



The 21st Navajo Nation Council

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FOR IMMEDIATE RELEASE

Judiciary Committee votes against permanent appointment for probationary Justice Shirley

WINDOW ROCK, Ariz. – In a narrow vote of 4-3, the Judiciary Committee voted today against the permanent appointment of probationary Associate Justice Eleanor Shirley. The committee's vote means that Justice Shirley will be removed from the bench upon the adoption of a resolution sponsored by Honorable Kee Allen Begay.

Honorable Begay, chairman for the Judiciary Committee, said the committee voted against Justice Shirley's appointment as a result of various factors that the committee felt was important to the Navajo judiciary, despite favorable recommendations for permanent appointment. The committee identified Shirley's dependency on Chief Justice Herb Yazzie, lack of dissenting opinions, ill preparation and the failure of the Navajo Nation Bar Association to provide sufficient, proper information regarding the evaluation of judges as undermining reasons.

"The committee based its decision on several factors," Begay said. "One of the main concerns was the way Honorable Justice Shirley answered our questions, she lacked demeanor and poise and her responses gave us a good indication of how she exercises her power from the bench. She was defensive to our inquiries. The other concern was the Chief Justice not providing any updated evaluations of his associate justices."

In mid-August, Chief Justice Herb Yazzie attempted to convince the committee to surpass the legislative process for recommending Justice Shirley for permanent appointment, as set forth in Title 7 of the Navajo Nation Code.

"There was no updated two-year evaluation from the Chief Justice regarding the associated justices under review," Begay said. "The only thing that was brought to the committee was the quarterly evaluation. The legislative process for recommending a judge or justice consists of a two-year probationary evaluation, which the committee failed to receive."

Another factor the committee realized during the performance evaluation was the fact that Justice Shirley failed to provide samples of her own work, including opinions, orders, and decision making, which was indicative of her dependence on the Chief Justice.

"The content of Honorable Justice Shirley's recommendation was over a two year period and during her evaluation today she did not exhibit any of those characteristics," Begay said. "When asked about her own legal opinions, she responded that opinions and orders of the Supreme Court are based on consensus. She never responded collectively of why there was never a dissenting opinion of the past two years on the bench."

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Chief Justice Herb Yazzie, who provided oral testimony in favor of Justice Shirley's permanent appointment, said the high court had issued only one dissenting opinion in the past, which is strong indication of how the high court strives for consensus before making a decision.

Honorable Ernest Yazzie, who made the motion to deny permanent appointment, disagreed.

"Honorable Justice Shirley's job history as a probationary judge was satisfactory, but her testimony today revealed that she relied too much on precedence and weighed her decisions according to her boss, Chief Justice Yazzie," added Ernest Yazzie. "In order for the Navajo people to seek justice, we need judges and justices that are accountable to upholding public trust and a justice with an independent mind."

For the second time, the committee was disappointed in the presentation of the Navajo Nation Bar Association, a non-profit organization that regulates the practice of law on the Navajo Nation.

"It is the NNBA's behavior not to be involved in the evaluation process," said Honorable Leonard Tsosie. "We have asked them before for their input and they seem unresponsive to it. We need to get the NNBA to make a recommendation on the evaluation of judges and justices."

A special Judiciary Committee meeting to remove Justice Shirley from the high court is scheduled to occur during the week of Oct. 25.

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