

LEGISLATIVE SUMMARY SHEET

Tracking No. 0198-13

DATE: July 3, 2013

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER;
AMENDING HEARING RULES ON THE EVALUATION OF THE PERFORMANCE OF
PROBATIONARY JUDGES AND JUSTICES

PURPOSE: This resolution, if approved, will amend hearings rules on the evaluation of probationary judges and justices of the Navajo Nation courts.

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

5-DAY BILL HOLD PERIOD	
TIME / DATE	3:52pm 7/3/2013
SIGNATURE	T. W. ...
END DATE	7/8/2013

PROPOSED STANDING COMMITTEE RESOLUTION
22nd NAVAJO NATION COUNCIL - Third Year, 2013

INTRODUCED BY

ALTON JOE SHEPHERD

(Prime Sponsor)

TRACKING NO. 0198-13

AN ACTION
RELATING TO LAW AND ORDER; AMENDING HEARING RULES ON THE
EVALUATION OF THE PERFORMANCE OF PROBATIONARY JUDGES AND
JUSTICES

BE IT ENACTED:

Section One. Findings and Purpose

A. *"Hearings Rules of the Judiciary Committee of the Navajo Nation Council to Evaluate the Performance of Probationary Judges"* were last amended on May 21, 2009 by the then-existing Judiciary Committee of the Navajo Nation Council through resolution JCMY--2-09. See attachment "1."

B. The Judiciary Committee no longer exists. Its functions have been reassigned to the newly-established Law and Order Committee of the Navajo Nation Council. See CAP-10-11. The Law and Order Committee now exercises legislative oversight over all courts of the Navajo Nation. Its purposes include *"improv[ing] the administration of a justice system that is independent from political influence and that is accountable and*

1 *responsible to the Navajo Nation in its administration and operation."* 2 N.N.C.
2 §600(C)(1).

3 C. The Law and Order Committee of the Navajo Nation Council, under Navajo Nation
4 law, has all powers "*necessary and proper*" in executing its assigned statutory duties and
5 responsibilities. 2 N.N.C. §601(A). Aside this, a particular statutory duty of the
6 committee is the "*review and evaluat[ion of] the performance of probationary and*
7 *permanent judges and justices*" of the Navajo Nation courts. 2 N.N.C. §601(B)(3).

8 D. *Hearing Rules* for the evaluation of probationary judges and probationary justices of
9 the Navajo Supreme Court must be updated.

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11 **Section Two. Amending Hearing Rules for Evaluation of Probationary Judges and**
12 **Justices**

13 The Law and Order Committee of the Navajo Nation Council hereby amends
14 "*Hearings Rules of the Judiciary Committee of the Navajo Nation Council to Evaluate*
15 *the Performance of Probationary Judges,*" as provided in Exhibit "A" attached hereto.
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3 **HEARING RULES OF THE JUDICIARY LAW AND ORDER COMMITTEE**
4 **OF THE NAVAJO NATION COUNCIL TO EVALUATE THE PERFORMANCE OF**
5 **PROBATIONARY JUDGES AND JUSTICES**
6

7 **I. Purpose/Applicability**

8 A. These Hearing Rules shall apply to the Judiciary Law and Order Committee's
9 performance evaluation hearings on probationary judges and justices at any time during
10 the judge's or justices' probationary terms. 2 N.N.C. § ~~574(D)-(G)~~ 601(B) and 7 N.N.C. §
11 355(C)-(E). The terms "probationary judge" and "judge", as referred to throughout these
12 rules, shall be inclusive of a probationary Chief Justice, probationary associate justice, as
13 well as probationary judge, subject to an evaluation hearing under these rules.

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

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

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

23 C. These rules shall be construed in accordance with 7 N.N.C. § 355(C)-(E), 2 N.N.C. §
24 ~~574(D)-(G)~~ 600 et seq., *In the Matter of Certified Questions II*, 6 Nav. R. 105 (Nav.S.Ct.
25 1989), and other applicable laws of the Navajo Nation.

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

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7 **2 II. Chief Justice's Evaluation of the Probation Judge**

8 The Chief Justice shall evaluate the probationary judge as required by 7 N.N.C. §
9 355(C).

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11 **3 III. Initiation of Judiciary Law and Order Committee Hearing**

12 A. Upon Completion of Two-Year Probationary Term.

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

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

21 B. At Any Time During the Probationary Term.

22 1. "At any time during the probationary term of any Chief Justice, Associate Justice
23 or Judge," the Judiciary Law and Order Committee "may recommend to the President
24 of the Navajo Nation that the probationary judge be removed from office." 7 N.N.C. §
25 355(D).

26 2. On its own initiative, or at the written request of the Chief Justice, the Committee
27 may initiate, schedule and conduct a performance evaluation hearing to evaluate and
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1 consider removing a probationary judge from office at any time during the
2 probationary judge's probationary term pursuant to 7 N.N.C. § 355(D).
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4 **4 IV. Notice and Date of Hearing**

5 Upon receiving written notice from the Chief Justice, or when calling for a hearing on
6 its own initiative, the Committee shall promptly set a date for a hearing to evaluate the
7 performance of the probationary judge. The Judiciary Law and Order Committee shall
8 develop a hearing schedule after receiving written notice from the Chief Justice, or after
9 the Committee's decision to hold the hearing. Within five working days of scheduling a
10 hearing, the Committee shall send written notice of the hearing date, time and location; to
11 the Chief Justice and the probationary judge.
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13 **5 V. Extension of Time**

14 Prior to the hearing, the Chairperson of the Judiciary Law and Order Committee may
15 extend the hearing date upon: (1) written request of the Chief Justice or the probationary
16 judge showing good cause for the extension; (2) request of the Judiciary Law and Order
17 Committee; or (3) good cause. A hearing shall not be extended more than 10 working
18 days later than the originally scheduled hearing date. The Chairperson of the Judiciary
19 Law and Order Committee shall promptly provide written notice of the determination on
20 the request, including the new hearing date, time and location, to the Chief Justice and the
21 probationary judge. Notice of the changed hearing dates shall also be provided to the
22 Judiciary Law and Order Committee, the Navajo Nation Bar Association and the general
23 public in the same manner.
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25 **6 VI. Judicial Evaluation Committee of the Navajo Nation Bar Association (NNBA)**

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

4 B. The Judicial Evaluation Committee shall submit the NNBA's most current evaluation
5 of the probationary judge in writing to the ~~Judiciary~~ Law and Order Committee
6 Chairperson, with copies provided to the Legislative Advisor to the ~~Judiciary~~ Law and
7 Order Committee, the Chief Justice and probationary judge not less than five working
8 days prior to the hearing.

9 C. The Chairperson of the ~~Judiciary~~ Law and Order Committee may issue a subpoena to
10 compel the attendance and written evaluation documents of the NNBA; pursuant to 2
11 N.N.C. §185(~~C~~) and (~~D~~).

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13 **7 XII. Public Notice and Public Testimony**

14 A. Notice of the hearing date, purpose, time, location and the rules governing public
15 testimony shall be provided to the general public through publication in the Navajo Nation
16 Council website, the Navajo Nation website, the Navajo Courts website, the Navajo Times
17 and English and Navajo language announcements on KTNN radio immediately after
18 scheduling the hearing. Written notice of the hearing shall be posted in a conspicuous
19 place at the Navajo Nation Bar Association office, the administrative offices of the
20 Judicial Branch, the Navajo Nation Supreme Court and each district court of the Navajo
21 Nation.

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

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

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

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16 **8 VIII. Conduct of Hearing**

17 A. The Chairperson of the Judiciary Law and Order Committee shall preside at the
18 hearing at which a quorum of the Committee shall be present. The Vice-Chairperson of
19 the Judiciary Law and Order Committee shall serve in the absence of the Chairperson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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16 **9 IX. Decision**

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

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

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25 ¹ "The Committee makes an independent determination of the training requirements and whether the probationary judge has
26 performed satisfactorily over the two-year probationary term." *In the Matter of Certified Questions II*, 6 Nav.R. 105 (Nav.S.Ct.
27 1989).

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

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

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

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10 **10 X. Judiciary Law and Order Committee Meeting to Adopt Resolution**

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

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

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

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24 **11 XI. Suspension of Rules**

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

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5 **XII. Amendment of Rules**

6 These rules may be amended by a duly adopted resolution of the ~~Judiciary~~ Law and
7 Order Committee.

JCMY-02-09

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

21st NAVAJO NATION COUNCIL - THIRD YEAR 2009

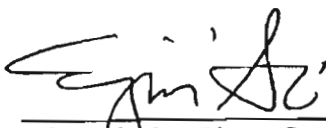
**AN ACTION
RELATING TO THE JUDICIARY; AMENDING HEARING RULES OF THE JUDICIARY
COMMITTEE OF THE NAVAJO NATION COUNCIL TO EVALUATE THE PERFORMANCE
OF PROBATIONARY JUDGES**

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

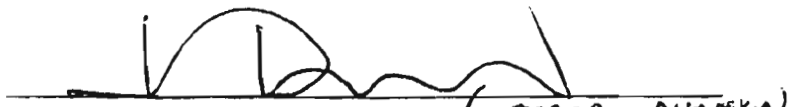
For good cause, the Committee may suspend any provision of these rules by motion, second and majority vote of the Committee, provided the suspension is consistent with the principles of fairness and due process. The motioning party must identify the rule to be suspended and good cause for the suspension. 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.

PROPOSED STANDING COMMITTEE RESOLUTION
21st NAVAJO NATION COUNCIL -- Third Year, 2009

INTRODUCED BY


(Prime Sponsor) (HAROLD WAUNEKA)

TRACKING NO. 0202-09

AN ACTION

RELATING TO 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.

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EXHIBIT A

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 of each on probationary judges and justices either at the conclusion of his/her probationary term or 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. ~~if the Committee is considering removal of the probationary judge. In accordance with these rules, the Committee shall determine whether each probationary judge has or has not satisfactorily completed or performed during his/her probationary term.~~

B. Upon conducting completion of a performance evaluation hearing in accordance with these rules, the Judiciary Committee ("Committee") shall: ~~(1) 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 that the probationary judge, ~~who has satisfactorily completed his/her two-year probationary term, be appointed as a permanent judge; (2) with the consent of the probationary judge, recommend to the President that the probationary judge, who has satisfactorily completed his/her two-year probationary term, serve another two-year (or less) probationary term before reconsideration for permanent appointment; or (3)~~

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

1 judge and recommend to the President ~~the that~~ removal of the probationary judge, ~~at~~
2 ~~any time during his/her probationary term, be removed~~ from office.

3 C. These rules shall be construed in accordance with 7 N.N.C. § 355(C)-(E), 2
4 N.N.C. § 574(D)-(G), *In the Matter of Certified Questions II*, 6 Nav. R. 105, A-CV-13-89
5 (Nav. S. Ct., ~~April 13,~~ 1989), and other applicable laws of the Navajo Nation.

6 C. ~~The standard term "probationary judge", as referred to throughout these rules,~~
7 ~~shall include a probationary Chief Justice, Associate Justice or District Court Judge.~~

8 D. In the event that ~~the~~ a probationary Chief Justice is the subject of the
9 performance evaluation hearing, the ~~Director of Judicial Administration and a senior~~
10 ~~permanently appointed~~ Associate Justice shall perform the duties of the Chief Justice as
11 expressed outlined in these rules. In the event there is not a permanent Associate Justice,
12 the senior probationary Associate Justice shall perform the duties of the Chief Justice as
13 outlined in these rules. The Director of Judicial Administration shall provide assistance
14 to the Associate Justice authorized to perform the duties of the Chief Justice as outlined
15 in these rules.

16 17 **2. ~~Commencement of Judicial Branch~~ Chief Justice's Evaluation of the** 18 **Probationary Judge**

19 The ~~Judicial Branch~~ Chief Justice shall ~~commence its two year evaluation of~~ evaluate
20 the probationary judge ~~twenty two (22) months after the probationary judge was sworn in~~
21 as required by 7 N.N.C. § 355(C). ~~The Judicial Branch shall provide notice of the~~
22 ~~commencement of the two year evaluation and pending hearing to the probationary~~
23 ~~judge, the Judicial Evaluation Committee of the Navajo Nation Bar Association and the~~
24 ~~general public twenty two (22) months after the probationary judge was sworn in.~~

25 26 **3. Initiation of Judiciary Committee Hearing**

27 A. Upon Completion of Two-Year Probationary Term.

28 1. ~~No later than five (5)~~ Within 15 working days after the two-
29 year anniversary of the ~~swearing in~~ confirmation of a probationary judge's
30 appointment, the Chief Justice shall provide written notice to the Judiciary

1 Committee, ~~through its Chairperson and Legislative Advisor,~~ that the probationary
2 judge has concluded his/her two-year probationary term and request a Committee
3 hearing to evaluate the two-year probationary performance of the probationary judge.

4 2. ~~Failure of the Chief Justice to provide such written notice in a~~
5 ~~timely manner will not waive or defeat the Committee's authority to conduct a~~
6 ~~hearing to evaluate the probationary performance of a probationary judge. In the~~
7 ~~event that the Chief Justice does not provide timely notice of the expiration of a~~
8 ~~probationary judge's two year probationary term, the Chairperson of the The~~
9 ~~Committee may shall initiate, schedule, and conduct a probationary performance~~
10 ~~evaluation hearing, otherwise in accordance with these rules, on his/her its own~~
11 ~~initiative, if the Chief Justice does not provide the above-mentioned notice to the~~
12 ~~Committee.~~

13 B. At Any Time During the Probationary Term.

14 1. "At any time during the probationary term of any Chief Justice,
15 Associate Justice, or Judge, regardless of the length of service of such judge, the
16 Judiciary Committee may recommend to the President of the Navajo Nation that the
17 probationary judge be removed from office." 7 N.N.C. § 355(D).

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

23 24 4. Notice and Date of Hearing

25 A. ~~Upon Completion of Two Year Probationary Term~~

26 Upon receiving written notice from the Chief Justice, or when calling for a hearing on
27 its own initiative, the Committee shall promptly set a date for a hearing to evaluate the
28 ~~two-year probationary~~ performance of the probationary judge. ~~The hearing shall be held~~
29 ~~not less than twenty (20) working days and no later than forty (40) working days~~ The
30 Judiciary Committee shall develop a hearing schedule after receiving written notice from

1 the Chief Justice of ~~the expiration of the two-year probationary term~~, or after the
2 Committee's decision to hold the hearing. ~~No later than ten (10)~~ Within five working
3 days ~~after receiving written notice from the Chief Justice, of scheduling a hearing,~~ the
4 Committee shall send written notice of the hearing date, time and location, ~~via U.S. mail,~~
5 ~~facsimile transmission or hand delivery,~~ to the Chief Justice and the probationary judge.

6 **B. — At Any Time During the Probationary Term**

7 ~~No later than ten (10) working days after the Committee's request for a hearing, the~~
8 ~~Chairperson shall: (1) set a date for a hearing to evaluate and consider the removal of a~~
9 ~~probationary judge; and (2) send written notice of the hearing date, purpose, time and~~
10 ~~location via U.S. mail, facsimile transmission or hand delivery, to the Chief Justice and~~
11 ~~the probationary judge. The hearing shall be held not less than ten (10) thirty (30)~~
12 ~~working days and no later than twenty (20) sixty (60) working days after written notice of~~
13 ~~the hearing is sent to the Chief Justice and probationary judge.~~

14
15 **5. Extension of Time**

16 Prior to the hearing, the Chairperson of the Judiciary Committee may extend the
17 hearing date upon: (1) written request of the Chief Justice or the probationary judge
18 showing good cause for the extension; (2) request of the Judiciary Committee member(s);
19 or (3) ~~Judiciary Committee necessity~~ good cause. A hearing shall not be extended more
20 than ~~ten (10)~~ working days later than the originally scheduled hearing date. The
21 Chairperson of the Judiciary Committee shall promptly provide written notice of ~~his/her~~
22 the determination on the request, and, if approved, including the extended new hearing
23 date, time and location, ~~via U.S. mail, facsimile transmission or hand delivery,~~ to the
24 Chief Justice and the probationary judge. Notice of changed hearing dates shall also be
25 provided to the Judiciary Committee, the Navajo Nation Bar Association and the general
26 public in the same manner.

27
28 **6. Judicial Evaluation Committee of the Navajo Nation Bar Association ("NNBA")**

29 A. Within 10 working days of scheduling a hearing, the Committee shall send
30 written notice of the hearing date, time and location, to the Executive Director of the

1 NNBA. The Chairperson of the A designated member of the Judicial Evaluation
2 Committee of the NNBA Navajo Nation Bar Association shall be provided written notice
3 of the hearing or its extension in accordance with Rules 4 and 5 and shall be requested to
4 attend the hearing and provide testimony regarding the Judicial Evaluation Committee's
5 NNBA's evaluation of the probationary judge.

6 B. The Judicial Evaluation Committee shall submit ~~its written~~ the NNBA's most
7 current evaluation of the probationary judge in writing to the Judiciary Committee
8 Chairperson, with copies provided to the Legislative Advisor to the Judiciary Committee,
9 the Chief Justice and probationary judge not less than fifteen (15) five working days prior
10 to the hearing. The Legislative Advisor shall provide photocopies of the written
11 evaluation to the Chief Justice and probationary judge no later than one (1) working day
12 after receiving the written evaluation.

13 C. ~~Failure of the Judicial Evaluation Committee to respond in a timely manner~~
14 ~~shall not have the effect of delaying the hearing; in that event, the hearing shall be~~
15 ~~conducted without the participation of the Judicial Evaluation Committee. The~~
16 Chairperson of the Judiciary Committee issue a subpoena to compel the attendance and
17 written evaluation documents of the NNBA, pursuant to 2 N.N.C. § 185(C) and (D).

18 19 **7. Public Notice and Public Testimony**

20 A. Notice of the hearing date, purpose, time, and location and the rules governing
21 public testimony shall be provided to the general public through publication in the
22 Navajo Nation Council website, the Navajo Nation website, the Navajo Courts website,
23 the Navajo Times and English and Navajo language announcements on KTNN radio
24 immediately after scheduling the hearing no later than five (5) working days after notice
25 of the hearing is provided to the Chief Justice, and probationary judge. In addition to
26 public notice typically required of Committee meetings, Written notice of the hearing
27 shall be posted, in a conspicuous place, at the Navajo Nation Bar Association office, the
28 administrative offices of the Judicial Branch, the Navajo Nation Supreme Court and each
29 district court of the Navajo Nation. A copy of these hearing rules shall be attached to
30 each posted notice.

1 B. Notice to the public shall clearly indicate that the hearing is open to the public
2 and public testimony is invited, ~~provided that witnesses contact the Legislative Advisor~~
3 ~~for the Judiciary Committee prior to the day of the hearing in accordance with these rules.~~
4 Notice shall also specify that anonymous comments will not be accepted. However,
5 Members of the general public wishing who want to participate in the hearing shall
6 submit written testimony to the Judiciary Committee Chairperson in care of the
7 Legislative Advisor to the Judiciary Committee not less than fifteen (15) five working
8 days prior to the hearing. The Legislative Advisor shall provide complete and legible
9 photocopies of the written testimony to the Chief Justice and probationary judge
10 immediately upon receipt and prior to the hearing, no later than one (1) working day after
11 receiving such written testimony. Under no circumstances shall such written testimony
12 be accepted fewer than fifteen (15) working days prior to the hearing.

13 C. ~~Members of the general public shall not be allowed to submit evidence or~~
14 ~~testimony to the Judiciary Committee in any other manner than described in Rule 7(B).~~
15 ~~Testimony or evidence of any allegations against the probationary judge attempted to be~~
16 ~~presented to the Judiciary Committee in non-compliance with these rules shall not be~~
17 ~~admissible but shall be referred to the Judicial Conduct Commission, or successor entity.~~
18 Testimony shall not include legal or factual matters pending in litigation before the
19 probationary judge.

20 D. Allegations of misconduct by the probationary judge may be heard at the
21 discretion of the Committee. However, such allegations of misconduct shall be
22 forwarded, if not entirely referred, to the Judicial Conduct Commission or proper
23 authorities for immediate investigation. Serious allegations of misconduct warranting
24 referral to the Judicial Conduct Commission or other authorities shall stop the
25 Committee's evaluation hearing on the judge until such time that an investigation is
26 completed. The Judiciary Committee shall instruct the Chief Justice to take appropriate
27 supervisory action toward the probationary judge in accord with Navajo Nation law and
28 policy. Upon completion of the investigation, the Committee shall resume the evaluation
29 hearing on the probationary judge with new timelines.
30

1 **8. Conduct of Hearing**

2 A. The Chairperson of the Judiciary Committee shall preside at the hearing at
3 which a quorum of the Committee shall be present. The Vice-Chairperson of the
4 Judiciary Committee shall serve in the absence of the Chairperson. ~~A proposed~~
5 ~~resolution shall not be prepared in advance of the hearing.~~

6 B. The Chairperson of the Committee shall conduct and regulate the course of
7 the hearing, ~~shall conduct the hearing, in accordance with these rules,~~ in a fair and orderly
8 manner and shall extend to all parties the right to be heard subject to these rules Rule
9 8(E) and Rule 7(B) and (C) and with consideration given to the due process rights of the
10 probationary judge.

11 C. The Office of Legislative Counsel shall, upon request of the Committee,
12 provide legal assistance and advice to the Committee ~~before, during and/or after the~~
13 ~~hearing.~~

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

17 E. The Committee shall not be bound by any formal rules of evidence applicable
18 in court proceedings. The Chairperson may exclude evidence that is irrelevant,
19 immaterial, ~~or~~ unduly repetitious, or unfairly prejudicial. Any objection with respect to
20 the conduct of the hearing shall be stated orally at the time of the hearing or submitted in
21 writing to the Committee within five ~~(5)~~ working days of the hearing.

22 F. All members of the Judiciary Committee, including the presiding Chairperson,
23 may ask questions of any testifying party at the hearing ~~presenters and respond and offer~~
24 ~~comments into the record.~~ The Chief Legislative Counsel, or staff, may ask questions at
25 the request of the Committee as permitted by the Chairperson.

26 G. ~~Oral and written testimony provided to the Judiciary Committee shall not~~
27 ~~include matters which are currently in litigation or in a grievance process.~~ The
28 ~~Committee may not consider the probationary judge's orders or opinions in its evaluation.~~
29 ~~However, the Committee may consider~~ Testimony may include Navajo Nation Supreme
30 Court reversals of the probationary judge's orders or opinions, as well as writs of

1 prohibition, writs of superintending control, and writs of mandamus issued against the
2 probationary judge. The Committee may also consider decisions rendered by the Judicial
3 Conduct Commission, ~~or its successor entity.~~

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

5 I. ~~The Chief Justice shall briefly introduce the probationary judge to the~~
6 ~~Committee and the~~ probationary judge shall have the first opportunity to address the
7 Committee. ~~The probationary judge shall have no more than fifteen (15) for up to 30~~
8 ~~minutes to address the Committee. The Chairperson may, in his/her discretion, allow a~~
9 reasonable amount of additional time. The probationary judge, ~~at his/her option,~~ may
10 provide written material (11 copies) to ~~each~~ the Committee ~~member~~ in support of his/her
11 performance evaluation.

12 J. The Chief Justice shall have up to 30 minutes to address the Committee. The
13 Chairperson may, in his/her discretion, allow a reasonable amount of additional time.
14 The Chief Justice shall provide to ~~each member of~~ the Committee (11 copies) and the
15 probationary judge, the Chief Justice's written performance evaluation of the
16 probationary judge, and recommendation regarding the permanent appointment of the
17 probationary judge, certificate(s) of completion or other written evidence that the
18 probationary judge has successfully completed a course of training accredited for judges
19 (if applicable), and any other relevant documents. The Chief Justice shall also submit 11
20 copies of all Judicial Performance Review Team evaluation memoranda/reports on the
21 probationary judge. Notwithstanding the Personnel Policies for Navajo Nation Judges
22 and Justices, the Judicial Performance Review Team's evaluation memoranda/reports on
23 the probationary judge shall be public documents when included in the Committee's
24 probationary performance evaluation hearing. The Chief Justice shall have no more than
25 fifteen (15) minutes to address the Committee. The recommendation of the Chief Justice
26 is relevant evidence amidst other evidence and factors that the Committee may consider
27 but is in no way not conclusive or binding on the Committee.

28 K. The Chairperson designated representative of the Judicial Evaluation
29 Committee of the Navajo Nation Bar Association NNBA shall have ~~no more than fifteen~~
30 up to (15) minutes to address the Judiciary Committee regarding explain the Judicial

1 Evaluation Committee's NNBA's evaluation of the probationary judge. The Chairperson
2 may, in his/her discretion, allow a reasonable amount of additional time. The
3 ~~Chairperson of the Judicial Evaluation Committee shall provide a copy of the judicial~~
4 ~~evaluation and any other relevant documents to each Judiciary Committee member, the~~
5 ~~probationary judge and the Chief Justice. The recommendation of the Chairperson of the~~
6 ~~Judicial Evaluation Committee of the Navajo Nation Bar Association is relevant evidence~~
7 ~~amidst other evidence and factors that the Committee may consider but is in no way not~~
8 ~~conclusive or binding on the Committee.~~

9 L. Following presentations from the probationary judge, the Chief Justice, and
10 ~~the Chairperson of the Judicial Evaluation Committee of the Navajo Nation Bar~~
11 ~~Association, the Judiciary Committee may shall~~ open the hearing to ~~members of the~~
12 ~~general public who submitted, in advance, written testimony submitted~~ in accordance
13 with these rules Rule 7(B) and (C). Such Public testimony shall be limited to ~~no more~~
14 ~~than ten (10) 15 minutes or less per witness. and shall not include matters not addressed~~
15 ~~in the written testimony.~~ The Chairperson may, in his/her discretion, allow a reasonable
16 amount of additional time.

17 M. The probationary judge and/or the Chief Justice shall each be allowed ~~no more~~
18 ~~than fifteen (15) up to 30 minutes to respond to oral and written testimony presented to~~
19 ~~the Judiciary Committee make closing remarks, with the probationary judge concluding~~
20 ~~last.~~ The Chairperson may, in his/her discretion, allow a reasonable amount of additional
21 time.

22 N. At the conclusion of all testimony, the Judiciary Committee ~~may shall~~ recess
23 in executive session to review and evaluate the testimony, ~~provided at the hearing, as well~~
24 ~~as the record and qualifications of the probationary judge. In open session, and by~~
25 ~~majority vote of the Judiciary Committee members present, the Committee shall~~
26 ~~determine whether the probationary judge has satisfactorily performed during his/her~~
27 ~~probationary term. In open session, and by majority vote of the Judiciary Committee~~
28 ~~members present, the Committee shall decide to recommend to the President of the~~
29 ~~Navajo Nation that the probationary judge: (1) be appointed as a permanent judge if~~
30 ~~he/she has satisfactorily completed his/her two year probationary term; (2) with the~~

1 consent of the probationary judge who has satisfactorily completed his/her two-year
2 probationary term, serve another two-year (or less) probationary term before being
3 reconsidered for permanent appointment; or (3) be removed from office. The Committee
4 shall make a decision regarding the evaluation and recommendation at the conclusion of
5 the hearing.

6 7 9. Decision

8 A. The Judiciary Committee shall base its evaluation and recommendation on the
9 evidence admitted at the hearing and its independent determination¹ on whether the
10 probationary judge meets the qualifications and requirements specified at 7 N.N.C. §§
11 354 and 355. ~~"The Committee makes an independent determination of the training
12 requirement and whether the probationary judge has performed satisfactorily over the two
13 year probationary term." In the Matter of Certified Questions II, 6 Nav. R. 105 (Nav. S.
14 Ct. 1989).~~

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

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

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

23 BC. After At the conclusion of the hearing, the Legislative Advisor shall draft a
24 proposed Judiciary Committee resolution outlining the Committee's decision, to be shall
25 be prepared for sponsorship sponsored by a member the Chairperson of the Judiciary
26 Committee, detailing the Committee's evaluation and recommendation. This resolution

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28
29 ¹ "The Committee makes an independent determination of the training requirement and whether the probationary
30 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).

1 shall be reviewed by the Department of Justice, the Office of Legislative Counsel and the
2 Chairperson of the Judiciary Committee pursuant to 2 N.N.C. § 164.
3

4 **10. Judiciary Committee Meeting to Adopt Resolution**

5 A. The proposed Committee ~~may discuss 2 NNC § 164 review comments made~~
6 ~~to its proposed resolution and may make amendments to the proposed resolution to~~
7 ~~clarify the action taken by the Committee at the hearing, however, resolution shall be~~
8 placed on the agenda of the next Committee meeting. ~~the Committee shall accept no~~
9 ~~additional testimony, oral or written, to alter the decision made at the hearing.~~

10 B. The Committee shall adopt, defeat or table the proposed resolution. The
11 proposed resolution shall not be tabled for more than ~~twenty~~ (20) working days.

12 C. Any Before adoption of a final written Committee resolution, should any new
13 evidence regarding the probationary judge which might alter the Committee's evaluation
14 decision, the Committee shall either table or defeat the proposed resolution and determine
15 whether to refer the matter must be referred to the Judicial Conduct Commission, or its
16 ~~successor~~ other authority entity, ~~and/or presented at~~ or schedule a new hearing in
17 accordance with these rules.

18 DC. The Committee shall promptly forward its duly adopted ~~recommendation~~
19 resolution recommending the permanent appointment or removal of the probationary
20 judge along with a cover letter to the probationary judge, the Chief Justice, and the
21 President of the Navajo Nation. Pursuant to a Judiciary Committee recommendation to
22 permanently appoint the probationary judge, the Legislative Advisor for the Judiciary
23 Committee shall also draft and forward to the President, for the President's sponsorship, a
24 proposed Navajo Nation Council Resolution permanently appointing the probationary
25 judge. A copy of the recommendation shall be forwarded to the probationary judge and
26 the Chief Justice.

27 28 **11. Suspension of Rules**

29 For good cause, the Committee may suspend any provision of these rules by motion,
30 second and majority vote of the Committee, provided the suspension is consistent with

1 the principles of fairness and due process. The motioning party must identify the rule to
2 be suspended and good cause for the suspension. A motion to suspend the rules is open
3 to debate. Good cause may include allowing a person who cannot read or write to testify
4 at the hearing.

5
6 **11 12. Amendment of Rules**

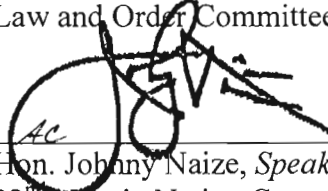
7 These rules may be amended by a duly adopted resolution of the Judiciary
8 Committee.



July 3, 2013

MEMORANDUM

TO : *Honorable Members*
Law and Order Committee

FROM : 
Hon. Johnny Naize, *Speaker*
22nd Navajo Nation Council

SUBJECT : **ASSIGNMENT OF LEGISLATION**

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

Legislation No. 0198-13

**RELATING TO LAW AND ORDER; AMENDING HEARING RULES ON THE
EVALUATION OF THE PERFORMANCE OF PROBATIONARY JUDGES AND
JUSTICES.**

As the Committee assigned to consider the legislation, Legislation No. 0198-13 must be placed on the Law and Order's agenda at the next regular meeting for final consideration.


ATTACHMENT: Legislation No. 0198-13

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



MEMORANDUM

To : Hon. Alton Shepherd, Council Delegate
Navajo Nation Council

From : 
Ron Haven, Attorney
Office of Legislative Counsel

Date : July 3, 2013

Re : RESOLUTION DRAFT - AN ACTION RELATING TO LAW AND
ORDER; AMENDING HEARING RULES ON THE EVALUATION OF
THE PERFORMANCE OF PROBATIONARY JUDGES AND JUSTICES

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

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

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

OLC # 13-173-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0198-13_____

SPONSOR: Alton Joe Shepherd

TITLE: An Action Relating To Law and Order; Amending Hearing Rules on the Evaluation of the Performance of Probationary Judges and Justices

Date posted: July 3, 2013 at 4:20pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

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

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

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

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO. 0198-13

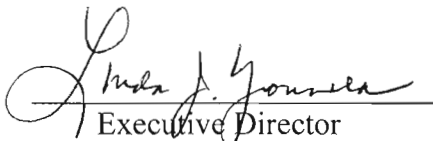
SPONSOR: Honorable Alton Joe Shepherd, Council Delegate

TITLE: Relating To Law And Order; Amending Hearing Rules On The
Evaluation Of The Performance Of Probationary Judges And Justices.

POSTED: July 3, 2013 at 03:55 p.m.

5 Day Comment Period Ended: July 8, 2013

Digital Comments received: none


Executive Director
Office of Legislative Services
July 9, 2013 8:31 am
Date/Time

RESOLUTION
OF THE LAW AND ORDER COMMITTEE
OF THE NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Third Year, 2013

AN ACTION

RELATING TO LAW AND ORDER; AMENDING HEARING RULES ON THE
EVALUATION OF THE PERFORMANCE OF PROBATIONARY JUDGES AND
JUSTICES

BE IT ENACTED:

Section One. Findings and Purpose

A. *"Hearing Rules of the Judiciary Committee of the Navajo Nation Council to Evaluate the Performance of Probationary Judges"* were last amended on May 21, 2009 by the then-existing Judiciary Committee of the Navajo Nation Council through resolution JCMY-02-09. See attachment "1".

B. The Judiciary Committee no longer exists. Its functions have been reassigned to the newly-established Law and Order Committee of the Navajo Nation Council. See CAP-10-11. The Law and Order Committee now exercises legislative oversight over all courts of the Navajo Nation. Its purposes include *"improv[ing] the administration of a justice system that is independent from political influence and that is accountable and responsible to the Navajo Nation in its administration and operation"*. 2 N.N.C. §600(C)(1).

C. The Law and Order Committee of the Navajo Nation Council, under Navajo Nation law, has all powers *"necessary and proper"* in executing its assigned statutory duties and responsibilities. 2 N.N.C. §601(A). Aside this, a particular statutory duty of the committee is the *"review and evaluat[ion of] the performance of probationary and permanent judges and justices"* of the Navajo Nation courts. 2 N.N.C. §601(B)(3).

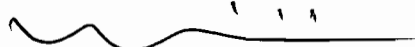
D. *Hearing Rules* for the evaluation of probationary judges and probationary justices of the Navajo Supreme Court must be updated.

Section Two. Amending Hearing Rules for Evaluation of Probationary Judges and Justices

The Law and Order Committee of the Navajo Nation Council hereby amends "*Hearing Rules of the Judiciary Committee of the Navajo Nation Council to Evaluate the Performance of Probationary Judges*", as provided in Exhibit "A" attached hereto.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Law and Order Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 3 in favor and 0 opposed, this 29th day of July, 2013.


Duane Tsinigine
Chairperson Pro Tem
Law and Order Committee

Motion: Elmer P. Begay
Second: Alton Joe Shepherd