judicial Conduct Commission or proper authorities for immediate investigation. Serious allegations of misconduct warranting referral to the Judicial Conduct Commission or other authorities shall stop the Committee's evaluation hearing on the judge until such time that an investigation is completed. The Judiciary Committee shall instruct the Chief Justice to take appropriate supervisory action toward the probationary judge in accord with Navajo Nation law and policy. Upon completion of the investigation, the Committee shall resume the evaluation hearing on the probationary judge with new timelines.

8. Conduct of Hearing

A. The Chairperson of the Judiciary Committee shall preside at the hearing at which a quorum of the Committee shall be present. The Vice-Chairperson of the Judiciary Committee shall serve in the absence of the Chairperson.

B. The Chairperson of the Committee shall conduct and regulate the course of the hearing in a fair and orderly manner and shall extend to all parties the right to be heard subject to these rules and with consideration given to the due process rights of the probationary judge.

C. The Office of Legislative Counsel shall, upon request of the Committee, provide legal assistance and advice to the Committee.

D. The hearing shall be open to the public and shall be recorded, with the exception that executive sessions shall not be open to the public and shall not be recorded.

E. The Committee shall not be bound by any formal rules of evidence applicable in court proceedings. The Chairperson may exclude evidence that is irrelevant, immaterial, unduly repetitious, or unfairly prejudicial. Any objection with respect to the conduct of the hearing shall be stated orally at the time of the hearing or submitted in writing to the Committee within five working days of the hearing.

F. All members of the Judiciary Committee, including the presiding Chairperson, may ask questions of any testifying party at the hearing. Legislative Counsel or staff may ask questions as permitted by the Chairperson.

G. Testimony may include Navajo Nation Supreme Court reversals of the probationary judge's orders or opinions, as well as writs of prohibition, writs of superintending control, and writs of mandamus issued against the probationary judge. The Committee may also consider decisions rendered by the Judicial Conduct Commission.

H. The Chairperson shall administer oaths to all testifying parties.

I. The probationary judge shall have the first opportunity to address the Committee for up to 30 minutes. The Chairperson may, in his/her discretion, allow a reasonable amount of additional time. The probationary judge may provide written material (11 copies) to the Committee in support of his/her performance evaluation.

J. The Chief Justice shall have up to 30 minutes to address the Committee. The Chairperson may, in his/her discretion, allow a reasonable amount of additional time. The Chief Justice shall provide to the Committee (11 copies) and the probationary judge, the Chief Justice's written performance evaluation of the probationary judge, and recommendation regarding the permanent appointment of the probationary judge. The Chief Justice shall also submit 11 copies of all Judicial Performance Review Team evaluation memoranda/reports on the probationary judge. Notwithstanding the Personnel Policies for Navajo Nation Judges and Justices, the Judicial Performance Review Team's evaluation memoranda/reports on the probationary judge shall be public documents when included in the Committee's probationary performance evaluation hearing.

K. The designated representative of the Judicial Evaluation Committee of the NNBA shall have up to 15 minutes to explain the NNBA's evaluation of the probationary judge. The Chairperson may, in his/her discretion, allow a reasonable amount of additional time.

L. Following presentations from the probationary judge, the Chief Justice, and the Navajo Nation Bar Association, the Judiciary Committee shall open the hearing to public testimony submitted in accordance with these rules. Public testimony shall be limited to 15 minutes or less per witness. The Chairperson may, in his/her discretion, allow a reasonable amount of additional time.

M. The probationary judge and the Chief Justice shall each be allowed up to 30 minutes to make closing remarks, with the probationary judge concluding last. The Chairperson may, in his/her discretion, allow a reasonable amount of additional time.

N. At the conclusion of all testimony, the Judiciary Committee shall recess in executive session to review and evaluate the testimony, the record and qualifications of the probationary judge.

9. Decision

A. The Judiciary Committee shall base its evaluation and recommendation on the evidence admitted at the hearing and its independent determination¹ on whether the probationary judge meets the qualifications and requirements specified at 7 N.N.C. §§ 354 and 355.

B. In open session and by majority vote, the Committee shall determine whether the judge's probationary performance was satisfactory or unsatisfactory.

1. When the judge's two-year probationary performance is deemed satisfactory, the Committee shall recommend the permanent appointment of the probationary judge.

2. When the judge's two-year probationary performance is deemed unsatisfactory, the Committee shall deny permanent appointment to the probationary judge and recommend the President's removal of the probationary judge.

¹ "The Committee makes an independent determination of the training requirement and whether the probationary judge has performed satisfactorily over the two year probationary term." *In the Matter of Certified Questions II*, 6 Nav. R. 105 (Nav. S. Ct. 1989).

C. After the conclusion of the hearing, a proposed Committee resolution outlining the Committee's decision, shall be prepared for sponsorship by a member of the Judiciary Committee.

10. Judiciary Committee Meeting to Adopt Resolution

A. The proposed Committee resolution shall be placed on the agenda of the next Committee meeting.

B. The Committee shall adopt, defeat or table the proposed resolution. The proposed resolution shall not be tabled for more than 20 working days. Before adoption of a final written Committee resolution, should any new evidence regarding the probationary judge which might alter the Committee's evaluation decision, the Committee shall either table or defeat the proposed resolution and determine whether to refer the matter to the Judicial Conduct Commission, or other authority, or schedule a new hearing in accordance with these rules.

C. The Committee shall promptly forward its duly adopted resolution recommending the permanent appointment or removal of the probationary judge to the probationary judge, the Chief Justice, and the President of the Navajo Nation.

11. Suspension of Rules

For good cause, the Committee may suspend any provision of these rules by motion, second and majority vote of the Committee, provided the suspension is consistent with the principles of fairness and due process. The motioning party must identify the rule to be suspended and good cause for the suspension. A motion to suspend the rules is open to debate. Good cause may include allowing a person who cannot read or write to testify at the hearing.

12. Amendment of Rules

These rules may be amended by a duly adopted resolution of the Judiciary Committee.