

RESOLUTION OF THE
LAW AND ORDER COMMITTEE
OF THE 23rd NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - THIRD YEAR, 2017

AN ACTION

RELATING TO LAW AND ORDER COMMITTEE; APPROVING THE JUDICIAL
CONDUCT COMMISSION PLAN OF OPERATION AND RULES AND PROCEDURE

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council and empowered to review and approve plans of operation for all divisions, departments and programs under the Committee's oversight authority and to amend or rescind such plans of operation. 2 N.N.C. §§ 600(A) and 601(B)(4).
- B. The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and policies and procedures recommended by the Judicial Conduct Commission and approved by the [Law and Order] Committee of the Navajo Nation Council. 7 N.N.C. § 424.

SECTION TWO. FINDINGS

- A. The Judicial Conduct Commission is established as an independent commission receiving administrative support and assistance from the Judicial Branch of the Navajo Nation.
- B. The Judicial Conduct Commission's recommended Plan of Operation is attached as **Exhibit A** and Rules and Procedure is attached as **Exhibit B**.
- C. The Navajo Nation finds it in the best interest of the Navajo People to approve the Judicial Conduct Commission's recommended Plan of Operation and Rules and Procedures.

SECTION THREE. APPROVAL

The Law and Order Committee hereby approve the Plan of Operation and Rules and Procedures for the Judicial Conduct Commission, attached hereto as **Exhibit A** and **Exhibit B**.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Law and Order Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 oppose, this 19th day of June, 2017



Honorable Raymond Smith Jr,
Vice Chairperson
Law and Order Committee

Motion: Honorable Edmund Yazzie
Second: Honorable Kee Allen Begay, Jr



JUDICIAL CONDUCT COMMISSION PLAN OF OPERATION

I. Establishment

Pursuant to 7 N.N.C. § 421, the Judicial Conduct Commission is established as an independent commission, free from political influence and interference, receiving administrative support and assistance from the Judicial Branch of the Navajo Nation.

II. Purpose

- A. Recognize that the leaders of the Judicial Branch (Alaaji' Hashkééjį Nahat'á) shall uphold the values and principles of Diné bi beenahaz'áanii in the practice of peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments pursuant to 1 N.N.C. § 203(E).
- B. Enhance and earn public trust and confidence in the Navajo Nation Judiciary by providing education, cultural teachings, and expertise on the responsibilities and significance of 'ánihwíí'ahii as naat'áanii in Navajo society.
- C. Educate the public that the Navajo Nation Judiciary plays a vital role in the protection, preservation, and maintenance of Navajo Nation sovereignty and nahat'á.
- D. Provide a forum for fair and impartial dispute resolution and the interpretation of laws, rules and regulations in a manner consistent with the values, customs and traditions of Diné.
- E. Advise the Chief Justice of the Judicial Branch, when requested to do so, to ensure that judges continue to fulfill their duties and obligations as naat'áanii consistent with the goal of upholding, restoring and strengthening hózhó na'hoodéel for Diné and those who have dealings with Diné.

III. Powers

A. The Judicial Conduct Commission shall have the following powers:

- 1. Provide public education on the role of the 'ánihwíí'ahii as naat'áanii and its significance in Navajo society;
- 2. Develop methodologies, tools and professional education for assessing and improving judicial performance;
- 3. Engage in dialogue with justices and judges on the ethical standards and responsibilities of 'ánihwíí'ahii as naat'áanii;

4. Accept referrals from the Chief Justice or the Law and Order Committee when the law requires for the investigation of complaints or grievances against justices and judges, including probationary justices and judges;
5. Make findings and recommend corrective action concerning justices and judges; and
6. If the Commission concludes that a recommendation for suspension or removal of justice or judge is appropriate, such recommendation shall be conveyed to the Chief Justice and others consistent with applicable law.

B. The Judicial Conduct Commission shall refer all complaints not properly before the Commission to the Chief Justice or to the Law and Order Committee when the complaint concerns the Chief Justice.

C. Upon request by the Chief Justice, the Judicial Conduct Commission may submit recommendations concerning whether or not to make a probationary judge permanent.

D. The Commission may adopt rules not inconsistent with this plan of operation or Navajo Nation laws and policies as it deems necessary and expedient for the performance of its duties.

E. If funding permits, the Judicial Conduct Commission may establish any position necessary to carry out the purposes and functions set forth in this Plan of Operation. All positions shall be under the general direction of the Commission, subject to the Navajo Nation Judicial Branch Employee Policies and Procedures. All personnel shall be employed and compensated in accordance with the Navajo Nation Judicial Branch Employee Policies and Procedures.

IV. Organization

- A. Pursuant to 7 N.N.C. § 423, the Commission shall be composed of five (5) members selected as follows:
 1. One (1) sitting or retired federal or state court justice or judge in good standing in his or her respective jurisdiction selected by the justices and judges of the Navajo Nation Courts.
 2. One (1) retired Navajo Nation justice or judge in good standing with the Navajo Nation Bar Association selected by the justices and judges of the Navajo Nation Courts.
 3. Two (2) regular or inactive members of the Navajo Nation Bar Association in good standing selected by the voting membership of the Navajo Nation Bar Association. The NNBA members shall have no pending disciplinary

proceedings against them and shall not have been formally reprimanded or suspended within a four consecutive year period prior to their selection

4. One (1) member of the Navajo general public selected by the Law and Order Committee of the Navajo Nation Council, from among applicants.

B. Officers

1. The Commission shall by a majority vote select a Chairperson and Vice Chairperson, each to serve during the term of his or her office. The Chairperson and Vice Chairperson shall continue as such officers through the respective terms of office for which they were appointed. In the event the Chairperson and/or Vice Chairperson shall cease to be a member of the Commission or resign from the office, the Commission shall select another member to succeed to such office.
2. The Chairperson shall call for and preside over meetings and work sessions of the Commission. In his or her absence, the Vice Chairperson shall preside over meetings and work sessions of the Commission.
3. In the absence of a Commission meeting, the Chairperson and the Vice Chairperson may act in place of the Commission, except that no final action may be taken in regards to a referral. The Commission may ratify the action of the Chairperson and the Vice Chairperson at the next regular meeting.

C. Term of Office

1. Each member of the Commission shall serve a term of four (4) years and may be reappointed to serve an additional term or terms. The term for a Commission member shall begin with the first official meeting that he or she attends. Upon initial constitution or re-constitution of the Commission, members in category (A)(3) shall serve two years, members in category (A)(4) shall serve three years and members in categories (A)(1) and (2) shall serve four years. Thereafter, each member appointed shall serve four years.
2. Upon expiration of term of office, a Commission member shall continue to serve until the next appointment is made.

D. Standard of Conduct

1. Each commission member shall not seek to influence a judge through membership on the Commission or by other means prohibited by law.
2. Each commission member shall not be influenced by a political body. The work of the Commission shall be free of political influence.
3. Each commission member shall abide by any applicable ethical and professional standards.
4. Each commission member is a naat'áanii and shall abide by standards of Diné Fundamental Law.

E. Removal and Vacancy from Office

1. A Commission member may only be removed from the Commission for cause, by a majority vote of the Commission, and with notice to the appointing body.
2. Reasons for removal shall include, but are not limited to, failure to uphold and foster hózhó consistent with their roles and duties while serving on the Commission and failure to comply with the standard of conduct set forth above.
3. In the event a Commission member is unable or unwilling to complete his or her term or becomes ineligible to serve, the original selecting body shall select a successor who shall be appointed for the remainder of the term.

F. Meetings

1. The Commission shall meet at least one time each year.
2. No business shall be conducted unless there is a quorum of the Commission present.
3. Commission members may attend meetings in person or by telephone, videoconference or other means approved by the Chairperson.

G. Quorum

1. Quorum shall be three (3) members.
2. Proxies are not allowed in lieu of attendance.

H. Compensation

Commission members may receive an honorarium for participating in meetings and/or work sessions and/or be reimbursed for travel expenses pursuant to Navajo Nation travel policies when such is authorized and funds are appropriated.

I. Expenditures

All expenditures shall be approved by majority vote of the Commission. In the absence of a Commission meeting, the Chairperson and the Vice Chairperson may act in place of the Commission. The Commission may ratify the action of the Chairperson and the Vice Chairperson at the next official meeting. If ratified by the Commission, such expenditures shall be considered approved by the whole Commission.

J. Administrative staffing

The Office of the Chief Justice shall serve as the secretariat of the Judicial Conduct Commission for purposes of meeting notice and coordination, support services, and the administration of programs of the Commission. The Commission shall have the responsibility and authority to designate administrative support staff of the Judicial Branch for purposes of processing expenditures and other budgetary matters.

V. Oversight

- A. The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and policies and procedures recommended by the Commission and approved by the Law and Order Committee of the Navajo Nation Council.
- B. The Commission will provide an annual written report to the Law and Order Committee on the activities, performance and administration of the Commission

VI. Amendments

This plan of operation may be amended upon recommendation by the Judicial Conduct Commission and approval by the Law and Order Committee of the Navajo Nation Council.

JUDICIAL CONDUCT COMMISSION

Rules and Procedure

Aadahwiint'íjdóo Nihwiit'aah Bik'íyáatih Yik'idéez'í'ígíí

(Diné Version)

Judicial Conduct Commission

Yoolkááldéé' díkwíidi shíí baah Sá ná'oogáa'go Hastóí dóó Sáanii binahagha', bi'oodla' dóó baáne' bee daaszi'ée t'éí binahji' nákéé' nahane', nahaghá dóó na'nitin danljigo díishjjiidi bee hoogááldóo bee hoot'ih.

Nítch'i Diyin Yábiyiji' dóó Nahasdzáán bikáa'ji' bee haz'aanii yee hahodiilaalá; Naaki danláago bika'ii dóó bi'áadii ałch'i' naazláago, ałk'indaagish dóó ałch'i' háadaadzigo niiníláálá. Jíhoonaa'éí dóó t'ééhonaa'éí ałkéé' naa'ashgo adinídíin dóó chahaatheeł náhoodleełgo, ında binahji' hááníbas dóó dah néitjigho oochííł bee bééhózingo niiníláálá, níłtsá bika' níłtsá bi'áád ałch'i' naazláago dóó bee hahodít'éigo ał'aan ánáá'niíłdóo nanise' ał'aa' áát'eeł Tó Ałtah Naashchíin daniljigo nahasdzáán bikáa'ji' naatlin.

Náásgoo dóó nee'niji' bee hwiináádóo bee hoogááł dóó ałhii' háa'ayoolchííł dóó Sá bee bii' ná'iildééh dooleełgo niilyáálá. Nanise' dóó bee'iináanii hólqo dooleełgo éí biniinaa éí Nahasdzáán, Tó, Nítchi dóó Kó' yee hináago niilyáálá.

Ni'haltso hoolyéédeé' dóó haz'áádeé' éí dził teezh bił ha'aznánée éí Ni'halgaiji' t'áá díj'go diyingo haz'ágóo hooghan niljigo ninályáago dził bee hadahodidzaa. Dził Ná'oodití dóó Dził Ch'óol'í'í éí ha'a'ahjigo ch'é'étiin siléii niljigo niilyáálá. T'áá díj'góo dził dadiyini nidaahya'ígíí éí Naha'tá Dziil danljigo bee daaszi'í'.

"Sis Naajini, Yoolgai Dziil, Dził Nant'áii, Sa'ah Naagheí Bik'eh Hózhóón niljigo biyi'dóo Nitsáhákees hazlji'.

Tsoodzil, Dootł'izhii Dziil, Dził Nant'áii, Sa'ah Naagheí Bik'eh Hózhóón niljigo biyi'dóo Nahat'á hazlji'.

Dook'o'oosłiíd, Diichití Dziil, Dził Nant'áii, Sa'ah Naagheí Bik'eh Hózhóón niljigo biyi'dóo liná hazlji'.

Dibéntsaa, Bááshzhinii Dziil, Dził Nant'áii, Sa'ah Naagheí Bik'eh Hózhóón niljigo biyi'dóo Sihasin hazlji'.

Dził Ná'ooditii, Yódi Dziil, Dził Nant'áii, Sa'ah Naagheí Bik'eh Hózhóón Dziil niljigo biyi'dóo Tsodizin hazlji'.

Dzil Ch'ool'í'í, Nitt'iz Altaas'éei Dziil, Dził Nant'aai, Sa'ah Naagheí Bik'eh Hózhóón niljigo biyi'dóo Sin hazlji."

Kót'éigo dahazl'ígíí biniinaa éí hooghan haz'áádóo Nahat'a hadahaazlá, tsodizin dóo sin bee bit hahodit'éigo atsiji' danljigo nahaghá bii' naazlá.

Nahat'a siláhagíí binahji' éí hastóí naat'aanii nidaadleeł dóo ndant'aago yee naat'aanii nidaadleeł. Nahat'a niilyáhagíí binahji' éí Nihookáa' Diyin Dine'é /Bíla'ashdla'ii niljini be'iina' bitsé siléii niljigo yidisin, yee tsodilzin dóo yik'ehgo nahasdzaán yikaa'gi hiná.

1. Definitions

A. "Chair" shall mean the Chair of the Judicial Conduct Commission.

B. "Chief Justice" shall mean the Chief Justice of the Navajo Nation or his or her designee.

C. "Commission" shall mean the Judicial Conduct Commission.

D. "Complaint" shall mean a written statement alleging a violation of the Navajo Nation Code of Judicial Conduct, Personnel Rules for Judges & Justices, and/or any other Navajo Nation laws or policies that set standards of ethics and conduct for Judges.

E. "Law and Order Committee" shall mean the Law and Order Committee of the Navajo Nation Council.

F. "Judge" shall mean judge or justice of the courts of the Navajo Nation.

G. "Peacemaking" shall mean hózhóji naat'aah.

G. "Referral" shall mean the document or set of documents forwarded by the Chief Justice or the Law and Order Committee to the Judicial Conduct Commission for review under these rules and procedures.

H. "Referring Party" shall mean the Chief Justice or the Law and Order Committee.

2. Adoption of Forms by Commission

The Commission may designate the use of such forms as it deems necessary and proper to carry out its duties regarding any matter within its purview.

3. Complaints

A. Complaints shall be filed with the Office of the Chief Justice, with the exception that complaints against the Chief Justice shall be filed with the Law and Order Committee. Only written complaints signed by the complainant(s) will be reviewed.

B. Complaints filed with the Chief Justice will be handled in accordance with Section XI of the Personnel Rules for Judges and Justices (adopted by JCJA-02-03 on January 7, 2003).

4. Referrals

A. Referrals to the Commission can only be made by:

1. The Chief Justice; or
2. The Law and Order Committee when a complaint has been filed against the Chief Justice or a complaint forwarded by the Law and Order Committee regarding a probationary Judge.

B. All referrals shall be filed directly with the Chair of the Commission or the Vice Chair if the Chair is unavailable.

C. All referrals to the Commission shall be in writing, signed by the referring party, and contain the following information:

1. The name of the subject Judge and the name of the Court to which he or she is assigned.
2. The subject complaint, if any, including the complaining party's name, address, and telephone number.
3. A brief statement of the issue or issues to be addressed by the Commission.
4. With respect to a referral alleging a pattern or practice by a Judge, any prior complaints and a statement of corrective measures previously taken concerning such pattern or practice.
5. Any other information the referring party deems relevant to the Commission's review.

5. Initial Conference and Planning

A. The Commission shall hold an initial conference within fifteen (15) business days of receiving a referral. The initial conference may take place by video conference, teleconference, or in person.

B. During the initial conference, the Commission shall review the referral and accompanying materials and develop a plan to address the referral which may include the assignment of tasks, development of timelines and meeting schedules, and identification of resources needed to complete its review.

6. Investigation by the Commission

A. When deemed appropriate and necessary, the Commission shall conduct its own investigation which may include talking with the complainant and other witnesses, informal conferences with the subject Judge, reviewing court files, and/or requesting the production of necessary records and documents.

B. When deemed appropriate and necessary, the Commission may share the results of the investigation with the referring party, complaining party, and subject Judge.

7. Failure to uphold, restore, and strengthen hózhó náhoodleel

A. The Commission recognizes the duty owed to the Diné under Diné Bi Beenahaz'áanii. If the Commission finds the subject Judge engaged in unethical or improper behavior in violation of the of the Navajo Nation Code of Judicial Conduct, Personnel Rules for Judges & Justices, or any other Navajo Nation laws or policies that set standards of ethics and conduct for Judges, the Commission shall engage in baayati' with the subject Judge and, if necessary and appropriate, the complaining party. The Commission may consult with a traditional practitioner affiliated with Peacemaking, the Medicine Men's Association or the Diné Haatalii Association.

B. Any resolutions and agreements made during this process shall be documented and shared with the referring party.

8. Disciplinary and Corrective Action

A. When the Commission determines that disciplinary or corrective measures are necessary, the Commission shall recommend to the Chief Justice one or more of the following Hashkééjii doo K'é bil naazt'ijii ach'i'yati':

- a. Private admonition, reprimand or censure;
- b. Public reprimand or censure;
- c. Imposition of limitations or conditions on duties;
- d. Retirement;
- e. Suspension (with or without pay);
- f. Removal;
- g. Other remedies, including interim remedies, as deemed appropriate by the Commission.

B. All recommendations for disciplinary and corrective action shall be supported by findings of fact and conclusions of law.

9. Findings and Recommendations

A. The findings and recommendations of the Commission shall be sent to the referring party.

B. Recommendations of suspension or removal shall be sent to the Chair the Law and Order Committee and to the Chief Justice with a copy to the subject Judge.

C. The referring party may implement the recommendations of the Commission or elect to set a meeting with the Commission for further clarification.

10. Final Report and Follow up

A. A final report, including final recommendations and findings, shall be sent to the referring party.

B. A follow up meeting shall be scheduled between the referring party and the Commission to determine if further review is necessary.

11. Appeal

There shall be no appeal of a recommendation by the Commission.

12. Quorum

No business shall be conducted unless there is a quorum of the Commission present. A quorum shall be three (3) members.

13. Decision

The Commission shall operate by baayat'i and the goal of reaching a consensus in making its recommendations.

14. Conflicts of Interest

A. Commissioners are expected to perform their duties and responsibilities with no influence of conflicts of interest.

B. If a Commissioner believes that he or she may have a possible conflict or the appearance of a conflict, he or she shall immediately disclose the conflict and recuse himself or herself.

C. If a Commissioner, subject Judge, complaining party, or referring party believes a conflict or an appearance of a conflict may affect the decision making ability of a Commissioner, the Commissioner may be excused by majority vote of Commissioners.

D. If the conflict of interest results in the Commission not being able to make a quorum, the Chair shall seek alternate Commissioners from the appointing body of the excused Commissioners.

15. Confidentiality

All records relevant to the referral, complaint, proceedings and meetings shall comply with the Navajo Nation Privacy Act, 2 N.N.C. § 81 et seq.