

LEGISLATIVE SUMMARY SHEET

Tracking No. 0302-15

DATE: August 25, 2015

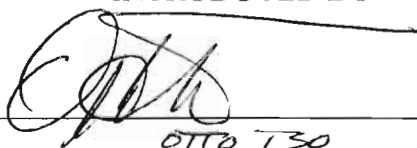
TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER;
EXTENDING THE PROBATIONARY TERM OF THE HONORABLE VICTORIA R.
YAZZIE FOR ONE YEAR

PURPOSE: The resolution's purpose is to extend the probationary term of Judge Yazzie.

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.

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL—FIRST YEAR, 2015

INTRODUCED BY


OTTO TSO
Primary Sponsor

TRACKING NO. 0302-15

AN ACTION

RELATING TO LAW AND ORDER; EXTENDING THE PROBATIONARY TERM OF THE
HONORABLE VICTORIA R. YAZZIE FOR ONE YEAR

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation established the Law and Order Committee (LOC) as a Navajo Nation standing committee and as such gave LOC authority to “review and evaluate the performance of probationary...judges.” 2 N.N.C. §§ 600(A), 601 (B)(8) (2012) and 7 N.N.C. §355(C) & (E) *see also* CJA-03-13, 22nd Navajo Nation Council, sect. 5, 30 (2013). The method LOC chose to use to evaluate a probationary judges’ performance is a public hearing. LOCJY-08-13.
- B. On Tuesday, July 7, 2015, LOC held a pubic hearing in Pinon, Arizona to review the record and Judge Victoria R. Yazzie’s qualifications. 7 N.N.C. § 355(E) and LOCJY-08-13.
- C. Judge Yazzie gave her opening remarks for permanent appointment. Followed by opening remarks by the Acting Chief Justice Eleanor Shirley, who recommended Judge Yazzie for permanent appointment. *Id.*
- D. LOC heard public testimony and a majority of the individual testimony was not in favor of the permanent appointment of Judge Yazzie. While Judge Yazzie received a satisfactory performance evaluation from then Chief Justice Herb Yazzie on March 10, 2015, at the conclusion of the public hearing, Acting Chief Justice Shirley verbally

recommended to LOC to extend Judge Yazzie's probationary period for a year in lieu of a permanency recommendation. *Id.*

E. Navajo Nation Code states that in order for a probationary district court judge to be recommended for permanent appointment he or she must receive satisfactory performance evaluations from the Chief Justice *and* the Law and Order Committee. 7 N.N.C. § 355(C). Here, Acting Chief Justice Shirley recommended a one-year probationary term extension.

F. LOC is "[t]o improve the administration of justice on the Navajo Nation by ensuring a justice system that is independent from political influence and that is accountable and responsible to the Navajo Nation in its administration and operations." 2 N.N.C. § 600(C)(1).

G. Currently, there are seven vacancies for Navajo Nation District Court Judge positions Nationwide and only one applicant. In order for LOC to affectively accomplish their purpose of accountability and responsibility in the Judicial Branch's administration and operations, maintaining qualified district court judges is paramount in accomplishing this purpose.

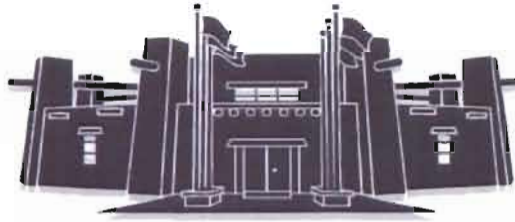
H. In order to protect the rights and interest of the Navajo People and in recognition the Acting Chief Justice's recommendation, LOC determines that Judge Victoria R. Yazzie remain on probation for an additional year.

Section Two: Probationary Term Waiver

The Law and Order Committee waives the two year probationary term in 7 N.N.C. §§ 355 & 356.

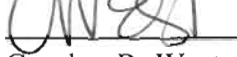
Section Three: Probationary Term Extended

LOC extends Judge Victoria R. Yazzie's probationary term for one year from July 5, 2015.



MEMORANDUM

TO: Honorable Otto Tso
Navajo Nation Council Delegate

FROM: 
Carolyn R. West, Attorney
Office of Legislative Counsel

DATE: August 25, 2015

SUBJECT: OLC Service Request Number 15-627-1: An Action Relating to Law and Order;
Extending the Probationary Term of the Honorable Victoria R. Yazzie for One
Year

As requested, I prepared the above-reference proposed resolution and associated legislative summary sheet. Based on existing law, the resolution drafted is legally sufficient. However, as with all legislation, the proposed resolution is subject to review by the courts in the event of a challenge. You are encouraged to review the proposed resolution to ensure this is drafted to your satisfaction.

The Office of Legislative Council recommends the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601 and 701. Nevertheless, “the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration. 2 N.N.C. § 164(A)(5).

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

If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0302-15_____ SPONSOR: Otto Tso

TITLE: An Action Relating To Law and Order; Extending the Probationary Term of the Honorable Victoria R. Yazzie For One Year

Date posted: August 26, 2015 at 9:39pm

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.: 0302-15

SPONSOR: Honorable Otto Tso

TITLE An Action Relating To Law And Order; Extending The Probationary Term Of The Honorable Victoria R. Yazzie For One Year.

Posted: August 26, 2015 at 9:39pm

5 DAY Comment Period Ended: August 31, 2015

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	1. Tyson Yazzie; Ganado, AZ
Inclusive Comments	<i>None</i>



**Executive Director
Office of Legislative Services**



Date/Time

Legislation No. 0302-15: Opposition to Legislation to Extend Probationary Term of the Honorable Victoria R. Yazzie

Tyson Yazzie <tyazzie4@asu.edu>

Sun 8/30/2015 4:25 PM

To: comments <comments@navajo-nsn.gov>, Mike Martinez <mmartinez@navajo-nsn.gov>,

1 attachment

07.07.2015.LOC.Hearing.VYazzie.Pinon.PDF;

To Whom It May Concern:

Following is my comments regarding Legislation No. 0302-15. I intend the following comment to be included in the "comments" section of the entire packet to be presented to the Navajo Nation Council as it makes its way from the various standing committees to the entire Council. Simply put, I strongly oppose the legislation for the reasons expressed below.

I served the Navajo Nation as a tribal prosecutor between May 2012 and August 2015. Given our staffing shortage, I was largely responsible for court coverage in the following Judicial Districts: Chinle, Dził Yijjin, and Dilkon. Occasionally, I also covered cases in Kayenta, Tuba City, Crownpoint, and Ramah Judicial Districts. During this time, I appeared before Judge Yazzie in many cases ranging from children's dependency, children's beyond control, children's delinquency, and adult criminal cases. Each of these types of cases ranged from the initial arraignment/preliminary hearings to sentencing/disposition hearings.

When I first began appearing in Dził Yijjin Judicial District (both Family Court and District Court), I was amazed and proud of the fact that Judge Yazzie could so eloquently speak the Navajo language. This in turn inspired me to speak Navajo in court as much as I could. I was further glad that the Navajo Nation had established the Dził Yijjin Judicial District - the newest judicial district - in such a remote area to serve the communities that particular judicial district encompasses. Unfortunately, my positive views of Judge Yazzie quickly disintegrated. I personally witnessed many instances of violations of persons due process rights at the hands of Judge Yazzie. Any ethical attempts on my part to correct the judge on procedural errors were quickly cast away by the judge. In fact, I have been admonished for doing so. Judge Yazzie has constantly taken an inconsistent and arbitrary approach to sentencing defendants found guilty. I've seen her order a deferred prosecution after a defendant has pled guilty (deferred prosecution may only be commenced by the parties as a form of settlement options) in a DUI case, sentence defendants to lengthy jail sentences purportedly for contempt (on many instances, defendant's were confused by the process as they appeared by telephone from Chinle Detention Center), and dismiss criminal cases for arbitrary and baseless reasons. Moreover, there are many instances where the judge was simply unavailable for court proceedings (many times even her own staff had no knowledge of her whereabouts). Any practitioner will readily inform you of how a case scheduled for a particular time will not be called for hours, resulting in significant delay. For many of these reasons, I spoke in opposition of the Law and Order Committee's (LOC) consideration of confirming Judge Yazzie as a permanent District Court Judge at the public hearing held on July 7, 2015.

The LOC public hearing held on July 7, 2015 can best be equated to a circus. There was no orderly process in place. For a large part of the hearing, there was no speaker or PA system available. Community members were cut off from expressing their complaints of the judge arbitrarily upon the supposition that they were getting into the merits of specific cases. No one clarified what this meant. In my view, many of the cases were closed cases where a final judgment had been entered. In fact, all the speakers from the community were nearly prevented from speaking publicly because apparently the hearing rules require that their statements be submitted in writing five days prior to the hearing. This caveat was never made public in the hearing notices posted in public places. During the hearing, the LOC called for the Navajo Nation Bar Association's comments from the Judicial Evaluations Committee. No one from the NNBA Judicial Evaluations Committee was present. It turns out that the LOC simply neglected to inform the NNBA of Judge Yazzie's public hearing. As a result, a necessary component of the decision of whether Judge Yazzie should be made a permanent District Court Judge was never presented to the LOC (since then, I believe the NNBA Judicial Evaluations Committee has ascertained a number of responses from NNBA members; however, it is unknown if such a compilation has been afforded to the LOC yet). During the hearing, 15 people spoke and provided public testimony. First, then-Acting Chief Justice Eleanor Shirley spoke in favor of Judge Yazzie's permanent appointment (after having provided supervision of at least two months as opposed to the entire duration of Judge Yazzie's probationary appointment of over two years). A Whippoorwill Chapter official also spoke in favor of Judge Yazzie's permanent appointment. However, in a striking deviation from the flow of positive remarks, the next 12 speakers spoke against Judge Yazzie's permanent appointment. These speakers ranged from myself (a then-tribal prosecutor), various chapter officials from

the Dził Yíjiiin Judicial District's chapter governments, and Navajo citizens who had made pro se appearances before the judge in various cases. In fact, a court clerk who worked with Judge Yazzie for two years spoke in opposition of Judge Yazzie's permanent appointment citing harsh actions taken by Judge Yazzie against her in the employment context. In this respect, a majority of those who testified in the LOC's presence opposed Judge Yazzie's permanent appointment. See Finding D, Legislation No. 0302-15. Despite public opposition, the LOC voted to recommend permanent appointment (the LOC vote was confusing. On one hand the LOC made it publicly known at the hearing that they were simply voting to "forward" the issue to the Council and were not deciding whether or not to recommend permanent appointment; on the other hand, after the hearing, the LOC members informed me that they in fact voted to recommend Judge Yazzie for permanent appointment).

Turning now to the legislation at hand, I strongly believe that the legislation is illegal. 7 NNC ss 355/356 is very clear. A probationary judge serves in "probation" status for two years from date of confirmation. Judge Yazzie was confirmed as a probationary judge in January of 2013. Two years from January 2013 is January 2015. Yet, LOC dragged their feet and waited to conduct public hearings until July 2015. At the end of two years, LOC votes yea or nay based on public hearing, evaluations from Chief Justice and NNBA, and based on the LOC's evaluation of judge's qualifications. From there, the President can appoint the probationary judge for permanent appointment. He/she then goes before NNC for vote for permanent appointment. What this legislation purports to do is "waive" 7 NNC ss 355/356 by extending Judge Yazzie's probationary appointment for another year. There is no basis in Navajo law to "waive" the clear and unambiguous mandates of 7 NNC ss 355/356. How can we uphold the rule of law and tell Navajo citizens that they are bound to the law by sentencing them when they violate Navajo laws and then the Council "waive" the law when they see fit?

The public sentiment expressed from Dził Yíjiiin community members is very clear: they do not support Judge Yazzie's permanent appointment as a District Court Judge. So why should we continue to oppose their views? After all, the purpose of a court is to serve the community. The fact remains that Judge Yazzie is simply unqualified to serve as a District Court Judge. The Navajo Nation Council should also take into account the fact that as of today, Judge Yazzie has unresolved criminal complaints in Dził Yíjiiin District Court as a criminal defendant (the very court she presides over). I have attached a listing of people present at the July 7, 2015 public hearing. The speakers are listed from #21 through #34.

For the foregoing reasons, I oppose Legislation No. 0302-15. Thank you.

Regards,

Tyson Yazzie

Tyson Yazzie

PO Box 1015

Ganado, AZ 86505

e-mail: tyson.yazzie@asu.edu

Cell Phone: 928.206.3209

LAW AND ORDER COMMITTEE OF THE
23RD NAVAJO NATION COUNCIL

SIGN IN SHEET

Special Meeting

July 7, 2015

Date

Pinon Chapter House - Pinon, AZ

LOCATION

<u>VISTORS/GUESTS</u>	<u>TITLE/DEPARTMENT</u>	<u>CONTACT NUMBER</u>
1. Laverne SilverSmith	Guest	
2. Ray SilverSmith	Guest	1-928-625-7148
3. Mary Lucy Joe	"	
4. Phyllis Delmore	"	
5. Ella M. James	FL-NCOA official	9286773338
6. [Signature]	Guest	
7. [Signature]	Guest	
8. [Signature]	"	"
9. [Signature]		
10. Harold D. Falt	Coast	"
11. Colleen Bia	Guest/Complaint	928 7815868
12. [Signature]	"	
13. Lavern H. Garneez	Supreme Court	928-871-6763
14. [Signature]	Chairman, Subcommittee	(928) 725-2085
15. [Signature]	Judicial	928-871-7669
16. A. B.	Gallup Ind	(505) 863-9011

Special

July 7, 2015

	<u>VISITORS/GUESTS</u>	<u>TITLE/DEPARTMENT</u>	<u>CONTACT NUMBER</u>
17.	Vanessa Vescal	Chinle-District	674-2070
18.	Bobby Taek	Chinle District	674-2070
19.	Alice McCook		
20.	Walter Phelps	Council Delegate	505 9061721
21.	Elvin BAHE	Chinle District President	505 9281725-378
22.	Evelyn M. Meadows	Pinon Chapter V P	
23.	Colleen Bia	Chinle Chapter	
24.	Bessie S. Allen	Pinon Chapter - ^{Chinle} official	
25.	Gerald Anastas	Low mth AZ	
26.	Rita Wilson	Chinle	
27.	Johnny Bia, Sr.	Chinle AZ	
28.	Shirley Leonard	Dul Yim Court Clerk	
29.	Laverne Silversmith	Blue Gap AZ	
30.	Jimmy Yellowhair	Black Mesa Chapter	
31.	Tretha Beas	Blue Whippoorwill	
32.	Tyson Yazzie	Prosecutor	
33.	Harold Fulton	Shiva Smith	
34.	Jennifer Begay	Whippoorwill	
35.		no more photo	
36.			
37.			
38.			
39.			
40.			