

JUDICIAL BRANCH
OF THE NAVAJO NATION

CODE OF JUDICIAL CONDUCT

PREAMBLE

This Code of Judicial Conduct addresses the special situation of Navajo judges in the Courts of the Navajo Nation. It states fundamental canons of conduct in general statements of judicial duties, the principles which underlie each duty, and considerations for the judge to comply with them. The code is designed to give general guidance, and to fix minimum standards of conduct.

A longstanding objective of the Navajo Nation courts is to preserve the customs and traditions of the Navajo people. They are embodied in the Navajo common law, and it is a source for many of the provisions of the code. The Navajo Nation courts, as a branch of the Navajo Nation Government, must respond to the needs and expectations of the Navajo people, so they will accept and respect their courts and judges. While the Navajo Nation courts generally follow the state model of justice, i.e. the adjudication method (where a judge decides the comparative merits of the arguments of two or more parties), that system is alien to the Navajo common law. Traditional Navajo justice methods rely upon adjusting the differences of equals, in mediation and the free discussion of problems, to resolve them by consent. It does not rely upon a superior decision-maker, who imposes decisions upon others. It does not use coercion or force, and is instead based upon an agreed need for harmony in the community. A code of judicial conduct for

Navajo Nation courts must incorporate the values of Navajo common law.

APPLICATION OF THE CODE

This code contains minimum standards and considerations which are necessary to guide each judge, and serve as a remainder of the high degree of personal integrity required for those who hold judicial office. It states fundamental ethical principles for both the adjudication and Navajo common law systems of the Navajo Nation courts.

The code applies to each judge and justice of the Navajo Nation courts, whether probationary or permanent. When a retired judge or justice is called upon to serve a trial level court, the Navajo Nation Supreme Court, or any other judicial function, the code applies to that individual.

Only those provisions of the code which are relevant to the Navajo Peacemaker Court, and the process of peacemaking, apply to peacemakers. The provisions of Canons 1 (promotion of Navajo justice), 7 (impropriety), and 8 (misuse of office) are relevant to the conduct of a peacemaker. The provisions regarding administrative duties (Canon 4), legal education (Canon 5), participating in the political process (Canon 6), and lobbying (Canon 9) are not relevant to the peacemaker's role. To the extent that the guidance of a peacemaker who is related to parties by blood or clan will assist peacemaking, disqualification from

participating in a case will not be required unless a party objects on that ground. A peacemaker is also disqualified if a conflict of interest or relationship would cause an unfair advantage, bias, or undue influence on a party.

Under certain circumstances the code may apply to other members of the court staff, and particularly those who advise or counsel a judge or justice. In particular, the Canons apply to law clerks, attorneys to the courts, paralegals, court administrators, and others who are in close and constant working relationship with a judge or justice. The principles apply, because these officials are identified with judges and justices in the eye of the Navajo public.

THE HISTORY OF THE COURTS OF THE NAVAJO NATION

AND JUDICIAL ETHICS

The history of the Navajo Nation courts shows that Navajo judges have always preserved the essential values of the Navajo common law, and that they continue to do so. Many traditional Navajo legal values embodied in the Navajo common law are also ethical values. An ethical value is one which states fundamental principles for the well-being of a society, as well as the oral relationships of its members.

There are three periods of Navajo judicial history: the traditional period, the period of the Navajo Court of Indian Offenses (1892-1958), and the modern period (1959-present).

The traditional period of Navajo justice was when Navajos developed their own special system of law. Navajo justice is based upon equality and consent, and not authority, with imposed decisions. The bodies which developed Navajo values as Navajo common law, and enforced it, were the family, clan, and extended clans. Kinship relationships, with duties to family members, clan relations, and extended clanspeople, are a system of law. Law is a system of norms (values) which are enforced, and the clan system provided relationships which are enforced through shared values of right and duty. Navajo common law is unique, because it fosters a high degree of individualism, within a framework of community duties and responsibilities. It works because of relationships and strongly-held moral values.

The judges were the *hozhoji* 'Naat'aah, or peace chiefs. They were leaders, chosen by community consensus, because of their wisdom, spirituality, exemplary conduct, speaking ability, and skill in planning for community survival and prosperity. They mediated disputes by encouraging people to fully talk out their problems, in order to reach agreed settlements and restore harmony in the community. Talking things out, achieving order, planning, and reaching consensus for harmony were the essential principles of Navajo legal procedure.

In 1883, the Secretary of the Interior ordered the creation of the Courts of Indian Offenses to destroy Indian culture. In 1892, the Commissioner of Indian Affairs amended the regulations

of the Courts of Indian Offenses, and the first Navajo Court of Indian Offenses was established. The annual reports of the agent to the Navajos praised the early Navajo judges of the court. The new court system and its regulations were in direct conflict with Navajo legal values, so the Navajo judges applied Navajo common law (at least when the superintendent was not looking). The judges would hear a broad criminal charge, such as disorderly conduct, and resolve the underlying dispute which led to the criminal complaint, often ending the case as a civil matter. They would have the parties talk out their disputes, and mediate them. The judges referred family matters to respected community leaders for resolution by Navajo justice methods. Court records show that the judges applied principles of Navajo common law, often disguising them as Anglo law. For example, the Navajo customary land trust was a method of preserving family land ownership, as well as protecting womens' rights to land.

In 1953, the United States Congress enacted legislation to permit the States to assume jurisdiction over Indian reservations. When the Navajo Tribal Council learned of a move in the Arizona legislature to assert State jurisdiction over the Navajo Nation, the Council enacted Resolution No. CO-69-58 (October 16, 1958). That law abolished the Navajo Court of Indian Offenses, and created the Navajo Tribal Court, which began operations on April 1, 1959.

In 1968, Congress passed the Indian Civil Rights Act. That brought the courts into conflict with the chairman of the Council,

when the courts enforced the new federal law to protect individual rights. On May 4, 1978, the Navajo Tribal Council created the Supreme Judicial Council, to hear appeals from any court decision to invalidate any "resolution, ordinance, act or decision" of the Council or its Advisory Committee. The Supreme Judicial Council heard few appeals, and its funding was withdrawn in 1981. The Advisory Committee formally abolished it on November 9, 1983, and the Navajo Tribal Council abolished it again when enacting the Judicial Reform Act of 1985.

Navajo common law has existed from time out of mind, and through the short 100-year history of courts of adjudication, Navajo judges have continued to apply it. It is based upon equality and consent in a horizontal system of justice (which is a legal system which deals with equals). The law imposed through the Navajo Court of Indian Offenses and to some extent, the Navajo Tribal Court, used adjudication, authority, and a vertical system of justice (which is a legal system which requires hierarchies of authority). The Navajo Nation courts, as a result of earlier efforts and the Judicial Reform Act of 1985, now use Navajo common law as the law of preference of the Navajo Nation, and seek to achieve a successful compromise of horizontal and vertical systems of justice.

That compromise is a central consideration in a code of judicial conduct which uses both Navajo and Anglo ethical values. Ethical values are a reflection of fundamental views of right and

wrong, and it is important to reflect both the values which underlie the adjudication method of the State court model, and fundamental Navajo values. That is what this code seeks to achieve.

CANON ONE

A NAVAJO NATION JUDGE SHALL PROMOTE NAVAJO JUSTICE

PRINCIPLE:

A Navajo judge should decide and rule between the Four Sacred Mountains. That means that judges, as Navajos, should apply Navajo concepts and procedures of justice, including the principles of maintaining harmony, establishing order, respecting freedom, and talking things out in free discussion.

CONSIDERATIONS:

1. Harmony: Injustice, in the sense of evil or wrongdoing, is the result of disharmony. One of the goals of justice is to return people and their community to harmony in the resolution of a dispute. The judge must promote harmony between litigants, achieve harmony through assuring reasonable restitution to victims, and foster harmony by providing the means for offenders or wrongdoers to return to their communities. That is achieved through free discussion, conciliation, consensus, and guidance from the judge.
2. Order: Navajo justice is concerned with order, which is

related to the principle of harmony. Court procedures and judicial decisions should be keyed to an orderly resolution of disputes.

3. Judicial Attitudes: A judge should behave to everybody as if they were his or her relatives. This value requires judges, as *Hozhoji' Naat'aah* (leaders), to treat everyone equally and fairly. Navajos believe in equality and horizontal, person-to-person relationships as a part of their concept of justice. Obligations toward relatives extend to everyone, because that is a means of not only stressing personal equality, but creating solidarity.

4. Coercion: Given the Navajo value of fundamental equality, it is wrong to use coercion against another. While judges have the duty of making decisions for others, that should be done with patience, courtesy, and without aggression. A judge should patiently listen to all proper and relevant evidence, as well as the reasonable and well presented arguments of parties or their counsel.

5. Humility: Navajo judges are successors of the traditional *hozhoji' Naat'aah* (peace chief), because they are chosen for their individual qualities. As such, they are only slightly higher than the others, and respect for their decisions depends upon their personal integrity. Humility is the personal value which prompts people to respect judges for their decisions, and not their position.

6. Fair Play: The procedure of Navajo justice is people talking out their problems for a consensual resolution of them. A judge should encourage free discussion of the problem before the court, within the limits of reasonable rules of procedure and evidence. A judge should not encourage or permit aggressive behavior, including the badgering of witnesses, rudeness, the infliction of intentional humiliation or embarrassment, or any other conduct which obstructs the right to a full and fair hearing.

7. Leadership and Guidance: Navajo leadership stresses obligations to others, and creates high duties to consider the overall good of the community. The honor and respect given to leaders is based upon an acceptance of their leadership qualities, and a duty to respect those who guide. While often judges are called upon to use the adjudication process to declare a winner and a loser, or inflict punishment upon an individual, Navajo common law encourages problem-solving and discussion to achieve harmony and order. Therefore, the judge should encourage discussion by the parties, settlement, and resolving underlying problems. The judge should have wisdom and knowledge to recommend plans, solutions, and resolutions to the parties before the court.

A judge shall always act with dignity and impartiality, to assure that parties have their day in court and an orderly and fair proceeding. A judge should exercise patience, and

use the authority of the court to decide cases in an atmosphere of reason, rather than contention. The court should immediately intervene to control inappropriate behavior, aggressive tactics, or any conduct which takes away from a fair hearing of the full case, and takes away from the respect due another human being.

8. Restitution: The Navajo common law of wrongs and crimes was primarily concerned with restitution (nalyeeh) not punishment. A judge should provide full restitution or reparation to injured parties, particularly in criminal cases. In addition, a judge should encourage appropriate apologies to those who have been wronged, and urge forgiveness for wrongdoers who admit fault and promise good behavior in the future.

CANON TWO

A NAVAJO NATION JUDGE SHALL

PROMOTE AND PROTECT THE INDEPENDENCE OF THE COURTS

PRINCIPLE:

The Navajo people expect that those who make decisions about their lives and futures will be wise and completely independent, and that the courts will decide without regard to improper influences. They may arise from family, clan, personal or business relationships; a personal interest in the case before the court; giving in to or fearing political influence; or, any consideration other than the equality of the parties and the merits of the case. To that end,

all judges must remain personally impartial and independent, and act to promote and protect the independence of the Navajo Nation courts.

CONSIDERATIONS:

1. Acting in Open Court: Decisions should be announced in open court, except when the judge issues written judgments or orders. A judge should make rulings in open court, with the opportunity for the parties or counsel to make objections for the record. While there may be occasions when a judge must consult with parties or counsel in chambers, they should have an opportunity to make offers of proof, arguments or objections for the record.
2. Judicial Hearing: A judge should, at all times, consider how his or her bearing (behavior/comportment/conduct/deportment) or demeanor, affects the public image of the Navajo Nation courts. Leaders are judged by their speech, actions, dress, appearance, manners, and conduct, and it is important to always project the image of judicial impartiality and independence.
3. Independence and Separation of Powers: A Navajo judge should consider the independence of the Navajo Nation courts, as well as the separation of powers in Navajo Nation Government. A judge must use a proper judicial role to determine the ultimate facts of a case and the law applicable to it, as well

as the fair and proper remedy in a given case.

CANON THREE

A NAVAJO NATION JUDGE SHALL

ALWAYS EXERCISE THE INHERENT POWERS AND DUTIES OF THE COURT

WITH IMPARTIALITY AND DILIGENCE, IN ORDER TO ENCOURAGE

FREE DISCUSSION, ACHIEVE A PROMPT AND SPEEDY RESOLUTION

OF DISPUTES, AND OBTAIN A JUST RESOLUTION

OF ALL MATTERS UNDER CONSIDERATION

PRINCIPLE:

One of the inherent powers of a court is to regulate proceedings before it. As it is with all court powers, they must be used wisely and well, with impartiality and diligence, so that the end is a prompt and fair disposition of disputes.

CONSIDERATIONS:

1. The Judge as Mediator: The judge should use the pretrial conference, sentencing hearing, or post-judgment proceeding to encourage the parties to reach consensus regarding their dispute. The judge shall not coerce or force agreement or consent to a course of action, and shall not continue to preside where the judge is dissatisfied with a party who refuses to settle a case. An agreement is forced or coerced when a judge refuses to accept a fair and reasonable contention that there are fairly contested questions of fact,

where testimony should be heard or evidence should be received, or where the judge is so intent upon a settlement to save court time that he or she refuses to accept a reasonable refusal to settle. A judge should enter an order of recusal and disqualify himself or herself when resentment over a party refusing to settle will affect the ability to fairly hear a case. A judge should also enter an order of recusal when he or she has heard a great deal of information during settlement discussions which otherwise would not be admissible as evidence, and the judge is unable to disregard that information in a trial. No finding of fact or conclusion of law may be made upon information received during settlement discussions, which is not developed as evidence in a trial or hearing.

The elements the judge must balance in this consideration are the need to encourage full discussions of a case during settlement sessions, yet disregard otherwise inadmissible evidence or the stance of a party if the case goes to a trial or hearing. Therefore, if a judge is angry at a party for refusing to settle, and that anger may affect a judgment, or if the judge hears evidence not admissible at trial (e.g. a great deal of hearsay) and cannot disregard what has been heard, the judge should consider recusal.

While careful not to receive information in violation of rules of fairness, procedure, or evidence, the judge should

encourage a full development of information, in order to promote discussion and consensus.

If a judge is uncomfortable with mediation, or feels that the skills of a peacemaker will assist in the process of mediation, the judge should refer the case to the Navajo Peacemaker Court.

2. A Judge as Adjudicator: When called upon to make a decision in a contested matter, the judge should be satisfied that all available and relevant information is before the court, in order to make a fair decision. Where parties have the opportunity to present full proof of their case, but fail to do so, the judge may draw a negative inference from that fact. That is, if there is evidence that would support a contention, and the party having the evidence fails to produce it, the court may conclude that the evidence would not support the contention, or would go against it. Rules of practice, procedure, and evidence should be liberally applied so all relevant facts, and all reasonable arguments of law are presented.

The judge has the discretion, serving as an adjudicator, to ask questions of witnesses, particularly where counsel fails to develop facts which are relevant to the pleading. A judge also has the discretion to compel the production of evidence which is relevant to the case. A judge may recess or continue a case for a reasonable period of time for such

purposes.

3. Counselling Parties or Counsel Before the Court: While a judge should take care to not unfairly admonish a party of counsel before the court, or to give an appearance or partiality to one side or another, that judge should not hesitate to enter appropriate orders, or give direction, to assure a fair trial or hearing. Where a party or counsel has engaged in unfair or improper conduct during the course of a trial or hearing, a judge may, following the entry of judgment, provide counselling to the party or counsel. That should be done in a manner which makes clear that the admonitions given by the court did not or will not affect the outcome of the case. A judge may counsel parties or counsel as a group, or separately, as may be appropriate. Where there has been a direct or indirect contempt of court by a party or counsel, the court should not counsel or admonish, but use the proper procedures to punish for a direct or indirect contempt of court. In appropriate cases, a judge may refer acts of misconduct by a party or counsel to the Office of the Prosecutor or the Navajo Nation Bar Association.
4. Following the Law: A judge shall be faithful to the law, and use best efforts to discover and apply any rule of law declared by the Navajo Nation Treaty of 1868, applicable federal statutes, enactments of the Navajo Nation Council, the Navajo common law, or applicable and relevant principles of

law from other jurisdictions. A judge should remember that courts apply the law, and do not consider partisan or factional interest, public clamor, or criticism.

5. Bias: It does not require automatic recusal because of personal opinion, but only an aware and deliberate self-examination, with a moral judgment that it would be inappropriate to hear the case. The judge shall enter an order of recusal if it appears that bias or prejudice toward a person, group, or entity may play a part in a decision. A judge shall not permit any person, including members of the court staff, counsel, or those coming before the court, to express bias or prejudice, or argue that the court should consider any such matter in a decision or ruling.

6. Consultations: Judges, as humans, sometimes have negative attitudes toward others because of their race, gender, tribal affiliation, clan membership, political views, wealth or poverty, profession or business, official status, or membership in some other class. Judges shall perform the duties of judicial office without bias, prejudice or favoritism. If a judge bears either a bias or favoritism toward any group, he or she should consciously reflect to decide whether that attitude will affect the ability to remain impartial, given the identity of a party or parties before the court. A judge may consult with other judges or members of the court staff regarding relevant and applicable points of

law, and may receive appropriate assistance from such persons in the preparation of an order, judgment, or other decision. A judge may also consult with any independent and impartial expert in the law regarding general principles of law which may be applicable to a case. Those experts can include law professors, experienced attorneys, experts in the field (but not experts on a question of fact before the court), medicine men and women, counselors on tribal customs and usages, or other persons having expertise in law. A judge need not disclose the consultation with such a person, but must limit the consultation to general opinions of law on facts found by the judge alone. The judge retains the ultimate responsibility to decide controlling questions of fact and law.

7. Outside Activities: A judge is clothed with independence, integrity, and fairness. Those moral values become a permanent part of a good judge. The public will judge the courts on the personal conduct of a judge. No outside personal, business, or social activity of a judge should create a conflict between private interest and public duty. Attention to personal, business, or social activities should not reduce the time devoted to public business. The pursuit of a judge's private interests shall not be undertaken in such a way as to create public distrust in the judge's ability to decide matters with fairness and impartiality. The judge's

personal conduct and habits, as seen by the public, must not undermine public trust in his or her personal integrity. That includes prompt attention to just debts and obligations, the avoidance of alcohol or drug abuse, compliance with Navajo concepts of propriety and decency, and acting in a moral manner.

Some examples of the personal conduct required include dressing and behaving as the Navajo public expects; use of intoxicants, except where permitted and in a moderate manner; treating one's spouse and children with respect and courtesy in public places; avoiding sexual improprieties, including adultery, sexual harassment, or promiscuous behavior; acting with politeness and courtesy to members of the public; avoiding improper or offensive language or comments; and, acting as a leader who commands respect by giving respect.

8. Behavior in Other Courts: When a judge presides in another Navajo Nation court, or a court of a foreign jurisdiction, the judge should respect the integrity of that court, and that of judges who have either previously presided in the matter, or will preside in later proceedings. A judge will assume jurisdiction only upon a clear appointment, and with clear jurisdiction. Where a prior judge has made a procedural ruling in a case, that is the law of the case and is binding upon the successor judge, unless the ruling is clearly unjust, or violates fundamental principles of law.

A judge who has the honor of appearing in another tribe's court or tribunal shall respect the culture and traditions of that tribe.

9. Prompt, Efficient, and Fair Decisions: A judge shall plan pending cases with an eye to assuring a speedy, efficient, prompt, fair, and thoughtful determination of all disputed questions of fact and law. Due regard should be given to the right of a speedy trial in criminal matters, and the special needs of children, the elderly, the disabled, and those who complain of deprivations of fundamental civil rights. Persons who may be in jail pending a criminal trial are entitled to a speedy trial to avoid unjust incarceration. Children, the elderly, and disabled persons are entitled to have serious questions which affect their rights or status decided promptly. Those who seek proper relief by way of injunction, restraining order, or other specific orders to cure violations of civil rights should have their cases heard promptly. If a judge feels hesitant to rule on a matter because of a lack of knowledge of the law which applies to it, or because of the importance of the decision, that judge should use resources which are available within the judicial branch to assist in making the decision. Cases should not be left undecided when proper consultation may aid making a prompt decision.

10. Public Comment on Court Matters: The judge shall not publicly comment on matters pending before the court, including

providing information or views to the news media or persons in semipublic contacts. While a judge may give public addresses or make public statements regarding views on the law, they should be general expressions of informed opinion which are not related to any matter pending before the Navajo Nation courts.

11. Use of Non-Public Information: No judge shall disclose, or make any personal use of, non-public information acquired during the course of judicial office. This includes the use of any such information upon leaving judicial office.

CANON FOUR

A NAVAJO NATION JUDGE SHALL

ASSUME ADMINISTRATIVE RESPONSIBILITY FOR THE

PROMPT, EFFICIENT, AND CAREFUL EXERCISE OF COURT BUSINESS.

PRINCIPLE:

Aside from the duty to preside over cases, a judge has the responsibility to oversee the administrative functions of the court. A judge should supervise the activities of the court staff, to assure that the duties and responsibilities of each member are performed.

CONSIDERATIONS:

1. Planning: A judge should do long-term and short-term planning, with the assistance of appropriate members of the

court staff, to identify needs, goals, and objectives, and to make appropriate delegations and assignments of responsibility to affected staff members.

2. Delegations and Assignments: A judge should delegate administrative tasks and responsibilities to staff members, assign nonjudicial support duties to qualified personnel, and assure that members of the court staff understand their duties and responsibilities.
3. Supervision: A judge should adequately supervise so that members of the court staff properly perform their position duties.
4. Orientation: A judge should provide ongoing orientation to members of the court staff regarding their duties to the court and to the public. That includes instruction on the proper role and function of each staff member in the court organization, and the duty to treat members of the public with the utmost courtesy and cooperation.
5. Personnel Matters: A judge shall not carry out the administrative responsibility to hire, assign, promote, or discipline members of the court staff using bias or prejudice, nepotism, favoritism, or any factor other than merit and the qualifications of the person for the position.
6. Discipline: A judge should impose appropriate discipline for infractions of court policy, or a failure to carry out the duties of the position. Discipline should be imposed after

orientation on the duties of the position and court standards, counselling for minor infractions, and a fair hearing.

CANON FIVE

A NAVAJO NATION JUDGE SHALL

SEEK CONTINUING EDUCATION TO ACHIEVE KNOWLEDGE OF THE LAW,

AND PROMOTE THE OVERALL COMPETENCY OF THE NAVAJO NATION JUDICIARY

PRINCIPLE:

Navajos believe knowledge is power. Knowledge is highly-valued and continuously sought. When the Navajo Nation courts were created, a prominent concern of the Navajo Tribal Council was the education of the Navajo Nation judges. Navajo judges are chosen for their wisdom, so each judge must undertake a personal quest for knowledge of the law, in order to meet the expectations of the public.

CONSIDERATIONS:

1. Personal Competence in the Law: A judge must make a personal assessment of his or her weaknesses in legal knowledge, as well as areas of law which will be useful in carrying out judicial duties. A judge should develop a personal training plan, identify training opportunities, and communicate training needs to the Office of the Chief Justice. In addition, a judge should seek materials and resources for personal study, including materials available through the Solicitor, staff attorneys, the Navajo Nation Bar Association,

or other community resources.

A judge should strive to seek out new approaches and techniques to improve the skill to make wise and prompt decisions.

2. Assisting and Encouraging Others: A judge will often have knowledge or skills not possessed by other judges. In such instances, a judge should offer his or her knowledge or experience to others. A judge should participate in the development of comprehensive training and education plans, encourage and participate in Navajo Nation Judicial Branch training activities, and promote discussions with other judges regarding applicable law, court policy, or successful judicial techniques.

3. Legal Education: A judge should not only promote legal education within the Navajo Nation judiciary, but promote the education of the Navajo Nation bar and members of the general public. That is done by participation in bar or public functions, and responding to invitations to speak to public groups. While a judge shall not use such occasions to comment upon any matter pending before the courts, or render opinions regarding political matters, a judge should welcome opportunities to inform the public on the law, and reinforce the dignity of the Navajo Nation courts.

CANON SIX

A NAVAJO NATION JUDGE SHALL

AVOID AND REFRAIN FROM ENGAGING IN IMPROPER POLITICAL ACTIVITY

PRINCIPLE:

Navajo Nation politics and political relationships are different from those in other jurisdictions, because of group, family, and clan participation in the political process. A Navajo judge, as a leader, should vote, encourage others to vote, participate in chapter meetings, and participate in local affairs. Judges, as individuals, may exercise their voting rights and have personal opinions on matters of public interest. However, the public expects judges to remain fair and impartial, so it is inappropriate to hold an office of public trust and also engage in improper political activity.

CONSIDERATIONS:

1. Political Activities: While a judge may participate in government functions and activities, the judge must not engage in political functions. A judge shall not:
 - a. Act as a leader or hold an office in a Navajo Nation political organization, which includes organized Navajo Nation political parties, organizations which advocate in favor of or against a candidate for office or a given political view, organizations formed in support of any candidate for elective office, or a chapter faction.
 - b. Give a public endorsement or state public opposition to

a candidate for Navajo Nation public elective office. A judge may support a candidate for state or federal elective office.

c. Make a speech on behalf of a political organization, as defined in subsection 1(a) above.

d. Attend a meeting or gathering of a political organization, as defined in subsection 1(a) above.

e. Solicit funds for, pay monies to, or make a contribution to any candidate or any group or organization recited in subsection 1(a) above, or purchase tickets for dinners or other functions of such persons or groups.

2. Candidacy for Public Elective Office: A judge shall not retain judicial office and simultaneously be a candidate for public elective office. Such offices include the Navajo Nation President or Vice-President, membership in the Navajo Nation Council, chapter office, and public elective offices of the States of Arizona, New Mexico, or Utah, or of the Government of the United States. Such public offices also include elective, but not appointive, school board positions, and any other public position which is filled through the vote of the electorate.

3. Resignation upon Candidacy: Any judge who becomes a candidate or who announces an intent for candidacy to public elective office, shall immediately resign from judicial office.

4. Other Expressions of Political Views: Nothing in this canon

shall prohibit a judge from participating in non-elective activities of his or her chapter, so long as any public vote or expression of views on chapter matters does not compromise the appearance of independence and impartiality of the judge or the courts. The judge must make it clear that any expression of opinion on chapter policy does not represent the view of the Navajo Nation courts or the judge as a judge, but only a personal view. The judge shall avoid any public expression of political views, and should take care that when expressing views on issues of public interest, it is done in an appropriate manner, without speaking as a judge.

5. Contributions: While a judge may participate in chapter and other governmental functions, and express prudent and appropriate views on matters which do not compromise judicial independence, a judge should not make contributions to political groups or for activities which are not social in nature.

CANON SEVEN

A NAVAJO NATION JUDGE SHALL

AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

IN ALL ACTIVITIES

PRINCIPLE:

An "impropriety" is any act which violates any law; any act or inaction contrary to the duties of judicial office or these canons;

or one which undermines public confidence in a judge or the courts. It is an act which is clearly improper and in violation of the oath to follow and uphold the law, or which creates the appearance of impropriety.

CONSIDERATIONS:

1. Obedience to the Law: A judge shall comply with the laws of the Navajo Nation, and act to promote public confidence in the integrity, fairness, and impartiality of the Navajo Nation judiciary.
2. Impartiality: A judge shall not allow family, clan, religious, social, political, or other relationships and activities to influence judicial conduct or judgment.
3. Use of Office for Self or Others: A judge shall not use the prestige of judicial office to promote the interests of the judge or others.
4. Influence: A judge shall not act or permit others to act so as to give the impression they have any special influence with the judge, or are in a position to influence the judge.
5. Testimony: A judge shall not voluntarily appear in any court to testify as a character witness for a party. The prohibition against appearing as a character witness extends to letters to a court or probation officer, but does not prohibit letters of recommendation for matters outside judicial jurisdiction.

6. Membership in Organizations: A judge shall not serve as a member of a board, including nonprofit organization boards, unless the work of the board deals with the promotion of law or the judiciary, and membership does not conflict with judicial duties. Board membership includes membership on advisory boards.

CANON EIGHT

A NAVAJO NATION JUDGE SHALL NOT

USE THE JUDICIAL POSITION TO PROMOTE

FINANCIAL OR BUSINESS DEALINGS, AND SHALL NOT

ENGAGE IN BUSINESS DEALINGS WHICH COMPROMISE

JUDICIAL INDEPENDENCE

PRINCIPLE:

A judge shall not use his or her judicial office for personal gain. Such includes using the status of judge in commercial activities, or obtaining loans and benefits from governmental entities. Additionally, while judges may receive income from investments or outside business interests, including family businesses, those financial or business activities must not constitute a conflict of interest or permit an appearance of a conflict of interest.

CONSIDERATIONS:

1. Use of Position: A judge shall not engage in any financial or business dealing, using or appearing to use judicial office

as an advantage. That does not prohibit self-identification as a judge where normal business practice requires disclosure of a person's occupation.

2. Financial or Business Relationships: A judge shall not engage in financial or business dealings which either create a relationship with counsel who regularly appears before the Navajo Nation courts, or be involved with activities which are likely to come before the Navajo Nation courts.

3. Investments: A judge may, subject to this code, hold and manage investments for self and family, including real estate transactions, or other gainful activity.

4. Business Entities: A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity, except that a judge may, subject to this code, manage and participate in:

- a. A business owned by the judge or members of the judge's family; or
- b. A business entity primarily engaged in investments on behalf of the judge or the judge's family.

5. Managing Investments: A judge shall manage personal and family investments or financial interests in a manner that minimizes the number of cases where the judge should be disqualified. In situations where there may be a conflict of interest by holding investments in entities which appear before the Navajo Nation courts, the judge should give up

those investments as soon as the judge can do so without serious financial detriment.

5. Gifts and Loans: A judge and members of the judge's family residing in the same household, shall not accept or knowingly permit the acceptance of any gift, bequest, favor or loan from anyone except for:
 - a. Gifts as public testimonials or honoraria, gifts customarily offered for speaking engagements, gifts by Indian customs, complimentary items offered by publishers or suppliers, invitations for bar-related functions, or public functions associated with the law and judicial office.
 - b. A gift, award or benefit arising out of the business, profession, or separate activity of a spouse or family member residing in the judge's household, including gifts, awards and benefits for the use of the judge or any family members, provided that the item or benefit cannot reasonably be seen as being intended to influence the judge in performing judicial duties.
 - c. Ordinary social hospitality or Indian customary gifts.
 - d. A gift from a relative or friend for a special occasion, such as a wedding, anniversary, birthday, or ceremonial, if the gift is fit for the occasion and the relationship.
 - e. A gift, bequest, favor or loan from a blood or clan relative or close personal friend, where the judge would

in any event be disqualified from hearing a case involving such persons.

f. A loan from a public or private lending institution, in the regular course of business, on the same terms available to persons who are not judges.

g. A scholarship or fellowship awarded on the same terms and criteria as to other applicants.

7. Trusts, Estates, and Fiduciary Activities: A judge shall not serve as an executor, administrator, personal representative, trustee, attorney in fact, or other fiduciary, except for the estate or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. A judge shall not serve in such a position if it is likely the judge will be involved in adversary proceedings before the Navajo Nation courts. When serving in a permitted fiduciary activity, general restrictions on financial activities apply.

8. Service as a Peacemaker, Arbitrator or Private Mediator: A judge shall not serve as a peacemaker, arbitrator or private mediator, or otherwise perform judicial functions in a private capacity.

9. Business with the Judicial Branch: No judge or a member of a judge's immediate family may conduct business with the Judicial Branch of the Government of the Navajo Nation.

10. Reporting of Outside Compensation: Each judge and justice

shall, in accordance with guidelines established by the Chief Justice, make an annual report of outside compensation and financial interests to the Director of Judicial Administration.

CANON NINE

A NAVAJO NATION JUDGE SHALL NOT

LOBBY OR ADVOCATE ANY POSITION BEFORE A LEGISLATURE OR

ADMINISTRATIVE AGENCY, UNLESS DONE IN CONJUNCTION

WITH A JUDICIAL ACTIVITY OR TO IMPROVE THIS

NAVAJO NATION JUDICIAL SYSTEM

PRINCIPLE:

Given the special public trust of judicial office, the need to avoid even an appearance of impropriety, and the need to avoid political activity, it is inappropriate for a judge to lobby, participate in lobbying, provide his or her name for lobbying, or advocate any position before a legislature or administrative body. However, there are occasions when a legislative or administrative proposal may be of interest to the Navajo judiciary as a whole, and in such instances it is proper for a judge to use judicial office for such purposes.

CONSIDERATIONS:

1. General Prohibition: A judge shall not participate in, comment upon, advocate, or permit the use of the judge's name

for the advocacy of any position pending before the Navajo Nation Council, a state legislature, the United States Congress, an administrative agency, or a public body. Lobbying the enactment or defeat of legislation or policy before a legislative or policy-making body is generally prohibited.

2. Exception: Where a matter affects the Navajo Nation judiciary or is one which falls within judicial expertise in the law and is pending before a nonjudicial body, a judge may testify orally or in writing, or otherwise participate in proceedings upon such matters. Provided, however, it may be done only after consultation with appropriate judicial personnel, and the development of a court policy on the matter in question. A judge may appear to give testimony, but only in consultation with the Chief Justice of the Navajo Nation, the Judiciary Committee of the Navajo Nation Council, and the Intergovernmental Relations Committee of the Navajo Nation Council, as provided by Title 2 of the Navajo Tribal Code.

CANON TEN

A NAVAJO NATION JUDGE SHALL NOT

INITIATE, PERMIT OR CONDONE EX PARTE COMMUNICATIONS WITH

PARTIES, COUNSEL, OR INTERESTED PERSONS, EXCEPT

WHEN PROVIDED BY LAW

PRINCIPLE:

Public confidence in the independence and integrity of the judge is undermined, and the judge's decisions are suspect, when there are informal out-of-court communications regarding the merits of a case. Some people do not understand the function of a judge, and feel it is permissible to communicate information or their views on a matter pending before the court to a judge. This must be politely but firmly discouraged, or punished, in appropriate cases. There are times, however, when communications regarding administrative matters, scheduling, or matters unrelated to the merits of the case are appropriate.

CONSIDERATIONS:

1. Definition: An "ex parte communication" is any written or oral communication of information or opinion regarding the merits of a case, without an opportunity for all parties to participate in or respond to the communication.
2. General Prohibition: A judge shall not initiate, permit, or condone any ex parte communication with a party, counsel, or interested person, except as provided by law. Exceptions to the prohibition include administrative matters which do not go to the merits of the case, case scheduling, or emergency applications and writs which are allowed by law.
3. Visits to Chambers: A judge should refuse to speak with any party or attorney in chambers regarding a matter before the court, unless the judge is satisfied that (1) the party or

attorney has consulted with all opposing parties or counsel, and has obtained their agreement to consult with the judge regarding a particular matter, (2) the visit involves a purely administrative function, such as complications in filing or a question of procedure, (3) the question to be discussed is a matter of scheduling, or (4) the visit is for the purpose of making application for a special writ or proceeding, permitted by law to be done ex parte. Any other visitor who wishes to discuss a case should be courteously, but firmly, told by the judge or a member of the court staff that the judge cannot and will not discuss any case pending before the court.

4. Recording Permissible Visits: Where a party or counsel is permitted to discuss a matter by consent, or make a visit for scheduling, the judge or a member of the court staff should prepare a memorandum of what was discussed for the court file and for all parties.

5. Emergency Applications and Extraordinary Writs: Where emergency applications warrant requests, or extraordinary writs are permitted by law, the petition should be presented in open court, with the presence of a clerk of court, and recorded. A judge should be assisted by a member of the court staff, and the proceedings should be recorded by tape recording or minute entry. There may be rare occasions when an individual will make an emergency visit to a judge at the

Judge's home for proper emergency relief. The judge should, in such instances, make arrangements to record or report on the meeting and its results.

6. Non-adversarial Matters: This rule shall not apply to judicial functions which do not involve adversarial proceedings (e.g. name changes).

CANON ELEVEN

A NAVAJO NATION JUDGE SHALL

RECUSE AND DISQUALIFY HIMSELF OR HERSELF WHERE

THE JUDGE'S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED

PRINCIPLE:

The rules of the Navajo Nation courts do not provide for automatic disqualification, and parties are generally required to show bias or prejudice to cause a judicial disqualification. There are, however, situations which give an appearance of impropriety or partiality, and the judge should recuse or disqualify himself or herself under the following circumstances:

1. Personal Bias, Prejudice, or Knowledge: A judge should not preside over a matter where the judge has a personal bias or prejudice toward a party, or where the judge has personal, firsthand knowledge of the facts which will arise in the case.
2. Service as Counsel, Law Associate, or Material Witness: A judge should not preside where the judge has served as counsel in the case before the court, or counsel appearing before the

judge has been associated as counsel in the case before the court, or the judge is a material witness in the case.

3. Economic Interest: Where a judge, acting individually or as a fiduciary, or the judge's spouse, parent or child has an economic interest in the subject of the case, or any interest which could be substantially affected by its outcome, the judge should not preside.

4. Blood Relations: A judge should not preside where a party is the judge's father, mother, maternal or paternal grandparent, uncle, aunt, brother, or sister, or the party is a child, spouse, or guardian of such person. The rule also applies for entities where such persons are officers, directors, or trustees.

5. Clan Relations: The judge should not preside over a matter involving a relative by clan relation where there is a reasonable objection to the judge presiding, or where presiding would give an appearance of impropriety.

CONSIDERATIONS:

1. Recusal or Disqualification. When: The situations mentioned above are ones where the judge should enter an order of recusal or grant a motion of disqualification. Other situations may arise where a judge may have a past or present relationship to a party or witness such as to require recusal or disqualification as a matter of fairness or to avoid any

appearance of impropriety.

2. Questionable Situations: Where a judge knows of any situation where the judge's fairness or impartiality may be called into question, the judge should make a disclosure of the facts of the matter to the parties, state whether or not the judge feels such will affect fairness or impartiality, and permit the parties to act in accordance with the information provided.
3. Use of Sound Discretion: While the existence of a personal, business, religious, philosophical, or other position may require a judge from presiding in a matter, or the potential of the appearance of impropriety may require recusal, the judge should not grant a motion for disqualification without good cause. The judge should also consider judicial economy, the use of a motion for disqualification as a means of delay, the availability of other judges to hear the matter, or whether the ground for disqualification will cause unfairness or injustice.

November 1, 1991