

LEGISLATIVE SUMMARY SHEET
Tracking No. 0285-19

DATE: September 25, 2019

AN ACTION RELATING TO LAW AND ORDER COMMITTEE; RESCINDING RESOLUTION LOCS-19-18 "APPROVING RULES AND REGULATIONS GOVERNING DELEGATION OF AUTHORITY FROM THE LAW AND ORDER COMMITTEE TO THE JUDICIAL CONDUCT COMMISSION ON THE SCREENING OF APPLICANTS AND RECOMMENDATIONS FOR PROBATIONARY APPOINTMENT OF JUDGES AND JUSTICES; AS SET FORTH AT 2 N.N.C. §§ 601 (B)(7) AND (B)(7)(a); AMENDING THE PLAN OF OPERATION FOR THE JUDICIAL CONDUCT COMMISSION"

PURPOSE: Rescinding Resolution LOCS-19-18. .

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 review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 2388
Website Posting Time/Date: _____
Posting End Date: 9/30/19
Eligible for Action: 10/01/19

PROPOSED NAVAJO NATION COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY


(Prime Sponsor) OTTO TSO

TRACKING NO. 0285-19

AN ACTION

RELATING TO LAW AND ORDER COMMITTEE; RESCINDING
RESOLUTION LOCS-19-18 "APPROVING RULES AND REGULATIONS
GOVERNING DELEGATION OF AUTHORITY FROM THE LAW AND
ORDER COMMITTEE TO THE JUDICIAL CONDUCT COMMISSION ON THE
SCREENING OF APPLICANTS AND RECOMMENDATIONS FOR
PROBATIONARY APPOINTMENT OF JUDGES AND JUSTICES; AS SET
FORTH AT 2 N.N.C. §§ 601 (B)(7) AND (B)(7)(a); AMENDING THE PLAN OF
OPERATION FOR THE JUDICIAL CONDUCT COMMISSION"

BE IT ENACTED:

Section One. Authority

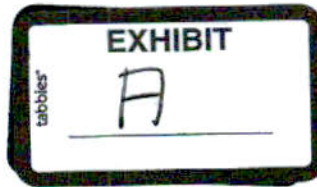
- A. The Law and Order Committee of the Navajo Nation Council is a standing committee empowered with providing a process for accepting applications for judicial positions and for determining the most qualified candidates. 2 N.N.C. §601 (B)(7)
- B. The Law and Order Committee has the authority to delegate its powers in specific areas to other entities upon approval of sufficient rules and regulations governing such delegation. 2 N.N.C. § 601(2)
- C. The Law and Order Committee has the authority to rescind and such delegation when deemed appropriate. 2 N.N.C. § 601(2)

1 **Section Two. Findings**

- 2 A. The Law and Order Committee approved Resolution LOCS-19-18 “Approving
3 Rules and Regulations Governing the Delegation of Authority from the Law and
4 Order Committee to the Judicial Conduct Commission on the Screening of
5 Applicants and Recommendations for Probationary Appointment of Judges and
6 Justices; As Set Forth at N.N.C. §§ 601(B)(7) and (B)(7)(a); Amending the Plan
7 of Operation for the Judicial Conduct Commission.”. See Exhibit A.
8 B. The Law and Order Committee now finds it to be in the best interest of the Navajo
9 Nation to rescind Resolution LOCS-19-18.

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11 **Section Three. Approval**

12 The Law and Order Committee hereby rescinds Resolution LOCS-19-18 as found
13 at Exhibit A.
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LOCS-19-18

RESOLUTION OF THE
LAW AND ORDER COMMITTEE

23RD NAVAJO NATION COUNCIL - FOURTH YEAR, 2018

AN ACTION

RELATING TO LAW AND ORDER COMMITTEE; APPROVING RULES AND REGULATIONS GOVERNING DELEGATION OF AUTHORITY FROM THE LAW AND ORDER COMMITTEE TO THE JUDICIAL CONDUCT COMMISSION ON THE SCREENING OF APPLICANTS AND RECOMMENDATIONS FOR PROBATIONARY APPOINTMENT OF JUDGES AND JUSTICES; AS SET FORTH AT 2 N.N.C. §§ 601 (B) (7) AND (B) (7) (a); AMENDING THE PLAN OF OPERATION FOR THE JUDICIAL CONDUCT COMMISSION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600(A). 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).
- B. The Law and Order Committee, among other duties and responsibilities, provides a process for accepting applications for judicial positions and for determining the most qualified candidates. 2 N.N.C. § 601 (B) (7); see also, 7 N.N.C. § 355(A). The Committee screens all applicants for judicial positions within the Navajo Nation. These judicial positions include District Court judges, Associate Justices of the Navajo Supreme Court and the Chief Justice. 2 N.N.C. § 601 (B) (7) (a). Upon the screening of applicants, it refers those qualified to the President of the Navajo Nation for appointment purposes. *Id.*
- C. The Navajo Nation Council created the Judicial Conduct Commission essentially to hear complaints against judges of the Navajo Nation District Courts and Justices of the Navajo Nation Supreme Court. The Navajo Nation Council, in establishing the commission, stated its purposes and powers as follows:

1. To enhance public confidence in the Navajo Nation Judiciary by providing a fair, impartial and expeditious forum to hear complaints and grievances against Navajo Nation Justices and Judges involving alleged violations of the Code of Judicial Conduct, personnel policies for Justices and Judges, and any other Navajo Nation laws or policies that set standards of ethics and conduct for Justices and Judges.
2. To investigate or direct the investigation of complaints or grievances against Justices and Judges;

2 N.N.C. § 422(A)(1) and (2).

- D. Pursuant to 2 N.N.C. § 601(B)(2), the Law and Order Committee may "delegate responsibilities and authorities as appropriate for efficiency and streamlining of government processes to the Division, local government units, and appropriate entities provided that the Committee first approves rules and regulations governing such delegations and to rescind such delegations."

SECTION TWO. FINDINGS

- A. It is in the best interest of the Navajo Nation that the duties and responsibilities of the Law and Order Committee in screening applications and determining qualifications of applicants for judicial positions be delegated to the Judicial Conduct Commission.
- B. It is further in the best interest of the Navajo Nation that duties and responsibilities of the Law and Order Committee in recommending applicants to the Navajo Nation President for judicial appointment be delegated to the Judicial Conduct Commission.

SECTION THREE. APPROVING RULES AND REGULATIONS

The Law and Order Committee of the Navajo Nation Council hereby approves "Rules and Regulations for the Delegation of Responsibility and Authority to the Judicial Conduct

Commission regarding the Screening of Applicants for and Recommendation of Probationary Appointment of Judges and Justices of the Navajo Nation", as attached hereto as **Exhibit "A"**.

SECTION FOUR. APPROVING DELEGATION OF AUTHORITY

- A. In regards to 2 N.N.C. § 601 (B)(7) and probationary appointments, the authority of the Law and Order Committee of the Navajo Nation Council is to screen applicants and determine qualifications of applicants for judicial positions is hereby delegated to the Judicial Conduct Commission
- B. Further, in regards to 2 N.N.C. § 601(B)(7)(a) and probationary appointments, the authority of the Law and Order Committee is to recommend applicants to the Navajo Nation President for judicial appointment is hereby delegated to the Judicial Conduct Commission.
- C. The delegations approved herein shall be limited to areas specified. The delegations may be rescinded or amended, in whole or in part, by the Law and Order Committee at any time.

SECTION FIVE. APPROVING AMENDMENTS TO THE PLAN OF OPERATION

The Law and Order Committee of the Navajo Nation Council hereby approves amendments to the Plan of Operation for the Judicial Conduct Commission as reflected in **Exhibit "B"**.

RULES AND REGULATIONS FOR THE DELEGATION OF RESPONSIBILITY AND
AUTHORITY TO THE JUDICIAL CONDUCT COMMISSION REGARDING THE
SCREENING OF APPLICANTS FOR AND RECOMMENDATION OF PROBATIONARY
APPOINTMENT OF JUDGES AND JUSTICES OF THE NAVAJO NATION

I. AUTHORITIES

- A. The Navajo Nation Council, by Resolution No. CAP-10-11, amended provisions of Title Two of the Navajo Nation Code and established the Law and Order Committee with authority to delegate responsibilities and authorities as appropriate to Divisions, local government units, and appropriate entities for efficiency and streamlining of government processes provided that the Committee first approves rules and regulations governing such delegations and rescission of such delegations. 2 N.N.C. § 601(B)(2).
- B. Pursuant to 2 N.N.C. § 601(B)(7), the Law and Order Committee is to provide a process for accepting applications for judicial positions and for determining the most qualified candidates.
- C. Pursuant to 2 N.N.C. § 601(B)(7)(a), upon screening all eligible applicants, the Law and Order Committee shall recommend to the President of the Navajo Nation a panel of qualified candidates for appointment of Probationary Chief Justice, Associate Justices of the Supreme Court and Probationary Judges of the lower courts, and all other judicial positions within the Navajo Nation as may be created.
- D. The Judicial Conduct Commission is an independent commission with the power to enhance public confidence in the Navajo Nation Judiciary by providing a fair, impartial and expeditious forum to hear complaints and grievances against Navajo Nation Justices and Judges involving alleged violations of laws and policies that set standards of ethics and conduct for Justices and Judges. 7 N.N.C. §§ 421 and 422(A)(1).

II. DELEGATION

- A. Pursuant to 2 N.N.C. § 601(B)(2), the Law and Order Committee hereby delegates to the Judicial Conduct Commission its

responsibilities and authorities to provide a process for accepting applications for judicial positions pursuant to 2 N.N.C. § 601(B)(7), and to screen and recommend a panel of qualified candidates for the appointment of Probationary Chief Justice, Associate Justices of the Supreme Court and Probationary Judges of the lower courts to the President of the Navajo Nation pursuant to 2 N.N.C. § 601(B)(7)(a).

- B. The Judicial Conduct Commission shall apply the qualifications set forth at 7 N.N.C. § 354 to screen and recommend a panel of qualified candidates for judicial appointment to the President of the Navajo Nation.
- C. The Judicial Conduct Commission receives administrative support and assistance from the Judicial Branch of the Navajo Nation pursuant to 7 N.N.C. § 421.

III. RESPONSIBILITIES AND AUTHORITIES

- A. The Executive Director of the Judicial Conduct Commission ("Executive Director") shall receive applications and supporting documents for district court Judge ("Judge"), Chief Justice ("Chief Justice") and Associate Justice ("Justice") of the Navajo Nation.
- B. In the event that the Executive Director position is vacant, the Judicial Branch Human Resources Director shall perform the duties of the Executive Director as set forth herein until the position is filled.
- C. The Executive Director shall verify the applicants meet the qualifications found at 7 N.N.C. § 354 (A)(1), (2), (3), (6), (7), (8), (10), (11), (13), (14) and, if applicable, (B)(1).
- D. The Executive Director shall notify those applicants who meet the qualifications listed at Rule C of the date, time and location of a writing test and interview to be held within 90 days. The Executive Director shall notify, in writing, those applicants who are not selected for a writing test and interview and which criteria of Rule C they did not meet.
- E. The Executive Director shall forward the completed applications of those who meet the qualifications at Rule C to the Commission.

- F. The Commission shall implement a writing sample format requiring the Candidate to write 5-10 pages of analyzing Navajo legal issues and criteria for its administration and evaluation.
- G. The Commission shall develop and approve interview questions and criteria for the administration and evaluation of the interview. Each applicant shall be interviewed by a quorum of the Commission.
- H. The Commission shall evaluate the applicant(s) and make recommendations based on the completed applications, writing test and interviews without undue delay.
- I. The Commission shall send its recommendations by resolution to the President of the Navajo Nation and a copy thereof to the Law and Order Committee within 15 days of the evaluation.

IV. REVIEW AND AMENDMENT

- A. The scope and administration of this delegation of responsibilities and authorities may be evaluated and reviewed by the Law and Order Committee of the Navajo Nation Council for compliance and continuance of the delegation.
- B. The Executive Director of the Judicial Conduct Commission shall report on the status of the screening of qualified candidates for the appointment of Probationary Chief Justice, Associate Justices of the Supreme Court and Probationary Judges of the lower courts at least twice each year to the Law and Order Committee.
- C. Pursuant to 2 N.N.C. § 601(B)(2) and other applicable law, these Rules and Regulations may be amended or rescinded in whole or in part by the Law and Order Committee of the Navajo Nation Council or this delegation may be rescinded in whole or in part at any time.

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' Hashkééji 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. Recommend probationary appointment of judges and justices who embody the values and principles of Diné bi beenahaz'áanii, consistent with 1 N.N.C. § 203(E).
- ~~C-D.~~ 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-E.~~ 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-F.~~ 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. The Commission shall accept delegations of authority from the Law and Order Committee consistent with 2 N.N.C. § 601(B)(2), including but not limited to the screening and recommendation of applicants for judges and justices.
 - ~~1-2.~~ Provide public education on the role of the 'ánihwíí'ahíi as naat'áanii and its significance in Navajo society;
 - ~~2-3.~~ Develop methodologies, tools and professional education for assessing and improving judicial performance;
 - ~~3-4.~~ Engage in dialogue with justices and judges on the ethical standards and responsibilities of 'ánihwíí'ahíi as naat'áanii;
 - ~~4-5.~~ 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;
 - ~~5-6.~~ Make findings and recommend corrective action concerning justices and judges; and
 - ~~6-7.~~ 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

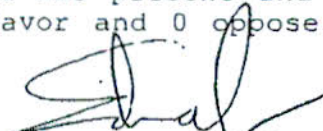
- A. The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and policies and procedures recommended by the Commission and approved by the Law and Order Committee of the Navajo Nation Council.
- B. The Commission will provide an annual written report to the Law and Order Committee 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.~~ The Judicial Conduct Commission may recommend amendments to the Plan of Operation.

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 3 in favor and 0 oppose, this 17th day of September 2018.



Edmund Yazzie, Chairperson
Law and Order Committee
of the 23rd Navajo Nation Council

Motion: Honorable Raymond Smith, Jr.
Second: Honorable Kee Allen Begay, Jr.

Chairperson Edmund Yazzie not voting.

NAVAJO NATION

RCS# 15

Special Session

9/17/2018
01:47:14 PM

Amd# to Amd#
MOT Smith
SEC Begay, K

Legislation No. 0290-18
Approving Rules & Regulations
Governing Delegation of Authority

PASSED

Yea : 3

Nay : 0

Excused : 0

Not Voting : 2

Yea : 3

Begay, K

Smith

Tso

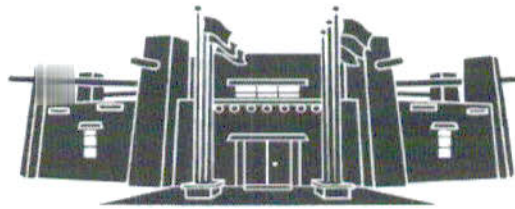
Nay : 0

Excused : 0

Not Voting : 2

Yazzie

Daniels



MEMORANDUM

TO: Honorable Otto Tso
24th Navajo Nation Council

FROM: 
Edward A. McCool, Acting-Chief Legislative Counsel
Office of Legislative Counsel

DATE: September 25, 2019

AN ACTION RELATING TO LAW AND ORDER COMMITTEE; RESCINDING RESOLUTION LOCS-19-18 "APPROVING RULES AND REGULATIONS GOVERNING DELEGATION OF AUTHORITY FROM THE LAW AND ORDER COMMITTEE TO THE JUDICIAL CONDUCT COMMISSION ON THE SCREENING OF APPLICANTS AND RECOMMENDATIONS FOR PROBATIONARY APPOINTMENT OF JUDGES AND JUSTICES; AS SET FORTH AT 2 N.N.C. §§ 601 (B)(7) AND (B)(7)(a); AMENDING THE PLAN OF OPERATION FOR THE JUDICIAL CONDUCT COMMISSION"

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 as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. 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 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.