

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

**22<sup>nd</sup> 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).

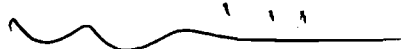
D. *Hearing Rules* for the evaluation of probationary judges and probationary justices of the Navajo Supreme Court must be updated.

**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 29<sup>th</sup> day of July, 2013.

  
Duane Tsinigine  
Chairperson Pro Tem  
Law and Order Committee

Motion: Elmer P. Begay  
Second: Alton Joe Shepherd

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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**  
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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 **§ 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 determination<sup>1</sup> 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 <sup>1</sup> "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       **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       **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 **12 XII. Amendment of Rules**

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