

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
21st NAVAJO NATION COUNCIL -- Fourth Year, 2010

INTRODUCED BY

Thomas Walker, Jr.

(Prime Sponsor)

Tracking No. 0359-10

AN ACT

RELATING TO JUDICIARY; APPROVING THE JUDICIAL ELECTIONS
REFERENDUM ACT OF 2010; REFERRING A REFERENDUM MEASURE TO THE
NOVEMBER 2, 2010 NAVAJO NATION GENERAL ELECTION BALLOT WITH A
QUESTION WHETHER TO AMEND TITLES 2, 7 AND 11 OF THE NAVAJO
NATION CODE TO PROVIDE FOR THE ELECTION OF NAVAJO NATION
DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES

BE IT ENACTED:

Section One. Findings

A. The Navajo Nation finds that Navajo Nation District Court judges and Supreme Court justices, as leaders of the Judicial Branch (“Aláají’ Hashkééjí Naat’ááh”), are appointed officials and not elected leaders chosen by the Diné in a democratic election process as set forth at 1 N.N.C. § 203(A).

B. “The People have a fundamental right to choose their leaders and leaders have the obligation to ensure those rights.” Nelson v. Shirley, No. SC-CV-03-10, Slip Op. at 16 (Nav. Sup. Ct. May 28, 2010, as corrected June 2, 2010).

C. The Navajo Nation finds that to ensure the fundamental right and freedom of the Diné to participate in their democracy with an option to choose their leaders in the Navajo Nation courts, and to ensure the people’s trust and confidence in the Navajo Nation Judiciary, the Diné should have an opportunity to decide through a referendum

1 vote in the 2010 General Election whether Navajo Nation District Court judges and
2 Supreme Court justices should be elected positions beginning with the 2012 Chapter
3 Election.

4
5 **Section Two. Referring a Referendum Measure and Ballot Language to the**
6 **November 2, 2010 Navajo Nation General Election Ballot on the Judicial Elections**
7 **Referendum Act of 2010**

8 The Navajo Nation Council hereby refers a referendum measure and ballot language
9 to the November 2, 2010 Navajo Nation General Election ballot on the Judicial Elections
10 Referendum Act of 2010, as follows:

11 _____
12 **Official Title:** "The Judicial Elections Referendum Act of 2010"

13
14 **Descriptive Summary:** The Judicial Elections Referendum Act of 2010 is a
15 referendum ballot question from the Navajo Nation Council to give the Navajo people an
16 opportunity at the November 2, 2010 General Election to decide by majority vote whether
17 to change the positions of all Navajo Nation District Court Judges and all Navajo Nation
18 Supreme Court Justices from their current status as appointed probationary and permanent
19 positions to elected positions subject to retention elections, beginning with the 2012
20 Navajo Nation Chapter Elections.

21
22 **Brief Statement of Legal Effect:**

23 A "YES" vote is in favor of changing Navajo Nation District Court Judge positions
24 and Navajo Nation Supreme Court Justice positions to elected positions subject to
25 retention elections. A "YES" vote will amend the Navajo Nation Code and shall have the
26 effect of approving the amendments to Titles 2, 7 and 11 of the Navajo Nation Code, as
27 set forth in the complete text of the legislation referred by this referendum measure.

28 A "NO" vote is against changing Navajo Nation District Court Judge positions and
29 Navajo Nation Supreme Court Justice positions to elected positions, and shall have the
30 effect of maintaining the current status of Navajo Nation law whereby Navajo Nation

1 Judges and Justices are appointed by the President and confirmed by the Navajo Nation
2 Council. A "NO" vote will not amend the Navajo Nation Code.

3
4 **Referendum Ballot Question:**

5 "Should Navajo Nation District Court Judges and Navajo Nation Supreme Court
6 Justices be changed from appointed positions to elected positions, subject to retention
7 elections, beginning in the 2012 Navajo Nation Chapter Elections?"

8 "YES"

9 "NO"

10
11 **Section Three. Complete Text of Proposed Legislation Referred by Referendum**
12 **Measure to Amend Titles 2, 7 and 11 of the Navajo Nation Code**

13 The Navajo Nation Council hereby refers the complete text of proposed legislation by
14 referendum measure to amend Titles 2, 7 and 11 of the Navajo Nation Council, as
15 follows:

16
17 **Title 2. Navajo Nation Government**

18 **Chapter 1. Establishment**

19 **Subchapter 1. Generally**

20 * * * *

21 **§ 3. Oath of office**

22 The President, Vice-President, ~~and~~ all delegates to the Navajo Nation Council, all
23 judges of the Navajo Nation District Courts, and all justices of the Navajo Nation
24 Supreme Court, before assuming their official duties, shall take an oath of office as
25 prescribed by 11 N.N.C. § 6.

26 * * * *

27 **Title 2. Navajo Nation Government**

28 **Chapter 3. Legislative Branch**

29 **Subchapter 9. Standing Committees**

30 **Article 9. Judiciary Committee**

1 * * * *

2 **§ 574. Powers**

3 In addition to the powers enumerated at 2 N.N.C. § 185, the Committee shall have the
4 following powers including those powers necessary and proper to carry out the purposes set
5 forth in § 572 above:

6 A. To serve as the oversight committee for all operations of the Judicial Branch.

7 B. To ~~determine, with the approval of~~ recommend to the Navajo Nation Council,
8 qualifications to be required of judges and justices of the Navajo Nation.

9 ~~C. To provide a process for accepting applications for judicial positions and for~~
10 ~~determining the most qualified candidates.~~

11 ~~1. Upon screening all eligible applicants, the Committee shall recommend to the~~
12 ~~President of the Navajo Nation a panel of qualified candidates for appointment as~~
13 ~~probationary Chief Justice, Associate Justices of the Supreme Court and probationary~~
14 ~~judges of the lower courts, and all other judicial positions which the Navajo Nation~~
15 ~~Council may create.~~

16 ~~2. The President shall appoint probationary justices and judges only from~~
17 ~~among those named in the panel submitted by the Committee. Probationary justices or~~
18 ~~judges shall be confirmed by the Navajo Nation Council.~~

19 ~~D C.~~ C. To review and evaluate the performance of probationary and permanent justices
20 and judges and issue evaluation reports.

21 ~~E To recommend to the President of the Navajo Nation the removal of probationary~~
22 ~~justices and judges prior to their permanent appointment.~~

23 ~~F. To recommend to the President the permanent appointment of probationary justices~~
24 ~~and judges.~~

25 ~~1. The President shall not appoint to a permanent position any justice or judge~~
26 ~~not recommended by the Judiciary Committee.~~

27 ~~2. The appointment of permanent justices and judges shall be confirmed by the~~
28 ~~Navajo Nation Council.~~

29 ~~G. To present directly to the Navajo Nation Council the issue of permanent~~
30 ~~appointment of any probationary justice or judge whom the Committee and the Chief~~

1 Justice have recommended for permanent appointment and which recommendation the
2 President of the Navajo Nation has failed to convey to the Navajo Nation Council within 60
3 days of receiving the recommendation.

4 H D. To recommend to the Navajo Nation Council the removal of permanent justices or
5 judges, pursuant to 11 N.N.C. § 240.

6 *[Subsequent subsections shall be appropriately redesignated.]*

7 * * * *

8
9 **Title 7. Courts and Procedure**

10 **Chapter 1. Definitions**

11 * * * *

12 **§ 104. Retired judge or justice and Former judge or justice defined**

13 A. The term “retired judge” and “retired justice” as used in this Title shall mean
14 retired Navajo Nation judges and retired Navajo Nation justices who previously held
15 appointed office as a Navajo Nation judge or justice but duly retired under applicable
16 laws prior to January 15, 2013.

17 B. The term “former judge” and “former justice” as used in this Title shall include
18 retired judges or justices as defined in Subsection A, as well as legal practitioners in good
19 standing with the Navajo Nation Bar Association who previously held elective office as a
20 Navajo Nation judge or Navajo Nation justice but are no longer in office due to non-
21 retention.

22 C. The term “former judge” and “former justice” as used in this Title shall not
23 include any judge or justice who was removed from office, recalled from office, or
24 resigned from office.

25 * * * *

26 **Title 7. Courts and Procedure**

27 **Chapter 3. Judicial Branch**

28 **Subchapter 3. District Courts**

29 **§ 251. Composition**

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A. The District Courts of the Navajo Nation shall consist of 17 judges recommended by the Judiciary Committee of the Navajo Nation Council, appointed by the President of the Navajo Nation, and confirmed by the Navajo Nation Council elected for a term of four years, pursuant to the qualifications set forth in the Navajo Election Code, 11 N.N.C. § 8. The total number of elected judicial positions as established by this Title may be expanded or reduced as deemed necessary by the Navajo Nation Council upon recommendation by the Judiciary Committee.

B. The District Court judges shall represent the following Judicial Districts of the Navajo Nation:

- 1. Alamo and Tóhajiilee 1 judge
- 2. Aneth 1 judge
- 3. Chinle 2 judges
- 4. Crownpoint 2 judges
- 5. Dilkon 1 judge
- 6. Kayenta 2 judge
- 7. Ramah 1 judge
- 8. Shiprock 2 judges
- 9. Tuba City 2 judges
- 10. Window Rock 3 judges

~~B C.~~ The District Courts and judges of the Navajo Nation shall be located in such Judicial Districts of the Navajo Nation as are developed by the Judicial Branch, approved by the Navajo Nation Council, upon recommendation by the Judiciary Committee, and provided for in the Navajo Nation operating budget , pursuant to 11 N.N.C. § 13.

* * * *

Title 7. Courts and Procedure

Chapter 3. Judicial Branch

Subchapter 4. Special Division of Window Rock District Court

* * * *

§ 292. Composition

1 A. The Special Division of the Window Rock District Court shall consist of three
2 judges, or ~~retired~~ former judges or ~~retired~~ former justices, who shall be assigned in such
3 manner and for such terms as is provided in this Section, for the purpose of appointing
4 special prosecutors pursuant to 2 N.N.C. §§ 2021-2024.

5 * * * *

6 C. The Chief Justice of the Navajo Nation shall designate and assign three judges or
7 ~~retired~~ former judges or ~~retired~~ former justices to the Special Division for each successive
8 two-year term, subject to confirmation by the Navajo Nation Council. At least two of the
9 judges shall be active ~~permanent~~ judges of District Courts of the Navajo Nation. The third
10 judge may be either an active ~~permanent~~ judge of the Navajo Nation or a ~~retired~~ former
11 judge or ~~retired~~ former justice of the Navajo Nation. Unless there are an insufficient
12 number of active ~~permanent~~ judges from at least two District Courts, not more than one
13 judge or ~~retired~~ former judge may be assigned to the Special Division from a particular
14 District (or preceding trial) Court. The Chief Justice shall designate one of the assigned
15 judges or justices to be the presiding judge of the Special Division.

16 * * * *

17 ~~G. Within five calendar days of the enactment of this Section, the Special Division shall~~
18 ~~be created pursuant to Subsection (C) of this Section.~~

19
20 **Title 7. Courts and Procedure**

21 **Chapter 3. Judicial Branch**

22 **Subchapter 5. Supreme Court**

23
24 **§ 301. Composition and location**

25 A. The Supreme Court of the Navajo Nation shall consist of ~~the Chief Justice of the~~
26 ~~Navajo Nation and two Associate~~ three Justices of the Supreme Court elected for a term of
27 four years, pursuant to the qualifications set forth in the Navajo Election Code, 11 N.N.C. §
28 8. By written administrative order issued by all three Supreme Court justices, the elected
29 justices shall select the Chief Justice of the Supreme Court for a corresponding term of four
30 years, as set forth in 7 N.N.C. § 371.

1 3. Navajo Nation group insurance shall be provided for Navajo Nation District
2 Court judges and their dependents, while in elective office. The Navajo Nation shall
3 pay a percent of the insurance premium as its contribution.

4 4. Each Navajo Nation District Court judge is a common law employee of the
5 Navajo Nation for federal employment tax purposes. The Controller of the Navajo
6 Nation shall make deduction in the proper amounts from the salaries of the judges for
7 federal income tax and social security income withholding.

8 B. Supreme Court justices.

9 1. Supreme Court associate justices shall be compensated by an annual salary of
10 ninety thousand dollars (\$90,000) per year. The Chief Justice shall be compensated by
11 an annual salary of one hundred thousand dollars (\$100,000) per year. Justices shall be
12 paid bi-weekly. A salary increase may be approved by two-thirds (2/3) vote of the full
13 Navajo Nation Council but shall not become effective unless ratified by two-thirds
14 (2/3) of all Navajo Nation Chapters within 30 days of approval by the Navajo Nation
15 Council. The provisions of this subsection shall not apply to travel reimbursements,
16 deferred compensation benefits, or any other benefits which are separate from the bi-
17 weekly base salary established in this Section.

18 2. Supreme Court justices, or their beneficiary in the event of death, are paid a
19 deferred compensation benefit when they leave office in good standing.

20 3. Navajo Nation group insurance shall be provided for Navajo Nation Supreme
21 Court justices and their dependents, while in elective office. The Navajo Nation shall
22 pay a percent of the insurance premium as its contribution.

23 4. Each Navajo Nation Supreme Court justice is a common law employee of the
24 Navajo Nation for federal employment tax purposes. The Controller of the Navajo
25 Nation shall make deduction in the proper amounts from the salaries of the justices for
26 federal income tax and social security income withholding.

27
28 **§ 352. Removal from office; recall**

29 ~~A. The Judiciary Committee of the Navajo Nation Council may recommend the~~
30 ~~removal of any Justice or Judge from office if the Judiciary Committee determines~~

1 ~~reasonable cause exists to believe the Justice or Judge has engaged in malfeasance or~~
2 ~~misfeasance in office, serious neglect of duty, or has become mentally or physically unable~~
3 ~~to perform the duties of office. The Chief Justice may recommend to the Judiciary~~
4 ~~Committee the removal of any Justice or Judge as provided for above. Only if the~~
5 ~~Judiciary Committee does not follow the Chief Justice's recommendation may the Chief~~
6 ~~Justice recommend such removal directly to the Navajo Nation Council.~~

7 ~~B. The Judiciary Committee of the Navajo Nation Council may recommend the~~
8 ~~removal of any Justice or Judge from office if the Judiciary Committee determines there is~~
9 ~~substantial evidence that the Justice or Judge willfully or negligently made significant~~
10 ~~misrepresentations or omissions about his or her qualifications on his or her application for~~
11 ~~the judicial position. The Chief Justice may recommend to the Judiciary Committee the~~
12 ~~removal of any Justice or Judge as provided for above. Only if the Judiciary Committee~~
13 ~~does not follow the Chief Justice's recommendation may the Chief Justice recommend such~~
14 ~~removal directly to the Navajo Nation Council.~~

15 ~~C. A recommendation for removal under Subsections (A) or (B) above shall be~~
16 ~~presented promptly to the Navajo Nation Council by proposed resolution, and the Justice or~~
17 ~~Judge sought to be removed from office shall be given an opportunity to appear before the~~
18 ~~Navajo Nation Council and present evidence in his or her own defense. The Navajo Nation~~
19 ~~Council is not bound by the formal Rules of Evidence in its considerations or deliberations.~~
20 ~~Thereafter such Justice or Judge may be removed from office by a two-thirds (2/3) vote of~~
21 ~~the full membership of the Navajo Nation Council.~~

22 ~~D. Documented and conclusive evidence that a Justice or Judge has been convicted of a~~
23 ~~felony in state or federal court since taking office, or that a Justice or Judge has been~~
24 ~~convicted of any tribal criminal offense which is also identified as a Major Crime in 18~~
25 ~~U.S.C. § 1153 since taking office, shall result in the removal of such Justice or Judge by~~
26 ~~resolution of the Judiciary Committee of the Navajo Nation Council.~~

27 A. Navajo Nation judges and justices are subject to removal, pursuant to 11 N.N.C. §
28 240, upon recommendation by the Judiciary Committee.

29 B. Navajo Nation judges and justices are subject to removal from office by election
30 recall, pursuant to 11 N.N.C. § 241 et seq.

1
2 **§ 353. Retirement; termination of participation in Retirement Plan**

3 A. ~~Definitions. The following definitions shall apply for purposes of this Section:~~

4 1. ~~Judiciary Committee means the Judiciary Committee of the Navajo Nation~~
5 ~~Council.~~

6 2. ~~Navajo Nation Judge as used in this Section shall include the Chief Justice of~~
7 ~~the Navajo Nation, all Associate Justices of the Navajo Nation Supreme Court, and all~~
8 ~~Trial Judges of the Navajo Nation District Courts and Family Courts.~~

9 3. ~~Judges' Retirement Plan means:~~

10 a. ~~Either duly approved and established provisions directly applicable to~~
11 ~~Judges contained within the Retirement Plan for Employees of the Navajo~~
12 ~~Nation and Participating Affiliates or its successor; or~~

13 b. ~~A duly approved and established Navajo Nation Judges' Retirement~~
14 ~~Plan document.~~

15 B A. ~~Eligibility.~~

16 1. ~~Judges and justices beginning service as elected officials after the effective~~
17 ~~date of this Section: after January 15, 2013 are not entitled to accrue employee~~
18 ~~retirement benefits as judges or justices, but are compensated as elected officials~~
19 ~~pursuant to 7 N.N.C. § 351.~~

20 a. ~~A Navajo Nation Judge beginning service after the effective date of~~
21 ~~this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may~~
22 ~~retire and receive retirement benefits only in accordance with the Judges'~~
23 ~~Retirement Plan and only after meeting the vesting, retirement age and other~~
24 ~~eligibility requirements of the Judges' Retirement Plan.~~

25 b. ~~The provisions of this Section specifically applicable to Navajo~~
26 ~~Nation Judges beginning service before the effective date of this Section are not~~
27 ~~applicable to Judges beginning service after the effective date of this Section.~~

28 2. ~~Judges beginning service before the effective date of this Section:~~

29 a. ~~The vesting, retirement age, and other eligibility requirements~~
30 ~~specifically identified in this Section as applicable to Navajo Nation Judges~~

1 beginning service before the effective date of this Section shall be incorporated
2 into and applied through the Judges' Retirement Plan.

3 b.

4 2. A Navajo Nation judge or justice beginning service with a confirmed
5 appointment before December 31, 2010 the effective date of this Section with a
6 permanent appointment pursuant to ~~7 N.N.C. § 355~~ may retire after having served a
7 total of eight or more years in office shall be entitled to receive any accrued retirement
8 benefits as may be authorized for the judge or justice by the judges' and justices'
9 retirement provisions in the Retirement Plan for Employees of the Navajo Nation and
10 Participating Affiliates upon retirement which shall occur no later than the conclusion
11 of his or her appointment term on January 14, 2013. A Navajo Nation Judge beginning
12 service before the effective date of this Section who retires before reaching the age of
13 55 years pursuant to Subsection (B), but not due to disability, shall not receive
14 retirement benefits until the Judge has reached the age of 55 years.

15 e. A Navajo Nation Judge beginning service before the effective date of
16 this Section who retires or resigns with less than a total of eight years in office
17 shall not be eligible for retirement benefits under this Section.

18 3. A Navajo Nation judge who intends to retire or justice shall compile all the
19 necessary paperwork and forward it to the Chief Justice. If the Chief Justice finds from
20 the paperwork that the Judge meets the requirement for retirement, the Chief Justice
21 shall give preliminary approval to the retirement request and forward the paperwork to
22 the Navajo Nation Retirement Program no later than January 14, 2013 for concurrence
23 review and processing of retirement benefits pursuant to the judges' and justices'
24 retirement provisions in the Retirement Plan for Employees of the Navajo Nation and
25 Participating Affiliates.

26 4. A Navajo Nation judge's or justice's total years of service for purposes of
27 calculating eligibility for retirement benefits shall begin with the date of confirmation
28 by the Navajo Nation Council and include all years served as a an appointed Navajo
29 Nation probationary Judge and as a permanent Judge judge or justice, or both.

30 C. Removal; effect on retirement benefits.

1 ~~1. The Navajo Nation Council may, upon recommendation of the Judiciary~~
2 ~~Committee, remove from office a permanent Navajo Nation Judge for inability to~~
3 ~~perform judicial duties due to permanent mental or physical disability. The Chief~~
4 ~~Justice shall recommend removal to the Judiciary Committee. A Navajo Nation Judge~~
5 ~~removed under Subsection (C) shall receive retirement benefits in accordance with the~~
6 ~~disability provisions of the Judges' Retirement Plan.~~

7 ~~2. A Navajo Nation Judge who has been removed from office for malfeasance,~~
8 ~~misfeasance, serious neglect of duty, or criminal conviction as set forth in 7 N.N.C. §~~
9 ~~352, shall be eligible for retirement benefits under this Section but shall not have the~~
10 ~~status of retired Judge.~~

11 ~~D. Permanent disability; eligibility.~~

12 ~~1. A Navajo Nation Judge may retire if the Judge has become permanently~~
13 ~~disabled from performing his or her duties of office. "Permanently disabled" means the~~
14 ~~permanent inability of the Judge, by reason of physical or mental incapacity, to perform~~
15 ~~any substantial part of his or her ordinary duties as a Navajo Nation Judge. A Navajo~~
16 ~~Nation Judge who retires under Subsection (D) shall receive retirement benefits in~~
17 ~~accordance with the disability provisions of the Judges' Retirement Plan.~~

18 ~~2. A Navajo Nation Judge who intends to retire under Subsection (D) shall~~
19 ~~compile all the necessary paperwork and forward it to the Chief Justice for review. The~~
20 ~~Chief Justice shall recommend to the Judiciary Committee whether the Judge is eligible~~
21 ~~to retire under Subsection (D). The Judiciary Committee shall recommend to the~~
22 ~~Retirement Plan Administration Committee or its successor whether the Judge is~~
23 ~~eligible to retire under Subsection (D). The Retirement Plan Administration Committee~~
24 ~~or its successor shall have final authority to determine whether a Navajo Nation Judge~~
25 ~~is eligible to retire under the disability provisions of the Retirement Plan.~~

26 ~~3. The Retirement Plan Administration Committee or its successor, with the~~
27 ~~concurrence of the Judiciary Committee, may develop nondiscriminatory procedures~~
28 ~~for evaluating the continuing disability of a Navajo Nation Judge retired under~~
29 ~~Subsection (D). The retirement benefits of a Navajo Nation Judge retired under~~
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1 ~~Subsection (D) shall be suspended for failure to comply with such procedures in a~~
2 ~~timely fashion or if the disability no longer meets the criteria of Subsection (D).~~

3 ~~4. The retirement benefits of a Navajo Nation Judge who retires under~~
4 ~~Subsection (D) shall be suspended during any time such Judge engages in the practice~~
5 ~~of law in any way, including the teaching of law.~~

6 ~~E. Benefit levels.~~

7 ~~1. Retirement benefits for Navajo Nation Judges beginning service after the~~
8 ~~effective date of this Section shall be established through the Judges' Retirement Plan~~
9 ~~document and administered through the Navajo Nation Retirement Program. The~~
10 ~~Judges' Retirement Plan may take into consideration the American Bar Association~~
11 ~~Standards relating to judicial retirement.~~

12 ~~2. Retirement benefits for Judges beginning service before the effective date of~~
13 ~~this Section shall be incorporated into the Judges' Retirement Plan document and~~
14 ~~administered through the Navajo Nation Retirement Program. Such benefits shall be~~
15 ~~equivalent to the Section 353 in effect during the Judge's service.~~

16 ~~3~~ 5. ~~A retired Navajo Nation Judge or justice who is receiving~~ receives
17 ~~retirement benefits pursuant to this Section shall not simultaneously receive salary,~~
18 ~~wages and/or stipends for work performed from those employers participating in the~~
19 ~~Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its~~
20 ~~successor.~~

21 ~~4. A Navajo Nation Judge's retirement benefits shall not be diminished except~~
22 ~~as specifically identified under Subsections (D) and (E).~~

23 ~~F. Pro Tempore service. The Chief Justice may recall a retired Navajo Nation Judge to~~
24 ~~service as a Navajo Nation Judge pro tempore. The retired Judge recalled to service shall~~
25 ~~be reimbursed only for reasonable expenses related to such service. A Navajo Nation~~
26 ~~Judge who has retired due to disability or has been removed pursuant to Subsection (C)~~
27 ~~shall not be eligible for recall to service.~~

28 ~~G. Plan document. The Judges' shall:~~

29 ~~1. Incorporate the applicable amended Subsections of Section 353;~~
30

1 2. ~~Incorporate provisions for the continued payment of retirement benefits~~
2 ~~which have vested or will vest under the former Section 353; and~~

3 3. ~~Include a Judges' retirement trust fund to pay judges their retirement benefits.~~

4 H. ~~Authority. The Budget and Finance Committee, upon positive recommendation of~~
5 ~~the Judiciary Committee and the Retirement Plan Administration Committee, shall have the~~
6 ~~authority to approve the initial Judges' Retirement Plan document and any subsequent~~
7 ~~amendments. This authority shall not be deemed to alter or amend the Retirement Plan~~
8 ~~Administration Committee's or the Navajo Nation Retirement Program's authority to~~
9 ~~administer the Judges' Retirement Plan or the Budget and Finance Committee's authority to~~
10 ~~administer the underlying trust fund.~~

11 I. ~~Effective dates. Except for amended Subsections (B), (C), (D) and (E), these~~
12 ~~amendments to 7 N.N.C. § 353 shall become effective upon enactment. Subsections (B),~~
13 ~~(C), (D) and (E) shall become effective after a final Navajo Nation Judges' Retirement Plan~~
14 ~~has been recommended by the Judiciary Committee and the Retirement Plan~~
15 ~~Administration Committee and approved by the Budget and Finance Committee and the~~
16 ~~Judges retirement trust fund fully funded by the Navajo Nation Council. For purposes of~~
17 ~~this Subsection, fully funded shall mean funded to a level sufficient to satisfy the funding~~
18 ~~requirements of the Employees Retirement Insurance Security Act¹ if such Act was~~
19 ~~applicable to the Judges Retirement Plan.~~

20 ¹29 U.S.C.A. § 1001 *et seq.*

21 B. Each affected appointed judge and justice participant shall resign or retire no later
22 than January 14, 2013.

23 C. The judges' and justices' retirement provisions in the Retirement Plan for Employees
24 of the Navajo Nation and Participating Affiliates shall terminate effective January 14, 2013.

25 D. Each affected appointed judge and justice shall be vested in his or her accrued
26 benefit upon retirement no later than January 14, 2013, as may be authorized by the judges'
27 and justices' retirement provisions in the Retirement Plan for Employees of the Navajo
28 Nation and Participating Affiliates, but only to the extent the Plan is funded.

29
30 **§ 354. Qualifications for judicial appointment Judges and Justices**

1 A. District Courts. The following standards and qualifications shall apply to all judicial
2 appointments to the District Courts of the Navajo Nation:

3 ~~1. Member of Navajo Nation and Age. An applicant shall be an enrolled~~
4 ~~member of the Navajo Nation and shall be over 30 years of age.~~

5 ~~2. Criminal Convictions. An applicant shall not have any felony or other~~
6 ~~conviction of an offense identified as a Major Crime in 18 U.S.C. § 1153 in any~~
7 ~~jurisdiction. An applicant shall not have any misdemeanor convictions in any~~
8 ~~jurisdiction within a five consecutive year period prior to the date the application is~~
9 ~~submitted.~~

10 ~~3. Education. Each applicant shall have earned, at a minimum, an Associate of~~
11 ~~Arts or Science degree from an accredited institution of higher education. An applicant~~
12 ~~who has earned a higher educational degree shall be preferred, with particular~~
13 ~~preference being given to a law degree (J.D. or LL.M.).~~

14 ~~4. Experience. Each applicant shall have at least four years direct work~~
15 ~~experience in a law related area and shall have a working knowledge of Navajo and~~
16 ~~applicable federal and state laws. Those applicants with experience working with the~~
17 ~~Navajo Nation Courts or with state and federal courts shall be preferred.~~

18 ~~5. Knowledge of Navajo Language, Culture and Tradition. Each applicant must~~
19 ~~be able to speak both Navajo and English, and have some practical knowledge of the~~
20 ~~fundamental laws of the Diné. The applicant must be able to demonstrate:~~

- 21 ~~a. An understanding of K'é, including the Diné clan system; and~~
22 ~~b. A basic understanding of traditional Navajo religious ceremonies; and~~
23 ~~c. An understanding of the traditional Navajo lifestyle.~~

24 ~~6. Health. Each applicant shall produce a current statement from a licensed~~
25 ~~physician indicating that the applicant is in good mental health.~~

26 ~~7. Driver's License. Each applicant shall possess a valid driver's license.~~

27 ~~8. No Substance Abuse or Addiction. In addition to the requirement of~~
28 ~~obtaining a medical statement pursuant to Subsection (A)(6) above, each applicant must~~
29 ~~attest that he or she does not abuse or have a harmful physical addiction to any mood~~
30 ~~altering substance.~~

1 9. ~~Writing Test.~~ Upon initial screening of applicants by the Judiciary
2 Committee, those applicants selected shall submit to a writing test that illustrates each
3 applicant's organizational, analytical and communicative legal writing abilities.

4 10. ~~Ethics.~~ Each applicant shall show that he or she has neither present nor past
5 conflicts of interests that give the appearance of partiality or bias in cases brought in the
6 Courts of the Navajo Nation. Each applicant must demonstrate a commitment to
7 judicial independence and an impartial background that will indicate neutrality and
8 fairness for proper decision making. An applicant shall not have been found in
9 violation of:

10 a. ~~The Navajo Nation Ethics in Government Law;~~

11 b. ~~Standards of ethics or professional conduct for lawyers in any~~
12 ~~jurisdiction; or~~

13 c. ~~Standards of ethics for judges or judicial codes of conduct in any~~
14 ~~jurisdiction;~~

15 within a five consecutive year period prior to the date the application is submitted.

16 11. ~~References.~~ Each applicant must be of good moral character and shall
17 submit a minimum of four current letters of reference specifically regarding his or her
18 application for judicial appointment. At least one letter of reference shall be from a
19 regular member in good standing with the Navajo Nation Bar Association. Such letters
20 shall outline the applicant's legal skills, motivation and employment performance, and
21 the applicant's character and capacity for independence, honesty and impartiality.

22 12. ~~Management Ability.~~ Each applicant shall possess managerial and
23 independent decision-making skills necessary for the efficient operation of a Court.
24 Information such as the applicant's record of supervising staff, coordinating budget and
25 personnel requirements, verbal communication and writing abilities shall be carefully
26 considered by the Judiciary Committee.

27 13. ~~Navajo Nation Bar Association.~~ Each applicant shall provide proof in his or
28 her application that he or she is presently a regular or inactive member in good standing
29 with the Navajo Nation Bar Association and shall maintain membership in good
30 standing throughout his or her judicial career.

1 ~~14. Removal from office. Navajo Nation probationary and permanent judges~~
2 ~~removed from office for any reason shall not be eligible for subsequent judicial~~
3 ~~appointment.~~

4 A. Qualifications for Navajo Nation District Court Judge Candidates and Judges are set
5 forth in the Navajo Election Code, 11 N.N.C. § 8(C).

6 ~~B. Supreme Court. The standards and qualifications applicable to judicial~~
7 ~~appointments to the District Courts of the Navajo Nation shall apply to all judicial~~
8 ~~appointments to the Supreme Court of the Navajo Nation with the following variations:~~

9 ~~1. Education. Each applicant for judicial appointment to the Supreme Court~~
10 ~~shall have earned, at a minimum, a four-year Bachelor's degree from an accredited~~
11 ~~institution of higher education. An applicant who has earned a J.D. or LL.M. shall be~~
12 ~~preferred.~~

13 ~~2. Judge Applicants. A sitting Navajo Nation District Court Judge applicant~~
14 ~~who meets all requirements for appointment to the Supreme Court shall be preferred, in~~
15 ~~accordance with the following:~~

16 ~~a. A Navajo Nation District Court Judge (permanent or probationary)~~
17 ~~beginning service before the effective date of this Section shall be eligible for~~
18 ~~appointment to the Supreme Court irrespective of the increased minimum~~
19 ~~educational qualifications for either District Court Judges or Supreme Court~~
20 ~~Justices enumerated in this Section. Provided, however, that such District Court~~
21 ~~Judge applicant shall meet all other minimum qualifications as set forth in this~~
22 ~~Section.~~

23 ~~b. A Navajo Nation District Court Judge (permanent or probationary)~~
24 ~~beginning service after the effective date of this Section shall not be eligible for~~
25 ~~appointment to the Supreme Court unless he or she meets all minimum~~
26 ~~qualifications for Supreme Court Justices as set forth in this Section.~~

27 ~~C. These minimum qualifications and educational requirements shall not affect the~~
28 ~~status of probationary or permanent Justices or Judges beginning service before the~~
29 ~~effective date of this Section.~~

30

1 ~~D. Each applicant shall be objectively evaluated, selected, appointed and confirmed~~
2 ~~based solely on their qualifications for the particular judicial position at issue and without~~
3 ~~regard to political affiliation or association.~~

4 B. Qualifications for Navajo Nation Supreme Court Justice Candidates and Justices are
5 set forth in the Navajo Election Code, 11 N.N.C. § 8(D).

6
7 **§ 355. Appointment; ~~t~~Term of office**

8 ~~A. The President of the Navajo Nation shall appoint the Chief Justice, Associate~~
9 ~~Justices, and District Court Judges with confirmation by the Navajo Nation Council from~~
10 ~~among those applicants recommended by the Judiciary Committee of the Navajo Nation~~
11 ~~Council.~~

12 ~~— B. The Chief Justice and the Associate Justices of the Supreme Court, and all District~~
13 ~~Court Judges shall be appointed for a probationary period of two years and upon permanent~~
14 ~~appointment shall serve thereafter during good behavior.~~

15 ~~— C. A probationary Chief Justice, Associate Justice or Judge shall not be recommended~~
16 ~~for permanent appointment unless he or she has successfully completed a course of training~~
17 ~~accredited for judges and he or she has received a satisfactory performance evaluation from~~
18 ~~the Chief Justice and the Judiciary Committee of the Navajo Nation Council at the~~
19 ~~conclusion of the probationary Justice's or Judge's two-year probationary term.~~

20 ~~— D. At any time during the probationary term of any Chief Justice, Associate Justice or~~
21 ~~Judge, the Judiciary Committee may recommend to the President of the Navajo Nation that~~
22 ~~the probationary Justice or Judge be removed from office. The President of the Navajo~~
23 ~~Nation, pursuant to such recommendation, shall remove such probationary Justice or Judge~~
24 ~~from office. Any Justice or Judge so removed shall not be eligible for the status of retired~~
25 ~~Judge, shall not be eligible for reappointment as a Justice or Judge, and shall not be called~~
26 ~~to sit in any case pursuant to 7 N.N.C. § 353(F).~~

27 ~~— E. At the conclusion of the two-year probationary term, the Judiciary Committee shall~~
28 ~~review the record and qualifications of each probationary Justice or Judge and shall~~
29 ~~recommend to the President whether or not each probationary Justice or Judge has~~
30 ~~satisfactorily completed the probationary term and should be appointed to a permanent~~

1 ~~position. The President shall not appoint to a permanent position any probationary Justice~~
2 ~~or Judge not recommended by the Judiciary Committee. The appointments shall be~~
3 ~~submitted to the Navajo Nation Council for confirmation.~~

4 A. Judges and justices previously appointed shall conclude their terms as judges and
5 justices by resignation or retirement no later than January 14, 2013.

6 B. Judges and justices shall be elected officials commencing with the 2012 Chapter
7 Elections for four year terms. Elected judges and justices shall take an oath of office
8 administered by the Chairperson of the Judiciary Committee of the Navajo Nation Council
9 and begin their terms in office on Tuesday, January 15, 2013; and on the second Tuesday
10 after the first Monday of January following each election for judges and justices thereafter.

11 C. Elected judges and justices shall be subject to retention elections every four years
12 without term limitations, subject to maintaining all qualifications and compliance with
13 Navajo Nation law, including but not limited to the Navajo Election Code, 11 N.N.C. § 1 *et*
14 *seq.*

15 D. Any judge or justice not reelected in a retention election shall immediately make
16 appropriate arrangements to cease and cease his or her service as a judge or justice. The
17 affected judge or justice position shall be subject to a special election to fill the position
18 pursuant to the Navajo Election Code, 11 N.N.C. § 1 *et seq.* and applicable policies and
19 procedures promulgated thereto.

20
21 **§ 356. Probationary term [Reserved]**

22 ~~A. The probationary term for District Court Judges, the Chief Justice and Associate~~
23 ~~Justices shall be two years from the date of confirmation by the Navajo Nation Council.~~

24 ~~B. A permanent District Court Judge subsequently appointed as Chief Justice or~~
25 ~~Associate Justice shall also be subject to a two-year probationary term as described in~~
26 ~~Subsection (A) of this Section.~~

27
28 **§ 357. Evaluation**

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unable to perform the duties of the Chief Justice. The Chief Justice shall delegate to the acting Chief Justice some or all of the ~~powers of the office~~ duties of the Chief Justice. The Chief Justice may at any time change his or her written designation of the Associate Justice empowered to act as Acting Chief Justice. The Acting Chief Justice shall serve without additional salary compensation, unless duly selected as Chief Justice.

~~B. The Chief Justice may designate in writing one permanent District Court Judge to carry out the administrative duties of the Office of Chief Justice whenever the Chief Justice and both Associate Justices are absent from the territorial jurisdiction of the Navajo Nation, ill or otherwise unable to perform the duties of the Chief Justice. The designation shall expire at a time designated by the Chief Justice or whenever withdrawn in a separate writing by the Chief Justice and, in any event, shall automatically expire in five working days after the date of designation unless renewed in writing by the Chief Justice.~~

* * * *

§ 374. Oath of Office

A. The Chief Justice of the Navajo Nation shall administer the oath of office to the President, Vice President, Navajo Nation Council Delegates, and all other elected officials as ~~provided by law~~ prescribed by 11 N.N.C. § 6. The Chief Justice may designate another Justice or Judge of the Navajo Nation to administer the oath. In the absence of a selected Chief Justice, any elected Justice of the Supreme Court shall administer the oath as described above.

B. The Chairperson of the Judiciary Committee of the Navajo Nation Council shall administer the oath of office to the elected Supreme Court Justices as prescribed by 11 N.N.C. § 6.

* * * *

Title 11. Elections
Chapter 1. Navajo Election Code of 1990
Subchapter 1. General Provisions

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§ 2. Definitions

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E. “Chapter/Judicial elections” – Elections held for the purpose of electing Chapter officers, other elected officials, school board members, Navajo Nation District Court judges, Navajo Nation Supreme Court justices, and/or for voting on a referendum.

* * * *

N. “Elected Officials” - Those officials holding offices of the President of the Navajo Nation, Vice-President of the Navajo Nation, Delegate of the Navajo Nation Council, Navajo Nation District Court Judge, Navajo Nation Supreme Court Justice, Chapter officers, other elected officials, the elected members of the Navajo Nation Board of Education and school board members that have been elected and appointed pursuant to this Election Code.

* * * *

W. “Judge” – Navajo Nation District Court Judge.

X. “Justice” – Navajo Nation Supreme Court Justice.

* * * *

~~Z~~ BB. “Navajo Nation Officials” - The President of the Navajo Nation, Vice-President of the Navajo Nation, ~~and~~ Delegates of the Navajo Nation Council, Navajo Nation District Court Judges, and Navajo Nation Supreme Court Justices.

* * * *

~~BB~~ DD. “Officials” – As used in Subchapter 13 hereof this term is used to designate those holding the Offices of President of the Navajo Nation, Vice President of the Navajo Nation, Delegate of the Navajo Nation Council, Navajo Nation District Court Judge, Navajo Nation Supreme Court Justice, chapter officers, other elected officials, and school board members.

* * * *

~~H~~ KK. “Special elections” – Elections called by the Board in the event of a sufficient recall or referendum petition, or to fill a Judicial vacancy created following a failed Judicial retention election, or to fill a vacancy in accord with this Title.

[All subsections will be appropriately redesignated in alphabetical order.]

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§ 3. Elections; election dates

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B. Chapter/Judicial elections shall be held on the first Tuesday of November 2004 and every fourth year thereafter on the Tuesday after the first Monday in November.

C. Primary elections shall be held on the first Tuesday which precedes the date of the general election or chapter/judicial election by a minimum of 90 days.

* * * *

§ 6. Terms of office; oath

A. The term of office of all offices filled by the general and/or chapter/judicial elections shall be four years. The first half of the term of office shall be the first 24 months following the oath of office for that position. The second half of the term of office shall be the remaining term prior to the next oath of office for that position.

* * * *

C. Candidates elected to chapter offices in chapter/judicial elections shall be installed in office upon taking the oath of office, which shall be administered at the direction of the Board during the first week following the first Saturday in January, and their predecessors term of office shall expire upon their installation.

* * * *

F. At each Chapter/Judicial election for judges and justices, all persons elected as District Court Judges and Supreme Court Justices shall be installed in office at noon on the second Tuesday after the first Monday of January following their election, and their predecessors' terms of office shall expire upon their installation in office.

* * * *

§ 8. Qualifications for office

* * * *

C. Qualifications for Navajo Nation District Court Judge Candidates and Judges:

1 1. Shall be an enrolled member of the Navajo Nation; shall be a registered voter; and
2 shall be over 30 years of age by the date of the election.

3 2. Shall not have any felony conviction in any jurisdiction. Shall not have any
4 misdemeanor convictions in any jurisdiction within a five consecutive year period prior to
5 the date of filing the candidate application.

6 3. Shall have earned, at a minimum, an Associate of Arts or Science degree from an
7 accredited institution of higher education.

8 4. Shall be able to speak both Navajo and English; and shall be able to read and write in
9 English.

10 5. Shall possess a valid driver's license.

11 6. Shall not have present or past conflicts of interest that give the appearance of
12 partiality or bias in cases brought in the Courts of the Navajo Nation. Shall have
13 unswerving loyalty to the Navajo Nation, must be competent and capable of upholding the
14 oath of office, have a commitment to judicial independence and an impartial background
15 that will indicate neutrality and fairness for proper decision making.

16 7. Shall not have been found in violation of: the Navajo Nation Ethics in Government
17 Law; Standards of ethics or professional conduct for lawyers in any jurisdiction; or
18 Standards of ethics for judges or judicial codes of conduct in any jurisdiction; within a five
19 consecutive year period prior to the date of filing the candidate application.

20 8. Shall be a member in good standing with the Navajo Nation Bar Association for a
21 period of five years prior to the date of filing of the candidate application, and shall
22 maintain membership in good standing throughout his or her judicial term.

23 9. Shall not have been previously removed from judicial office for any reason.

24 10. Shall not have been indicted by a federal grand jury at the time of filing of the
25 candidate application. Any candidate for Navajo Nation District Court Judge who is
26 indicted by a federal grand jury subsequent to the filing of the candidate application shall
27 be disqualified or removed from office.

28 11. Shall not, if elected, be in the permanent employment of the Navajo Nation, United
29 States or any state, county or subdivision thereof; nor be an elected official of United States
30 or any state, county or subdivision thereof; nor be an elected official of any other elective

1 office of the Navajo Nation, including chapter and school board positions. Shall resign
2 from any of the employment or elective offices described above before taking the oath of
3 office.

4 12. Shall not, if elected, engage in the private practice of law, or be in employment of
5 any kind, for self or others, during the term of elective office.

6 13. Failure to maintain any qualification enumerated herein throughout the term of
7 elective office shall result in the disqualification and removal of the District Court Judge.

8 D. Qualifications for Navajo Nation Supreme Court Justice Candidates and Justices:

9 1. Shall be an enrolled member of the Navajo Nation; shall be a registered voter; and
10 shall be over 30 years of age by the date of the election.

11 2. Shall not have any felony conviction in any jurisdiction. Shall not have any
12 misdemeanor convictions in any jurisdiction within a five consecutive year period prior
13 to the date of filing the candidate application.

14 3. Shall have earned, at a minimum, a Juris Doctor degree from an accredited
15 school of law.

16 4. Shall be able to speak both Navajo and English; and shall be able to read and
17 write in English.

18 5. Shall possess a valid driver's license.

19 6. Shall not have present or past conflicts of interest that give the appearance of
20 partiality or bias in cases brought in the Courts of the Navajo Nation. Shall have
21 unswerving loyalty to the Navajo Nation, must be competent and capable of upholding
22 the oath of office, have a commitment to judicial independence and an impartial
23 background that will indicate neutrality and fairness for proper decision making.

24 7. Shall not have been found in violation of: the Navajo Nation Ethics in
25 Government Law; Standards of ethics or professional conduct for lawyers in any
26 jurisdiction; or Standards of ethics for judges or judicial codes of conduct in any
27 jurisdiction; within a five consecutive year period prior to the date of filing the
28 candidate application.

29 8. Shall be a state-licensed attorney; shall be a member in good standing with
30 the Navajo Nation Bar Association for a period of 10 years prior to the date of filing of

1 the candidate application; and shall maintain such license and bar membership in good
2 standing throughout his or her judicial term.

3 9. Shall not have been previously removed from judicial office for any reason.

4 10. Shall not have been indicted by a federal grand jury at the time of filing of
5 the candidate application. Any candidate for Navajo Nation Supreme Court Justice
6 who is indicted by a federal grand jury subsequent to the filing of the candidate
7 application shall be disqualified or removed from office.

8 11. Shall not, if elected, be in the permanent employment of the Navajo Nation,
9 United States or any state, county or subdivision thereof; nor be an elected official of
10 United States or any state, county or subdivision thereof; nor be an elected official of
11 any other elective office of the Navajo Nation, including chapter and school board
12 positions. Shall resign from any of the employment or elective offices described above
13 before taking the oath of office.

14 12. Shall not, if elected, engage in the private practice of law, or be in
15 employment of any kind, for self or others, during the term of elective office.

16 13. Failure to maintain any qualification enumerated herein throughout the term of
17 elective office shall result in the disqualification and removal of the Supreme Court Justice.

18 € E. Qualifications for Chapter Officers:

19 * * * *

20 Ð F. Qualifications for Other Elected Officials:

21 * * * *

22
23 **§ 13. Election precincts for judges and justices elections**

24 A. District Court Judges.

25 1. On or before the first Monday of November 2011, and every four years
26 thereafter, the Navajo Nation Council shall establish the election precincts for each
27 Judicial District of the Navajo Nation, which shall, upon establishment, constitute the
28 Judicial Districts of the Navajo Nation.

29 2. The District Court judges shall be elected from the respective Judicial
30 Districts at the election precincts established by the Navajo Nation Council at

1 Chapter/Judicial elections for a term of four years beginning with the 2012
2 Chapter/Judicial elections.

3 3. There shall initially be 17 District Court judges who shall represent the
4 following Judicial Districts of the Navajo Nation:

5	<u>Alamo District and Tóhajiilee District</u>	<u>1 judge</u>
6	<u>Aneth</u>	<u>1 judge</u>
7	<u>Chinle</u>	<u>2 judges</u>
8	<u>Crownpoint</u>	<u>2 judges</u>
9	<u>Dilkon</u>	<u>1 judge</u>
10	<u>Kayenta</u>	<u>2 judge</u>
11	<u>Ramah</u>	<u>1 judge</u>
12	<u>Shiprock</u>	<u>2 judges</u>
13	<u>Tuba City</u>	<u>2 judges</u>
14	<u>Window Rock</u>	<u>3 judges</u>

15 4. The number and location of Judicial Districts, District Court Judges and
16 election precincts shall be approved by the Navajo Nation Council, upon
17 recommendation by the Judiciary Committee.

18 B. Supreme Court Justices.

19 The Supreme Court of the Navajo Nation shall consist of three justices elected at-large
20 for the entire Navajo Nation in the Chapter/Judicial election for a term of four years
21 beginning with the 2012 Chapter/Judicial election.

22 * * * *

23 **Title 11. Elections**

24 **Chapter 1. Navajo Election Code of 1990**

25 **Subchapter 2. Filing for Elections**

26
27 **§ 24. Challenges; appeals**

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29 G. The decision of the Office of Hearings and Appeals shall be issued to the party
30 initiating the challenge and the candidate within 10 days of the hearing. The decision of

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the Office of Hearings and Appeals shall be final for Judge and Justice election candidates and/or parties without appeal to the Supreme Court, but subject to reconsideration by the Office of Hearings and Appeals. For non-judge and non-justice election matters, Appeal may be made by either party to the Navajo Nation Supreme Court within 10 days of the date of decision. The Supreme Court shall review the appeal no later than 15 days from the date of filing. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

* * * *

§ 26. Filing Fee

A. Candidates shall remit a filing fee pursuant to the schedule set forth below at the time they file their candidate application:

President.....	\$1,500.00
Vice-President.....	\$1,500.00
<u>Supreme Court Justice</u>	<u>\$1,500.00</u>
<u>District Court Judge</u>	<u>\$1,000.00</u>
Navajo Nation Council Delegate.....	\$500.00
Chapter Officers.....	\$200.00
Other Officials.....	\$200.00
School Board Members.....	\$200.00
Kayenta Township Commission.....	\$200.00
Navajo Board of Election Supervisors.....	\$200.00
Board of Education (elected positions)....	\$200.00

* * * *

Title 11. Elections
Chapter 1. Navajo Election Code of 1990
Subchapter 3. Primary Election

§ 41. Primary elections; selection of candidates

1 A. The primary election ballots for each precinct shall list the candidates for the
2 offices of the President of the Navajo Nation, Navajo Nation Council Delegates, District
3 Court Judges, Supreme Court Justices, Chapter Offices, and Other Elected Offices and
4 School Board Members.

5 * * * *

6 F. In each election precinct represented in the Judicial District by one judge, the two
7 candidates receiving the highest number of votes in the primary election shall be the
8 candidates for judge in the chapter/judicial election. In each election precinct represented
9 in the Judicial District by two judges, the four candidates receiving the highest number of
10 votes in the primary election shall be the candidates for judge in the chapter/judicial
11 election. In each election precinct represented in the Judicial District by three judges, the
12 six candidates for receiving the highest number of votes in the primary election shall be
13 candidates for judge in the chapter/judicial election. In each election precinct represented
14 in the Judicial District by four judges, the eight candidates for receiving the highest
15 number of votes in the primary election shall be candidates for judge in the
16 chapter/judicial election.

17 G. The six primary election candidates receiving the highest number of votes Navajo
18 Nation-wide in the primary election for Supreme Court Justices shall be candidates for
19 the three Supreme Court Justice positions in the chapter/judicial election.

20 F H. The Board shall determine by regulations the number of votes a voter may cast
21 for each of the above offices and positions in the primary and general, or chapter/judicial
22 elections.

23 * * * *

24 **Title 11. Elections**

25 **Chapter 1. Navajo Election Code of 1990**

26 **Subchapter 9. Appointments**

27
28 **§ 161. Appointments**

29 A. With the exception of a vacancy resulting from recall or involving the President or
30 Vice President, or involving a Judge or Justice, and subject to certification by the Navajo

1 Election Administration, when a vacancy occurs during the second half of an elective
2 term of office, the remaining term shall be filled by appointment as follows:

3 * * * *

4 9. Whenever a vacancy occurs during the first or second half of a District
5 Court Judge's term of office or Supreme Court Justice's term of office, the remaining
6 term of the vacant office shall be filled pursuant to the special election provisions of
7 this Election Code.

8 * * * *

9 **Title 11. Elections**

10 **Chapter 1. Navajo Election Code of 1990**

11 **Subchapter 11. Campaign Expenses; Contributions**

12 * * * *

13 **§ 205. Limitation on expenditure by or on behalf of candidates; radio or television**
14 **time**

15 A. The following sums shall be the maximum amounts for both the primary and
16 general elections combined which may be expended by or on behalf of any candidate in a
17 primary and general, or special recall or referendum election. When anything of value
18 other than money is expended or used by or on behalf of any candidate, it shall be
19 considered as equivalent to money as its fair cash value. Necessary personal travel or
20 subsistence expenses of candidate and provided by candidate shall not be included in the
21 limitation and need not be reported.

22 1. For the Office of the President and Vice-President (combined sum), and
23 each Supreme Court Justice, one dollar and fifty cents (\$1.50) for each registered
24 voter.

25 2. For the offices of Delegate, Chapter Officer, District Court Judges, Other
26 Elected Officials and School Board members, four dollars (\$4.00) for each registered
27 voter within the election precinct.

28 * * * *

29 **Title 11. Elections**
30

1 **Chapter 1. Navajo Election Code of 1990**

2 **Subchapter 13. Removal of Officials; Placement of**
3 **Officials on Administrative Leave; Recall; Filling Vacancy**

4
5 **§ 240. Removal and placement on administrative leave**

6 A. The President, Vice-President, District Court Judges, Supreme Court Justices, and
7 Delegates to the Navajo Nation Council are subject to removal for just cause.

8 1. Just cause includes, but shall not be necessarily limited to:

9 a. Insanity, when judicially or mentally determined.

10 b. Conviction by any court of any felony.

11 c. Council members failing to attend Council meetings as required by
12 law.

13 d. President or Vice-President absent for three consecutive months
14 without permission of the Navajo Nation Council.

15 e. Habitual indulgence in alcoholic beverages.

16 f. Conviction of any misdemeanor involving deceit, untruthfulness,
17 and dishonesty, including but not limited to extortion, embezzlement, bribery,
18 perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or
19 misuse of Navajo Nation funds and property, and crimes involving the welfare
20 of children, child abuse, child neglect, aggravated assault and aggravated
21 battery.

22 g. Breach of fiduciary trust duties to the Navajo People.

23 h. Malfeasance or misfeasance of office.

24 2. Such official can be removed by at least two-thirds (2/3) vote of the Navajo
25 Nation Council.

26 * * * *

27 D. The Navajo Election Administration shall, upon notice and opportunity for
28 response, remove school board members, judges or justices no longer possessing the
29 necessary qualifications for office. Regarding his or her removal, an individual may
30

1 within 10 calendar days file with the Office of Hearings and Appeals a statement of
2 grievance pursuant to 11 N.N.C. § 341.

3
4 **§ 241. Officials subject to recall; recall affidavits; recall petition**

5 A. All elected officials may be removed from office if sixty percent of the registered
6 voters who voted in the last election for the same office in question file a petition seeking
7 the official's removal.

8 B. Any five or more registered voters may begin recall by filing a notarized
9 affidavit constituting themselves as a petitioner's committee which shall be responsible
10 for circulating and filing a recall petition. For recall of an elected official, ~~President,~~
11 ~~Vice President, Delegate, Chapter Officer, Other Elected Official, or school board~~
12 ~~member~~, members of the petitioners' committee shall be registered voters of the Chapter
13 or Chapters, which are represented by the elected official. A single petition is required
14 for each elected official to be removed.

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16
17 **§ 243. Petition challenges; hearings**

18 * * * *

19 G. The hearing decision shall be certified to the party or parties initiating the
20 challenge and the committee within 10 days of the hearing. The decision of the Office of
21 Hearings and Appeals shall be final for judge and justice recalls without appeal to the
22 Supreme Court, but subject to reconsideration by the Office of Hearings and Appeals. For
23 non-judge or non-justice recall matters, Appeal may be made by either the committee or
24 the party or parties initiating the challenge to the Navajo Nation Supreme Court within 10
25 days of the date of decision. A transcript of the hearing shall be filed within 30 days of
26 the filing of Notice of Appeal. The Supreme Court shall review the appeal no later than
27 30 days from the date of filing of the transcript. Review by the Supreme Court shall be
28 limited to: (1) the sufficiency of the recall petition, exclusive of the ground or grounds of
29 the petition; and (2) whether or not the decision of the Office of Hearings and Appeals is
30 supported by sufficient evidence.

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§ 244. Special recall elections; resignation; ballot

A. When a petition is certified sufficient by the Navajo Election Administration or in the event of a challenge, the Office of Hearings and Appeals' decision is sustained by the Navajo Nation Supreme Court, or other final decision, the Administration shall set a date for the special recall election and shall notify the committee and the official whose recall is sought that the petition has been certified and that it has set the date for a special recall election to be held not less than 30 days from the date of final certification. If a general or chapter/judicial election is set within 90 days of date the petition is finally certified, the special recall election shall be held during the general or chapter/judicial election.

* * * *

Title 11. Elections

Chapter 1. Navajo Election Code of 1990

Subchapter 18. Administrative Election Code Complaints and Hearings

§ 341. Office of Hearings and Appeals

A. The Office of Hearings and Appeals shall have the authority to implement procedures in resolving disputes pertaining to elections as follows:

* * * *

4. A party who wishes to appeal from a decision of the Office of Hearings and Appeals must file a Notice of Appeal with the Supreme Court of the Navajo Nation within 10 days after the decision is made. Provided, that the decision of the Office of Hearings and Appeals shall be final for all judge and justice election matters without appeal to the Supreme Court, but subject to reconsideration by the Office of Hearings and Appeals. For appeals of non-judge or non-justice election decisions of the Office of Hearings and Appeals, Rreview by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

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Section Four. Vote Requirement

This referendum measure shall pass if a majority of all registered voters who cast a vote, vote in favor of the referendum measure.

Section Five. Effective Date

A. If approved by referendum vote and duly certified by the Navajo Nation Board of Election Supervisors, these amendments to Titles Two, Seven and Eleven of the Navajo Nation Code shall become effective and applicable to the preparation and election of Navajo Nation District Court Judges and Supreme Court Justice in the 2012 Chapter/Judicial Election process.

B. If approved by referendum vote, presently appointed District Court Judges and Supreme Court Justices shall continue to hold their respective appointed judicial offices until the January 15, 2013 administration of the oath of office to the Judges and Justices elected, in accord with the provisions of these amendments.

C. If approved by referendum vote, presently appointed District Court Judges and Supreme Court Justices may run as candidates for the elective positions of District Court Judges and Supreme Court Justice, subject to the provisions of applicable law, including but not limited to the provisions of these amendments.

Section Six. Codification

If approved by referendum vote and duly certified by the Navajo Nation Board of Election Supervisors, the provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

Section Seven. Savings Clause

Should any provision of the amendments approved by this referendum measure be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of the legislation which are not determined invalid shall remain the law of the Navajo Nation.

LEGISLATIVE SUMMARY SHEET

Tracking No. 0359-10

DATE: June 16, 2010

TITLE OF RESOLUTION: Proposed Navajo Nation Council Resolution:

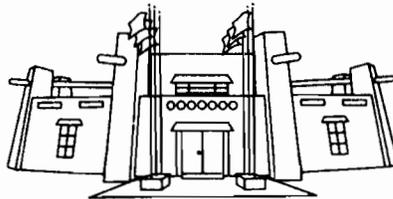
RELATING TO JUDICIARY; APPROVING THE JUDICIAL ELECTIONS REFERENDUM ACT OF 2010; REFERRING A REFERENDUM MEASURE TO THE NOVEMBER 2, 2010 NAVAJO NATION GENERAL ELECTION BALLOT WITH A QUESTION WHETHER TO AMEND TITLES 2, 7 AND 11 OF THE NAVAJO NATION CODE TO PROVIDE FOR THE ELECTION OF NAVAJO NATION DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES

PURPOSE:

To approve the Judicial Elections Referendum Act of 2010; refer a referendum measure to the November 2, 2010 Navajo Nation General Election ballot with a question whether to amend Titles 2, 7 and 11 of the Navajo Nation Code to provide for the election of Navajo Nation District Court judges and Supreme Court justices.

This written summary is provided in accord with Navajo Nation Council Rules of Order, Rule 11(A), or Standing Committee Rules of Order, Rule 12, on the resolution as drafted by the Office of Legislative Counsel. 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.

LAWRENCE T. MORGAN
Speaker of the Navajo Nation Council



June 17, 2010

MEMORANDUM

TO : Hon. Kee Allen Begay, Jr., *Chairperson*
Judiciary Committee

FROM : 
Hon. Lawrence T. Morgan, *Speaker*
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 Judiciary Committee of the Navajo Nation Council:

Legislation No. 0359-10

An Action

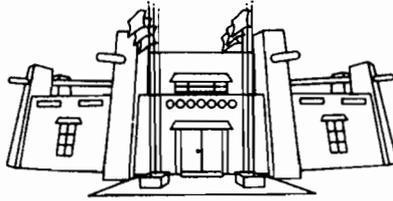
Relating to Judiciary; Approving the Judicial Elections Referendum Act of 2010; referring a Referendum Measure to the November 2, 2010 Navajo Nation General Election Ballot With a Question Whether to Amend Titles 2, 7, and 11 of the Navajo Nation Code to Provide for the Election of Navajo Nation District Court Judges and Supreme Court Justices.

As the Committee assigned to consider the legislation, Legislation No. 0359-10 must be placed on the Judiciary Committee's agenda for final consideration.

ATTACHMENT: Legislation No. 0359-10

xc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Denetsosie, *Attorney General*
Mark Grant, *Controller*
Hon. Thomas Walker, Jr., *Council Delegate (Prime- Sponsor)*
File

LAWRENCE T. MORGAN
Speaker of the Navajo Nation Council



June 17, 2010

MEMORANDUM

TO : Hon. Kee Allen Begay, Jr., *Chairperson*
Judiciary Committee
Hon. Francis Redhouse, *Chairperson*
Ethics & Rules Committee
Hon. *Members*
Navajo Nation Council

FROM : 
Hon. Lawrence T. Morgan, *Speaker*
21st 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 Judiciary Committee, Ethics & Rules Committee's agenda at the next regular meeting. The Navajo Nation Council will consider for final adoption:

Legislation No. 0359-10

An Action

Relating to Judiciary; Approving the Judicial Elections Referendum Act of 2010; referring a Referendum Measure to the November 2, 2010 Navajo Nation General Election Ballot With A Question Whether to Amend Titles 2, 7, and 11 of the Navajo Nation Code to Provide for the Election of Navajo Nation District Court Judges and Supreme Court Justices.

As the Committee assigned to consider the legislation, Legislation No. 0359-10 must be placed on the Judiciary Committee and the Ethics & Rules Committee's agendas at the next regular meeting. Upon consideration by the Ethics & Rules Committee, the Navajo Nation Council will consider for final adoption.

ATTACHMENT: Legislation No. 0359-10
xc: Hon. Joe Shirley, Jr., *President*
The Navajo Nation
Louis Denetsosie, *Attorney General*
Mark Grant, *Controller*
Hon. Thomas Walker, *Council Delegate (Prime Sponsor)*
File