

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0103-15_____

SPONSOR: Leonard Tsosie

TITLE: An Action Relating To Law And Order; Recommending The Removal Of Herb Yazzie As Chief Justice Of The Navajo Nation; Specifying The Grounds For Recommended Removal Of Herb Yazzie As Navajo Nation Chief Justice Pursuant To 7 N.N.C. § 352 And Other Related Sections; Recommending A Special Navajo Nation Council Session Date To Be Set To Consider The Removal Of Herb Yazzie As Chief Justice; Recommending That A Notice OF Special Session Of Navajo Nation Council Be Sent To The Chief Justice Herb Yazzie With The Allegations Warranting Removal

Date posted: March 24, 2015 at 5:15pm

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0103-15

DATE: March 24, 2015

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER ;
RECOMMENDING THE REMOVAL OF HERB YAZZIE AS CHIEF JUSTICE OF THE
NAVAJO NATION; SPECIFYING THE GROUNDS FOR RECOMMENDED REMOVAL
OF HERB YAZZIE AS NAVAJO NATION CHIEF JUSTICE PURSUANT TO 7 N.N.C. §
352 AND OTHER RELATED SECTIONS; RECOMMENDING A SPECIAL NAVAJO
NATION COUNCIL SESSION DATE BE SET TO CONSIDER THE REMOVAL OF
HERB YAZZIE AS CHIEF JUSTICE; RECOMMENDING THAT A NOTICE OF
SPECIAL SESSION OF NAVAJO NATION COUNCIL BE SENT TO THE CHIEF
JUSTICE HERB YAZZIE WITH THE ALLEGATIONS WARRANTING REMOVAL

PURPOSE: This resolution, if approved, will recommend removal of Herb Yazzie as Chief Justice; specify grounds for removal; recommend a special session of the Navajo Nation Council to consider removal; and recommend notice of the allegations be sent to Herb Yazzie.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Leave a
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Posting End Date: 3/29/2015
Eligible for Action: 3/30/2015

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. D103-15

AN ACTION

RELATING TO LAW AND ORDER; RECOMMENDING THE REMOVAL OF HERB
YAZZIE AS CHIEF JUSTICE OF THE NAVAJO NATION; SPECIFYING THE
GROUNDS FOR RECOMMENDED REMOVAL OF HERB YAZZIE AS NAVAJO
NATION CHIEF JUSTICE PURSUANT TO 7 N.N.C. § 352 AND OTHER RELATED
SECTIONS; RECOMMENDING A SPECIAL NAVAJO NATION COUNCIL
SESSION DATE BE SET TO CONSIDER THE REMOVAL OF HERB YAZZIE AS
CHIEF JUSTICE; RECOMMENDING THAT A NOTICE OF SPECIAL SESSION OF
NAVAJO NATION COUNCIL BE SENT TO THE CHIEF JUSTICE HERB YAZZIE
WITH THE ALLEGATIONS WARRANTING REMOVAL

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 2 N.N.C. § 600(A) and (C) the Law and Order Committee, as a
standing committee of the Navajo Nation Council, shall use Nitsáhákees, Nahat'á,
Iiná and Siihásin in exercising legislative oversight of the courts.
- B. Pursuant to 2 N.N.C. § 601(B)(5)(a) the Law and Order Committee shall have the
power to review and make recommendations to the Navajo Nation Council for
final approval of the removal of a permanent justice.

- 1 C. Pursuant to 2 N.N.C. § 1 the Navajo Nation Council established a three branch
2 system of government: the Legislative, Executive and Judicial Branches. The
3 authorities of the three branches of government were established by two major
4 Navajo Nation Council resolutions. The first Council resolution, CD-94-85, also
5 known as the Judicial Reform Act of 1985, reorganized the court system by
6 establishing the Judicial Branch and designating the Navajo Nation Supreme Court
7 as the final appellate authority. The second Council resolution CD-68-89, the Title
8 Two Amendments of 1989, established the Legislative and Executive Branches of
9 Navajo Nation government and defined their powers.
- 10 D. Pursuant to Exhibit A of the Judicial Reform Act of 1985, CD-94-85, the former
11 Judiciary Committee, in recommending amendments to Title 7 of the Navajo
12 Nation Code, clearly stated that “[t]he Navajo Tribal Court system has two duties:
13 (1) To hear and decide cases justly, promptly, and economically; and (2) to
14 maintain itself as an independent and respected branch of government[.]” CD-94-
15 98.
- 16 E. Pursuant to 7 N.N.C. § 352(A) the Law and Order (formerly known as the
17 Judiciary) Committee of the Navajo Nation Council may recommend the removal
18 of any justice or judge from office if the Law and Order Committee determines
19 reasonable cause exists to believe the justice or judge has engaged in malfeasance
20 or misfeasance in office, or serious neglect of duty.
- 21 F. Malfeasance is defined as the wrongful or unjust doing of some act which the doer
22 has no right to perform. See Black’s Law Dictionary, www.thelawdictionary.org.
- 23 G. Misfeasance is defined as not doing a lawful act in a proper manner, omitting to do
24 it as it should be done. See Black’s Law Dictionary, www.thelawdictionary.org.
- 25 H. Pursuant to 7 N.N.C. § 352(C) a recommendation for removal by the Law and
26 Order Committee shall be presented promptly to the Navajo Nation Council by
27 proposed resolution; and the justice sought to be removed from office shall be
28 given an opportunity to appear before the Navajo Nation Council and present
29 evidence in his or her own defense.
30

1 I. Pursuant to 7 N.N.C. § 301(A) the Supreme Court of the Navajo Nation shall
2 consist of the Chief Justice of the Navajo Nation and two Associate Justices of the
3 Supreme Court.

4 J. Pursuant to 7 N.N.C. § 371, in addition to his judicial duties, the Chief Justice of
5 the Navajo Nation shall supervise all justices and judges of the Navajo Nation and
6 administer the Judicial Branch in accordance with applicable standards, rules,
7 policies or procedures.

8 K. Herb Yazzie was confirmed as Chief Justice by the Navajo Nation Council on
9 April 21, 2005.

10 L. It is in the best interest of the Navajo Nation that the Law and Order Committee of
11 the Navajo Nation Council recommend to the Navajo Nation Council the removal
12 of Herb Yazzie as Chief Justice, recommend a date be set for the Special Session
13 of Council, and recommend that the Speaker provide notice to Chief Justice Herb
14 Yazzie of the allegations of malfeasance, misfeasance, or serious neglect of duty
15 and of the date of a Special Session of the Navajo Nation Council to hear the
16 allegations and his response to the allegations.

17 18 **Section Two. Allegations warranting removal of Herb Yazzie as Chief Justice**

19
20 **Allegation One. Herb Yazzie, as Chief Justice, has not taken any action**
21 **regarding the establishment of the Judicial Conduct Commission, whose purpose**
22 **is providing a forum to hear complaints against judges and justices. Inaction,**
23 **despite receiving \$100,000 in the FY2015 Navajo Nation Budget for the express**
24 **purpose of establishing the Judicial Conduct Commission, is misfeasance (not**
25 **doing a lawful act in a proper manner or omitting to do it as it should be done)**
26 **and serious neglect of duty.**

27
28 A. The Judicial Conduct Commission is established as an independent commission
29 receiving administrative support and assistance from the Judicial Branch. 7
30 N.N.C. § 421.

1 B. The purpose and powers of the Judicial Conduct Commission are:

- 2
- 3 1. To enhance public confidence in the Navajo Nation Judiciary by providing a
- 4 fair, impartial and expeditious forum to hear complaints and grievances
- 5 against Navajo Nation justices and judges involving alleged violations of the
- 6 Code of Judicial Conduct, personnel policies for justices and judges, and any
- 7 other Navajo Nation laws or policies that set standards of ethics and conduct
- 8 for justices and judges.
- 9 2. To investigate or direct the investigation of complaints or grievances against
- 10 justices and judges;
- 11 3. To make findings and recommend sanctions, as appropriate; and,
- 12 4. To forward recommendations for suspension or removal of justices and judges
- 13 to the Law and Order Committee and to the Chief Justice. 7 N.N.C. § 422(A).
- 14

15 C. The Judicial Conduct Commission shall refer all complaints not properly before

16 the Judicial Conduct Commission to proper authorities, such as the Chief

17 Prosecutor, the Ethics and Rules Office, or the Disciplinary Committee of the

18 Navajo Nation Bar Association, as necessary. 7 N.N.C. § 422(B)

19 D. In Fiscal Year 2015 the Navajo Nation Council allocated \$100,000 for the

20 Judicial Conduct Commission with the funds to be monitored by the Judicial

21 Branch through the Administrative Office of the Court, Business Unit #102001;

22 the Navajo Nation President signed the FY 2015 Comprehensive Budget,

23 including the \$100,000 allocation for the Judicial Conduct Commission, on

24 September 15, 2014.

25 E. Herb Yazzie, as Chief Justice and the administrator for the Judicial Branch, has

26 not supplied administrative support and assistance for the creation of the Judicial

27 Conduct Commission despite the Navajo Nation Council's, and Navajo Nation

28 President's approval of, appropriation of \$100,000 for that purpose.

29 F. As a result of inaction by the Chief Justice the Judicial Conduct Commission is

30 not in operation.

- 1 G. Without the Judicial Conduct Commission in place, residents of Navajo Nation
2 are without redress to question the quality of the Navajo Nation judges and
3 justices.
- 4 H. Without a Judicial Conduct Commission in place, it is necessary for the Navajo
5 Nation Council to use its authority pursuant to 7 N.N.C. § 352 to address Herb
6 Yazzie's conduct.
- 7 I. Chief Justice Herb Yazzie committed misfeasance and serious neglect of duty by
8 not providing administrative support or assistance to the Judicial Conduct
9 Commission so it may carry out its purpose.

10
11 **Allegation Two. Finding of Criminal Offense against members of the Navajo**
12 **Nation Board of Election Supervisors, without formal complaint and without a**
13 **hearing, is a violation of basic fundamental Due Process rights; Every accused**
14 **Navajo Nation citizen has a right to the Equal Protection of laws; the Supreme**
15 **Court is not a Trial Court; Prosecution of criminal cases is an Executive**
16 **Branch function under Separation of Powers. This action by the Herb Yazzie,**
17 **as Chief Justice, is malfeasance, the wrongful or unjust doing of some act which**
18 **the doer has no right to perform.**
19

- 20 A. The Navajo Nation Bill of Rights recognizes and mandates: "Equality of rights
21 under the law shall not be denied or abridged by the Navajo Nation on account of
22 sex nor shall any person within its jurisdiction be denied Equal Protection in
23 accordance with the laws of the Navajo Nation, nor be deprived of life, liberty
24 and property, without due process of law." 1 N.N.C. § 3.
- 25 B. Herb Yazzie, in his role as Chief Justice and with only Justice Eleanor Shirley,
26 rendered a decision in *Tsosie/Whitethorne v. NBOES and NEA*, No. SC-CV-68-
27 14, slip op. (Nav. Sup. Ct. November 4, 2014), finding that members of the
28 Navajo Board of Election Supervisors violated the election laws rendering its
29 members ineligible to maintain their elected offices and, further, finding the
30 Board knowingly and willfully failed or neglected to perform its duties under the

1 Election Code (11 N.N.C. § 365) thereby stripping the Board members of their
2 authorities and preventing the re-election of Board members to public offices.

3 C. Herb Yazzie, in his role as Chief Justice, violated the due process rights of
4 members of the Navajo Board of Election Supervisors. Without formal criminal
5 charges first being properly filed by Navajo Nation Prosecutors, without
6 arraignment, without trial at the District Court level, and without hearing or
7 proper opportunity to be heard, all members of the Navajo Board of Election
8 Supervisors were removed by the Supreme Court, with Herb Yazzie as Chief
9 Justice.

10 D. The Navajo Board of Election Supervisors, hereinafter the Board, is created by
11 the Navajo Nation Council as an independent entity. 2 N.N.C. §1051. The
12 Board shall be responsible to the Navajo Nation Council only and shall be placed
13 under the Naabik'íyáti' Committee (formerly the Intergovernmental Relations
14 Committee) who shall have ministerial oversight and whose primary purpose
15 shall be routing documents and record-keeping incidental to the authority
16 delegated to the Board and the Office by the Election Code; and to cause effect
17 to the authority entrusted solely in the Board and [Navajo Election
18 Administration] Office; and to guard the public interests entrusted to the Board.
19 2 N.N.C. § 871(A).

20 E. The Board shall have all powers necessary and proper to carry out the purpose
21 set forth in the Election Code. 2 N.N.C. § 873(A).

22 F. The Board is authorized and directed, among other enumerated powers, to (1)
23 administer, implement and enforce the Navajo Election Code, (2) to oversee and
24 supervise generally all Navajo Nation elections. 2 N.N.C. § 873(B)(1)(2), see
25 also 11 N.N.C. § 321(A)(1)(2).

26 G. On October 31, 2015, the Navajo Supreme Court stated: "We find the
27 Respondent Board violated the Election Laws rendering its members ineligible to
28 maintain their elected offices and, further, the Board knowingly and willfully
29 failed or neglected to perform its duties under the Election Code, a violation of
30 11 N.N.C. § 365."

1 H. On October 31, 2015, the Navajo Supreme Court stated: "Faced with
2 contemptuous conduct and pervasive violations of the Election Code, this Court
3 has the discretion to impose punishment, to compel compliance with its order,
4 and to deter future contemptuous conduct."

5 I. On October 31, 2015, the Navajo Supreme Court found the following:

- 6 1. The Navajo Board of Election Supervisors in indirect civil contempt for
7 failing to comply with the Court's order of October 23, 2014; and,
- 8 2. The Navajo Board of Election Supervisors in violation of Navajo Election
9 Laws; and,
- 10 3. The Navajo Board of Election Supervisors knowingly and willfully failed or
11 neglected to perform their duties under the chapter of the Election Code in a
12 manner prescribed therein, a violation of 11 N.N.C. § 365; and,
- 13 4. The Navajo Board of Election Supervisors are required to maintain their
14 qualifications throughout their term of office or face removal pursuant to 11
15 N.N.C. § 8(F), and pursuant to 11 N.N.C. § 240(D), CJA-02-14, the Navajo
16 Board of Election Supervisors are no longer eligible to hold their elected
17 positions having been found in violation of the Election Laws and in
18 violation of 11 N.N.C. § 365; subsequently the Navajo Board of Election
19 Supervisors are stripped of their authority to supervise the 2014 General
20 Election.

21 J. Criminal penal provisions of 11 N.N.C. § 365, states, "[i]t is unlawful for any
22 Chairman or members of the Navajo Board of Election Supervisors, any registrar
23 appointed by the Board of Election Supervisors or any poll judge or poll clerk or
24 Special Election Supervisor to knowingly and willfully fail or neglect to perform
25 any duty under any part of this chapter in the manner prescribed by this chapter
26 or to accept any money or other thing of value from any candidate or from
27 anyone acting or purporting to act on behalf of any candidate."

28 K. The members of the Navajo Board of Election Supervisors were removed based
29 on criminal penal provisions of the Election Code. "Penal" offenses cited in their
30 removal are essentially criminal offenses (criminal misdemeanors). These

1 provisions, including section 365 (Violation of Duty by Election Official), carry
2 penalties that include imprisonment (jail sentencing). See 11 N.N.C. §367(A).
3 Navajo law mandates due process because the Election Code (at sections 365 and
4 367) classifies violations as criminal offenses (criminal misdemeanors). 11
5 N.N.C. § 365 cannot be used in a contempt proceeding to evade due process
6 rights of the person being charged.

7 L. The members of the Navajo Board of Election Supervisors were not afforded the
8 basic rights normally afforded to the criminally-accused. None of the members
9 were criminally charged by Navajo prosecutors; none were served with written
10 criminal complaints (notifying them of what they were being accused of); none
11 of them were allowed to be properly arraigned before the District Courts; none of
12 them were allowed to enter a plea of guilty or not guilty; none of them were
13 allowed to prepare a defense and to cross examine those accusing them of
14 wrongdoing; none of them were allowed to make a statement prior to sentencing;
15 and none of them were allowed an appeal to a further judicial appellate body.
16 Essentially, they were all "convicted" in violation of basic rights that all people
17 are entitled to under Navajo law.

18 M. Pursuant to 11 N.N.C. § 367, Subchapter 19, Penal Provisions, (A), Any Navajo
19 or non-Navajo Indian married to a Navajo who shall violate any section of this
20 subchapter (including 11 N.N.C. § 365) shall be guilty of a misdemeanor as an
21 offense against the Navajo Nation and upon conviction hereof shall be sentenced
22 to imprisonment for not more than six months or to a fine of not more than one
23 thousand two hundred dollars (\$1,200), or both such imprisonment and fine.

24 N. The Diné Traditional Law declares and teaches that: The leader(s) of the Judicial
25 Branch (Alqají Hashkéékí Naat'ááh) shall uphold the values and principles of the
26 Diné bi beenahaz'áanii in the practice of peace making, obedience, discipline,
27 punishment, interpreting laws and rendering decisions and judgments. 1 N.N.C.
28 § 203(E).

29 O. A Chief Justice is a leader for the Judicial Branch. Herb Yazzie, in his role as
30 Chief Justice, is responsible for the Navajo Supreme Court misinterpreting and

1 misapplying the Navajo election laws in the removal of all the members of the
2 Navajo Board of Election Supervisors by not providing the Navajo Board of
3 Election Supervisors due process and equal protection of the law which the
4 Board members are entitled to under the Penal Provisions of the Election Laws;
5 and the Chief Justice is responsible for overreaching into the Legislative
6 Branch's authority over the Navajo Board of Election Supervisors. For the
7 reasons stated, Herb Yazzie as Chief Justice has committed malfeasance, the
8 wrongful or unjust doing of some act which the doer has no right to perform.

9
10 **Allegation Three. Navajo Nation law at 7 N.N.C. § 301(A) provides that the**
11 **Supreme Court is to include the Chief Justice and *two* Associate Justices for a**
12 **total of three justices. In the event three justices are not available, a justice by**
13 **designation is selected by the Chief Justice. Herb Yazzie as Chief Justice has on**
14 **numerous occasions failed to designate a third justice. This failure to designate**
15 **a third justice prevents the Supreme Court from being supplied with additional**
16 **legal analysis when addressing issues before the Court. In addition, the third**
17 **justice by designation breaks a tie vote among the justices. This failure to**
18 **designate a third justice by Herb Yazzie, as Chief Justice, is misfeasance, not**
19 **doing a lawful act in a proper manner or omitting to do it as it should be done.**

20
21 A. Navajo Nation law at 7 N.N.C. § 301(A) requires that the "Supreme Court of the
22 Navajo Nation shall consist of the Chief Justice of the Navajo Nation and two
23 Associate Justices of the Supreme Court. This Section has not been amended by
24 the Navajo Nation Council.

25 B. Herb Yazzie, as the administrator and Chief Justice of the Navajo Supreme Court,
26 is in violation of 7 N.N.C. § 301(A). He is responsible for the Supreme Court
27 issuing numerous opinions and orders under the signature of only two justices in
28 violation of the Navajo Nation Code and the Judicial Reform Act of 1985.

29 C. Herb Yazzie, as the administrator and Chief Justice of the Navajo Supreme Court,
30 continually misinterpreted and misapplied the Supreme Court's decision

1 regarding the reasoning for a two-justice panel in *Benally v. Mobil Oil*
2 *Corporation*, 8 Nav. R. 365 (2003); which was a *unique circumstance* in which a
3 justice who heard the case was not confirmed by the Navajo Nation Council and
4 could not continue in the case.

5 D. During the term of Herb Yazzie, as administrator and Chief Justice the Navajo
6 Supreme Court, he has continued to issue opinions with only two Justices, the
7 cases are, but not limited to:

9 <u>SC-CV-22-06</u>	Navajo Nation Department of Child Support Enforcement v. Navajo Nation Labor Commission, and concerning Evangeline 11 Logg
12 <u>SC-CV-20-06</u>	Ernest Tso v. Navajo Housing Authority, <i>et al.</i>
13 <u>SC-CV-21-06</u>	Ann Thompson v. Larry Kee Yazzie
14 <u>SC-CV-63-05</u>	Budget and Finance Committee of the Navajo Nation Council v. 15 Navajo Nation Office of Hearings and Appeals and concerning 16 Johnny Livingston and Edward Carlisle, Real Parties in Interest
17 <u>SC-CV-12-07</u>	Jackie Johnson and Heather Nicholl v. Tuba City District Court 18 and concerning Louise Yellowman, Real Party in Interest
19 <u>SC-CV-47-06</u>	Frederica J. Martinez v. Sage Memorial Hospital, Richie Nez
20 <u>SC-CV-09-06</u>	Richard Wirtz, Jr. v. Patricia A. Black
21 <u>SC-CV-30-06</u>	Marlene Thomas v. Chinle Chapter, Division of Community 22 Development
23 <u>SC-CV-04-08</u>	Willie Edward Miles v. Chinle Family Court and Concerning 24 Bertha James Miles, Real Party in Interest
25 <u>SC-CV-25-10</u>	Ferlin Clark v. Diné College (footnote 1 states: "The Court is not 26 restricted in issuing a two-justice opinion where "necessary and 27 proper" as long as the Chief Justice or his or her designate 28 presides in the case. <i>Benally v. Mobil Oil Corp.</i> , 8 Nav. R. 365, 29 368 (Nav. Sup. Ct. 2003)."
30 <u>SC-CV-58-10</u>	In the Matter of Frank Seanez. (footnote 1 states: "The Court is

	not restricted in issuing a two-justice opinion where "necessary and proper" as long as the Chief Justice or his or her designate presides in the case. <i>Benally v. Mobil Oil Corp.</i> , 8 Nav. R. 365, 368 (Nav. Sup. Ct. 2003)."
<u>SC-CV-03-10</u>	<i>Nelson v. Initiative Committee to Reduce Navajo Nation Council</i> . (footnote 1 states: "The Court is not restricted in issuing a two-justice opinion where "necessary and proper" as long as the Chief Justice or his or her designate presides in the case. <i>Benally v. Mobil Oil Corp.</i> , 8 Nav. R. 365, 368 (Nav. Sup. Ct. 2003)."
<u>SC-CV-56-11</u>	<i>Thomas-Pittman v. Navajo Nation</i> (footnote 1 states: "The Court is not restricted in issuing a two-justice opinion where "necessary and proper" as long as the Chief Justice or his or her designate presides in the case. <i>Benally v. Mobil Oil Corp.</i> , 8 Nav. R. 365, 368 (Nav. Sup. Ct. 2003)."
<u>SC-CV-07-09</u>	<i>In the Matter of the Guardianship of T.S.E.J. et al.</i>
<u>SC-CV-66-08</u>	<i>Gene Manning v. Francesca Abeita</i>
<u>SC-CV-44-08</u>	<i>Gwendolene Begay v. Navajo Engineering & Construction Authority and the Navajo Nation</i>
<u>SC-CR-01-09</u>	<i>Aaron John v. Navajo Nation</i>
<u>SC-CV-33-10</u>	<i>Hasgood et al v. Cedar Unified School District</i>
<u>SC-CV-08-11</u>	<i>Evelyn Acothley et al. v. the Hon. Carol Perry</i>
<u>SC-CV-58-10</u>	<i>In the Matter of Frank Seanez</i>
<u>SC-CV-03-10</u>	<i>Timothy Nelson v. Initiative Committee to Reduce Navajo Nation Council, Office of the President et al.</i>
<u>SC-CV-04-12</u>	<i>Navajo Housing Authority v. John Dennison</i> (footnote 1 states: "Before the Court is a procedural motion. N.R.C.A.P. Rule 6(b) states a procedural motion may be acted upon at any time. The rule specifically states that such a motion may be granted by a majority of the Justices of the Supreme Court without waiting for a response. We interpret this to mean that orders denying such

1 motions may be issued without a response, and that a unanimous
2 two-justice panel may issue such orders as the equivalent of a
3 majority of a fully constituted 3-justice panel. We have
4 previously stated that this Court has the authority to issue two-
5 justice opinions when "necessary and proper" to move cases
6 forward as long as the Chief Justice or his or her designate
7 presides in the case. Clark v. Diné College, No. SC-CV-25-10
8 (Nav. Sup. Ct. October 27, 2010) citing Benally v. Mobil Oil
9 Corp., 8 Nav. R. 365, 368 (Nav. Sup. Ct. 2003). We find that it
10 is necessary and proper for this Court to do so in the matter
11 before us.”)

12 SC-CV-63-11

Victor Bowman v. Delores Greyeyes

13 SC-CV-62-12

Sandoval v. Navajo Election Administration, and Concerning
14 Leo Johnson Real Party in Interest

15 SC-CV-64-12

Wauneka *et al* v. Yazzie *et al*.

16 SC-CV-41-14

Nouri v. Crownpoint Family Court

- 17
- 18 E. The two-justice opinions by the Navajo Nation Supreme Court include very
19 important matters involving law that are crucial to the Navajo People as a whole
20 and equally, if not more important, to the individual parties.
- 21 F. Three of the two-justice opinions by the Navajo Nation Supreme Court are
22 particularly grievous as these are very important decisions that affect governance
23 and separation of powers issues; and most important, our Navajo children. The
24 opinions include:
- 25 1. *In the Matter of Frank Seanez* (Permanent Disbarment of the Chief Legislative
26 Counsel)
 - 27 2. *Nelson v. Initiative Committee to Reduce Navajo Nation Council* (Challenge to
28 the calculation of signatures on the Initiative to lower the number of Council
29 Delegates)
- 30

1 3. *Nouri v. Crownpoint Family Court* (Question of Navajo jurisdiction over a
2 Navajo child)

3 G. The Navajo Nation Supreme Court reports 69 pending cases over the past five (5)
4 years; the oldest cases being reported are two (2) cases pending as of 2010. See
5 Judicial Branch of the Navajo Nation, Fiscal Year 2014 Fourth Quarter Report,
6 October 17, 2014; such delay in decisions by the Navajo Nation Supreme Court
7 has adverse impact on Navajo governmental operations, citizens and businesses.

8 H. Herb Yazzie, as administrator and Chief Justice, has the capacity to appoint judges
9 of the Navajo Nation to assist the Navajo Supreme Court to maintain compliance
10 with 7 N.N.C. § 301(A); however, Herb Yazzie continues to rely on only Justice
11 Eleanor Shirley as the second justice in critical cases that come before the court.

12 I. Herb Yazzie, as administrator and Chief Justice, has appointed judges of the
13 Navajo Nation to assist the Navajo Supreme Court as he did in appointing Judge
14 Irene Black as the third justice in the *Tsosie/Whitethorne v. NBOES and NEA* case;
15 however, Judge Irene Black did not continue as an appointed justice after
16 disagreeing with the Chief Justice and Justice Eleanor Shirley.

17 J. The opinions issued by two Justices of the Navajo Supreme Court and the delay in
18 decisions on pending cases does not conform with Diyin Bits'áá'déé' Beehaz'áanii
19 which teaches that the leader(s) of the Judicial Branch (Alaąjí Hashkéékí Naat'ááh)
20 shall uphold the values and principles of the Diné bi beenahaz'áanii in the practice
21 of peace making, obedience, discipline, punishment, interpreting laws and
22 rendering decisions and judgments. 1 N.N.C. § 203(E). This is misfeasance, not
23 doing a lawful act in a proper manner or omitting to do it as it should be done.

24
25 **Allegation Four. Violation of Navajo Nation laws and Separation of Powers with**
26 **regard to Herb Yazzie, as Chief Justice, asserting authority over the Office of**
27 **Hearings and Appeals an Executive Branch entity, by appointing a District**
28 **Court Judge to preside over a hearing before the Office of Hearings and**
29 **Appeals. This is malfeasance, the wrongful or unjust doing of some act which**
30 **the doer has no right to perform.**

- 1
- 2 A. The Office of Hearings and Appeals is established in the Executive Branch of the
- 3 Navajo Nation government. 2 N.N.C. § 1051 requires that the Office shall be
- 4 separate and independent from all other divisions, departments, programs,
- 5 commissions, enterprises, boards, or other Navajo Nation entities.
- 6 B. The Office of Hearings and Appeals Chief Hearing Officer (Director) is appointed
- 7 by the President. 2 N.N.C. §1053(A). The Chief Hearing Officer (Director) hires
- 8 hearing officers. 2 N.N.C. §1053(B)(1).
- 9 C. In the case *In the Matter of the Navajo Nation Election Administration's*
- 10 *Determination of Insufficiency Regarding the Two Initiative Petitions Filed by*
- 11 *Navajo Nation President Joe Shirley, Jr.*, No. SC-CV-28-09, slip op. (Nav. Sup.
- 12 Ct. July 30, 2009), the Navajo Supreme Court "appointed Judge Carol Perry to
- 13 serve in the role and capacity of a hearing officer with OHA to expedite" the case.
- 14 *In the Matter of NNEA* at 3. Judge Carol Perry was not a *hearing officer* under
- 15 *hearing officer* provisions of 2 N.N.C. §1053; she was a *District Court Judge* of
- 16 the Navajo Nation, ineligible to be a hearing officer. *District Courts* are within
- 17 the *Judicial Branch* of the Navajo Nation, not the *Executive Branch*. The Office
- 18 of Hearings and Appeals, under Navajo Nation law, is intended to be
- 19 "independent" from other entities of the Navajo Nation. 2 N.N.C. §1051.
- 20 D. Herb Yazzie, as administrator and Chief Justice, appointed a district judge to be a
- 21 hearing officer in violation of Navajo Nation law which is malfeasance, the
- 22 wrongful or unjust doing of some act which the doer has no right to perform.
- 23
- 24 E. In the case *McLaughlin v. Begaye*, No. SC-CV-80-14, slip op. (Nav. Sup. Ct.
- 25 December 4, 2014), an issue before the Navajo Supreme Court included an
- 26 allegation that the hearing officer assigned did not meet the qualification
- 27 requirements of a *hearing officer*. In permitting the hearing officer to continue in
- 28 the case, the Court stated that the hearing officer was appointed by the "President
- 29 pursuant to 2 N.N.C. § 1053 [and] therefore presume[s] the President made the
- 30 proper and legal appointment." The Court further stated that "there is nothing

1 which we can conclude that [the hearing officer], a duly installed hearing officer,
2 was without at least color of law to preside over this matter or any other matter in
3 the OHA.” *Id.*

4 F. In *McLaughlin v. Begaye*, the Navajo Supreme Court decided the issue of the
5 challenge to the qualifications of the hearing officer while the matter was still
6 pending at the Office of Hearings and Appeals and did not provide anyone an
7 opportunity to respond to the challenge of the hearing officer’s qualifications.

8 G. Herb Yazzie, as administrator and Chief Justice, ignored established Navajo
9 Nation law in *McLaughlin v. Begaye* regarding the qualifications of the hearing
10 officer and prematurely decided the issue.

11 H. The Diné Traditional Law declares and teaches that: The leader(s) of the Judicial
12 Branch (Alaąjí Hashkéékí Naat’ááh) shall uphold the values and principles of the
13 Diné bi beenahaz’áanii in the practice of peace making, obedience, discipline,
14 punishment, interpreting laws and rendering decisions and judgments. 1 N.N.C. §
15 203(E).

16 I. Herb Yazzie, using his capacity as Chief Justice, is responsible for the Navajo
17 Supreme Court overreaching into the Executive Branch authority by appointing
18 District Judge Carol Perry as a hearing officer for the Office of Hearings and
19 Appeals in a particular case. The selection of a District Court Judge to serve as an
20 administrative hearing officer is a violation of separation of powers, especially in
21 regards to duly-enacted requirements of 2 N.N.C. § 1053.

22 J. Herb Yazzie, using his capacity as Chief Justice, is responsible for issuing a
23 decision without complete legal positions first being presented by the parties on
24 the qualifications of the hearing officer for the Office of Hearings and Appeals.
25 This is malfeasance, the wrongful or unjust doing of some act which the doer has
26 no right to perform.

27
28 **Allegation Five. Herb Yazzie, as Chief Justice, has failed to uphold Diné bi**
29 **beenahaz’áanii, the laws of the Navajo Nation, by wrongfully interpreting the**
30 **laws of the Navajo Nation causing unnecessary expenses, violation of people’s**

1 **rights, uncertainties, overreaching (separation of powers violation), and**
2 **confusion on the Navajo Nation and in the legal communities. This is**
3 **misfeasance by not doing a lawful act in a proper manner or omitting to do it as**
4 **it should be done; and malfeasance, the wrongful or unjust doing of some act**
5 **which the doer has no right to perform.**
6

7 A. The Diné Traditional Law declares and teaches that: The leader(s) of the Judicial
8 Branch (Alqají Hashkéékí Naat'ááh) shall uphold the values and principles of the
9 Diné bi beenahaz'áanii in the practice of peace making, obedience, discipline,
10 punishment, interpreting laws and rendering decisions and judgments. 1 N.N.C. §
11 203(E).

12 B. Herb Yazzie, as Chief Justice and influential on the court, has wrongfully
13 interpreted the laws of the Navajo Nation causing unnecessary expenses, violation
14 of people's rights, uncertainties; and has not followed the legal principle of *stare*
15 *decisis*, causing confusion in the Navajo Nation and in the legal community. *Stare*
16 *decisis* is a policy of courts to abide by or adhere to the principles established in
17 decisions in earlier cases. This failure to follow earlier case law results in
18 inconsistent rulings and opinions.

19 C. Herb Yazzie, as Chief Justice and influential on the court, refused to apply the
20 limitation of 11 N.N.C. § 24, which requires that all complaints against candidates
21 be filed within 10 days of determination that a candidate is qualified to run for
22 office and not anytime beyond that, such as after an election has been conducted.
23 In contravention of Navajo Nation laws, the Court ruled that section 341, not
24 section 24, should be applied. The ruling resulted in a grievance over a
25 candidate's qualification after the primary election results were announced. This
26 has caused the 2014 Navajo Nation election to be prolonged, subjected to
27 uncertainties and caused unnecessary expenses.

28 D. Herb Yazzie, as Chief Justice and influential on the court, did not follow
29 established case law resulting in inconsistent rulings constituting misfeasance, not
30 doing a lawful act in a proper manner or omitting to do it as it should be done.

- 1 E. Herb Yazzie, as Chief Justice and influential on the court, ignored established
2 court rules by issuing an order which related to an action of the Navajo Nation
3 Council and the Navajo Nation President before the Navajo Nation Council or the
4 Navajo Nation President had the opportunity to respond and, by issuing the order,
5 unilaterally decided certain people and parties would not have an opportunity to
6 respond; and Herb Yazzie, as Chief Justice and influential on the court,
7 circumvented established procedure in issuing an order by declaring the Navajo
8 Nation Council a non-party to the action involving CMA-06-15.
9 *Tsosie/Whitethorne v. NBOES and NEA*, No. SC-CV-06-14, Order of March 20,
10 2015.
- 11 F. Herb Yazzie, as Chief Justice and influential on the court, ignored established
12 jurisdiction issues in the March 20, 2015 Order by declaring the Navajo Nation
13 Council a “non-party;” and as a declared “non-party” the court has no personal
14 jurisdiction over the Navajo Nation Council. This is misfeasance, not doing a
15 lawful act in a proper manner.
- 16 G. Herb Yazzie, as Chief Justice and influential on the court, has crossed the lines of
17 separation of powers relative to the Navajo government branches by issuing an
18 order that the Navajo Election Administration Executive Director should not be
19 forcibly removed from his current position for complying with existing statutory
20 law and orders of the court, a position that is in the Legislative Branch; this order
21 is premature as no action has been taken relative to the Navajo Election
22 Administration’s Executive Director.
- 23 H. Herb Yazzie, as Chief Justice and influential on the court, has crossed the lines of
24 separation of powers relative to the Navajo government branches by issuing an
25 order that the Office of the Controller’s Acting Controller is shielded from
26 retaliatory action for complying with the order of the court, a position that is in
27 the Executive Branch; this order is premature as no action has been taken relative
28 to the Office of the Controller’s Acting Controller. The Order further usurped the
29 authorities of the Navajo Nation Council and the Budget & Finance Committee to
30 authorize the expenditure of Navajo Nation public funds.

1 I. Herb Yazzie, as Chief Justice and influential on the court, is in violation of the
2 Separation of Powers doctrine for overreaching into the authority of the
3 Legislative and Executive Branch in prematurely granting immunity to the Navajo
4 Election Administration Executive Director and the Acting Controller of the
5 Navajo Nation; the grant of immunity is not within the authority of the Chief
6 Justice or the Navajo Nation courts absent proper procedure in cases filed before
7 the courts. The act by the Chief Justice is malfeasance.

8 J. Herb Yazzie, as Chief Justice, has failed to uphold Diné bi beenahaz'áanii, the
9 laws of the Navajo Nation, by issuing opinions that are inconsistent with previous
10 Navajo Nation Supreme Court opinions which has created confusion. This is
11 misfeasance by not doing a lawful act in a proper manner or omitting to do it as it
12 should be done.

13
14 **Allegation Six. Herb Yazzie, as Chief Justice, has violated the principle of**
15 **Separation of Powers, 2 N.N.C. § 1, and Due Process of Law, by disbarring the**
16 **Chief Legislative Counsel Frank Seanez without referring the issue to the**
17 **Navajo Nation Bar Association. Herb Yazzie, as Chief Justice, was the accuser,**
18 **the trier of fact, and the decision-maker. The Chief Legislative Counsel was**
19 **denied a fair hearing. This is malfeasance, the wrongful or unjust doing of some**
20 **act which the doer has no right to perform.**

21
22 A. Without consulting with the Navajo Nation Bar Association, the professional
23 association authorized to regulate the practice of law in the Navajo Nation, Herb
24 Yazzie, as Chief Justice and influential on the court, ordered the removal of the
25 Chief Legislative Counsel, Frank Seanez, thereby rendering the Legislative
26 Branch without its primary legal representative; this decision by the Supreme
27 Court is one of the two-justice opinions.

28 B. Allegations of professional legal wrongdoing are heard by the Navajo Nation Bar
29 Association's Disciplinary Committee.

- 1 C. In the case of the Chief Legislative Counsel Frank Seanez, the Supreme Court
2 disbarred Mr. Frank Seanez from practicing law on the Navajo Nation, forever.
- 3 D. Although the allegations involving Mr. Seanez should have been addressed by the
4 Disciplinary Committee of the Navajo Bar Association, they were not. There was
5 no deference given to the bar association in this matter involving the conduct of
6 lawyers.
- 7 E. Under the leadership of Herb Yazzie, as Chief Justice, the Chief Legislative
8 Counsel, the legal representative of the Legislative Branch, was disbarred without
9 due process. Herb Yazzie was the accuser, the trier of fact, and the decision-
10 maker. In matters involving issues between the Legislative Branch and the
11 Judicial Branch, Herb Yazzie, as Chief Justice, should exercise impartiality and
12 permit the Navajo Nation Bar Association's Disciplinary Committee to assess the
13 attorney's conduct. Because of Herb Yazzie's handling of this disbarment which
14 is to last forever, many members of the Navajo Nation Bar Association are
15 worried about practicing before the Navajo courts. Potential disbarment by Herb
16 Yazzie, acting without a fair examination by the Disciplinary Committee, has a
17 chilling effect on the legal profession. Bar members are concerned they may be
18 disbarred without due process. This affects the legal representation of all who
19 want fair consideration of cases before the Navajo Nation courts. This action by
20 the Chief Justice Herb Yazzie is malfeasance, the wrongful or unjust doing of
21 some act which the doer has no right to perform.
- 22

23 **Section Three. Recommendations to Navajo Nation Council**

- 24 A. The Law and Order Committee of the Navajo Nation Council, pursuant to 7 N.N.C. §
25 352 and related sections, recommends the removal of Herb Yazzie as Chief Justice on
26 the grounds of malfeasance and/or misfeasance in office and/or neglect of duty.
- 27 B. The Law and Order Committee of the Navajo Nation Council recommends that the
28 Speaker of the Navajo Nation Council call an special session of the Navajo Nation
29 Council to consider the recommendation to remove Herb Yazzie as the Chief Justice
30 of the Navajo Nation.

1 C. The Law and Order Committee of the Navajo Nation Council recommends that the
2 Speaker of the Navajo Nation Council provide notice to Chief Justice Herb Yazzie of
3 the allegations in support of his removal and the date and time of the Special Navajo
4 Nation Council Session in which this matter will be heard.
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