

**RESOLUTION OF THE
NAVAJO NATION ADVISORY COUNCIL ON DISABILITIES
A RESOLUTION**

REPORTING TO THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE, AND THE NAVAJO NATION COUNCIL; REGARDING THE EFFECTIVENESS OF THE ADULT GUARDIANSHIP ACT, 9 N.N.C. §§810-845, AND THE VULNERABLE ADULT PROTECTION ACT, 9 N.N.C. §§ 1901 – 1925; AND MAKING RECOMMENDATIONS.

SECTION ONE. AUTHORITY

- A. The Navajo Nation Advisory Council on Disabilities (NNACOD) is an advisory council established to serve as an advocate for individuals with disabilities and their families. 13 N.N.C. § 4801 (A).
- B. The NNACOD is responsible for identifying problems concerning individuals with disabilities, and shall work with Navajo Nation government entities to establish a continuum of appropriate services for individuals with disabilities, and address service gaps. 13 N.N.C. § 4801 (B).
- C. The NNACOD, as a Navajo-based organization concerned with the rights of people with disabilities, is granted authority by the Adult Guardianship Act to request non-confidential information from the Judiciary to assess the effectiveness of the Adult Guardianship Act. 9 N.N.C. § 845 Section Two "Monitoring of the Court Appointed Representative and Guardianship Process." The NNACOD requested this information on May 8, 2019.
- D. The NNACOD, through the authority in its implementing legislation, requested a similar report for the Vulnerable Adult Protection Act to assess the law's effectiveness and gain information about a possible service gap.

SECTION TWO. FINDINGS

- A. The Navajo Nation Judicial Branch developed a memorandum in response to the NNACOD's questions about the Adult Guardianship Act and Vulnerable Adult Protection Act on July 30, 2019. *See Exhibit A.*
- B. Summary of the response regarding the Adult Guardianship Act:
 1. The Adult Guardianship Act is being implemented in 12 of 13 judicial districts of the Navajo Nation, with a total of 273 cases brought under the Act between 2014-2018.
 2. There are no large discrepancies in the outcomes between judicial districts based on the type of information the judicial branch records.
 3. The information recorded by the Judicial Branch regarding the outcome of cases is varied and inconsistent throughout the districts and over time.
 4. Most Adult Guardianship Act cases result in either a dismissal without prejudice, or judgement for the petitioner.
 5. Of the 273 cases Adult Guardianship Act cases, only four (4) show an appointment of a guardian ad litem. Only 97 cases list an attorney of record, although it is not specified if the attorney is representing the person with a disability, or another party who initiated the guardianship proceeding.
 6. Under the Adult Guardianship Act, the court may appoint a guardian ad litem at any point in the case. 9 N.N.C. §823.

7. Under the Adult Guardianship Act, if prior to a hearing on a petition alleging the respondent is incapacitated or at any point in the course of a proceeding, the respondent is not represented by counsel, the court **must** appoint a legal advocate. 9 N.N.C. § 832.
- C. Summary of response regarding the Vulnerable Adult Protection Act:
1. The Vulnerable Adult Protection Act is not being implemented across all districts of the Navajo Nation. For the time period 2011-2019, all 20 legal cases brought under the Act were in the Kayenta judicial district.
 2. Of the 16 closed cases, 10 were dismissed without prejudice and six (6) resulted in a judgment for the petitioner.
 3. Under the Vulnerable Adult Protection Act, a petition for an Adult Protection Order may be filed by a Prosecutor on behalf of the Navajo Nation, or by a vulnerable adult pro se consistent with §1913. 9 N.N.C. § 1909.
 4. The Office of the Prosecutor has sole discretion in the decision to initiate legal proceedings in the Courts, on behalf of the Navajo Nation. 9 N.N.C. §1912.
 5. A vulnerable adult who has been abused and/or neglected may petition the Court for an adult protection order without the assistance of legal counsel or the Navajo Nation. 9 N.N.C. §1912.
- D. A request was sent to the Navajo Nation Department of Social Services concerning investigations under the Vulnerable Adult Protection Act. This request went unanswered.

SECTION THREE. RECOMMENDATIONS

- A. In regards to the Adult Guardianship Act,
1. NNACOD recommends that the Health, Education, and Human Services Committee support the efforts of the NNACOD and the Judicial Branch to revise the recordkeeping in Adult Guardianship Act cases to better capture types of outcomes and type of representation provided. This information will help ensure the statute is being implemented properly.
 2. NNACOD recommends the Health, Education, and Human Services Committee investigate how counsel, including guardians ad litem, are being appointed by the Courts and if the practice conforms to the requirements of the Adult Guardianship Act. The report produced by the Judicial Branch suggests that counsel is not appointed for respondents in Adult Guardianship Act cases as required by statute; however, additional data is needed to understand when and how counsel is appointed to respondents.
 3. Because counsel is not appointed with uniformity and as required by statute for respondents in Adult Guardianship Act cases when the issue of capacity is raised, the NNACOD recommends a training for the judges of the Navajo Nation on the Adult Guardianship Act and the requirement to appoint counsel.
- B. In regards to the Vulnerable Adult Protection Act,
1. NNACOD recommends that the Health, Education, and Human Services Committee issue a directive to convene the Office of the Prosecutor for each district and the Navajo Nation Department of Social Services to identify the reasons that no legal cases are brought under the Vulnerable Adult Protection Act in any district except Kayenta. The

lack of cases in these districts suggests a gap in services and interventions for vulnerable adults who have been abused and neglected.

2. NNACOD recommends training for the Office of the Prosecutor and Department of Social Services on the Vulnerable Adult Protection Act.
3. NNACOD recommends the Department of Social Services develop Policies and Procedures on implementation of the Vulnerable Protection Act.
4. NNACOD recommends amendments to the Vulnerable Adult Protection Act, if deemed necessary, so services and legal intervention are provided to vulnerable adults who are victims of abuse and neglect.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Advisory Council on Disabilities at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 6-0 on this 5th day of September, 2019.



Hoskie Benally, President

Navajo Nation Advisory Council on Disabilities

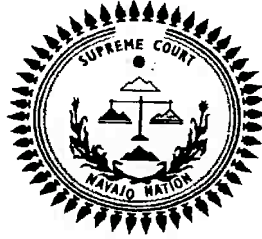
Motion: Sylvia McKinley

Second: Elsie Dee

JUDICIAL BRANCH OF THE NAVAJO NATION

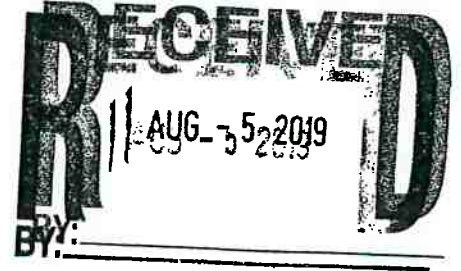
JOANN B. JAYNE
SHIRLEY
Chief Justice of the Navajo Nation
Supreme Court

ELEANOR
Associate Justice, Navajo



Supreme Court

P.O. Box 520 ♦ Window Rock, Arizona 86515
Telephone 928-871-7669 ♦ Fax 928-871-6866



TO: JoAnn B. Jayne, Chief Justice
NAVAJO NATION JUDICIAL BRANCH

FROM: _____/S/_____
William Morris, Solicitor
NAVAJO NATION JUDICIAL BRANCH

DATE: July 30, 2019

SUBJECT: Request for Records Adult Guardianship and Vulnerable Adult Protection Act

The Purpose of this memorandum is to satisfy your request for information under the Navajo Nation Privacy Act, 2 N.N.C. 81 et seq.

In accordance with your request, I have worked diligently to comply with your request. Compliance with this request required extensive work with our technical support team for Justware, the system we use to manage the court records database. In the event you need additional information, please feel free to contact me.

I. Request

As I understood your request, it seeks, in two parts, to gain information and statistics concerning Adult Guardianships and the Vulnerable Adult Protection Act on the Navajo Nation. The two requests are also divided by subject and specific time period. The request for information requested:

Relating to Adult Guardianship for the period 2014-2018, NNACOD seeks:

- 1) the number of cases brought under the adult guardianship act in each agency;
- 2) the types of outcomes (guardianship, court appointed representative);
- 3) Type of representation for people with disabilities (attorney, guardian ad litem, none?);

- 4) relationship between type of representation and outcome;
- 5) origin of the proceeding;
- 6) whether Navajo Social workers receive training on the Adult Guardianship act; and
- 7) the date of the most recent training.

Relating to the Vulnerable Adult Protection Act ("VAPA") for the period 2011-2018:

- 1) The number of reported incidents of suspected abuse or neglect of vulnerable adults in each agency;
- 2) The number of cases brought under the Vulnerable adult protection act;
- 3) Origin of the VAPA cases;
- 4) Types of outcomes;
- 5) The number of social workers trained in VAPA;
- 6) The number of social workers specifically working on VAPA cases; and
- 7) Date of the most recent training.

After extensive work with our IT department, we were able to produce most of the requested information. We believe that we have offered the records we have, and have formatted them consistent with our understanding of the request.

II. Adult Guardianships

For Adult Guardianships the period 2014-2018:

- 1) The number of cases brought under the adult guardianship act in each agency – the Judicial Branch organizes its records by judicial district and not by agency. Internet Technology ("IT") is attempting to determine this number by writing a unique query and running it through our database. This activity took more than one hour. There are 273 cases in Justware between 2014-2018.

| | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|------------------|------|------|------|------|------|-------|
| Alamo | 0 | 1 | 0 | 1 | 0 | 2 |
| Aneth | 0 | 0 | 2 | 1 | 2 | 5 |
| Chinle | 19 | 7 | 5 | 6 | 10 | 47 |
| Crownpoint | 17 | 7 | 16 | 8 | 2 | 50 |
| Dilkon | 10 | 1 | 0 | 4 | 4 | 19 |
| Dzil Yijiin | 0 | 0 | 0 | 3 | 5 | 8 |
| Kayenta | 2 | 2 | 3 | 1 | 2 | 10 |
| Pueblo Pinato | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|-------------|----|----|----|----|----|-----|
| Ramah | 0 | 0 | 0 | 0 | 1 | 1 |
| Shiprock | 14 | 8 | 12 | 7 | 10 | 51 |
| Tuba City | 6 | 5 | 2 | 5 | 4 | 22 |
| Tohajiilee | 2 | 1 | 2 | 1 | 1 | 7 |
| Window Rock | 10 | 5 | 13 | 11 | 12 | 51 |
| Total | 80 | 37 | 55 | 48 | 53 | 273 |

- 2) The types of outcomes (guardianship, court appointed representative) – the answers to these questions were varied, and inconsistent throughout the districts and over time.

Cases in the Judicial Branch are tracked as either open or closed. Additionally, disposition is tracked. This process is varied but generally listed as Dismissal by Stipulation, Dismissal with prejudice, Dismissal without prejudice, Judgment for Petitioner, Granted, Dismissal, and Vacated. The files are not uniform across the districts.

| Alamo | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------------------------|------|------|------|------|------|-------|
| Dismissal w/ prejudice | 0 | 1 | 0 | 0 | 0 | 1 |
| Judgment for the Petitioner | 0 | 0 | 0 | 1 | 0 | 1 |
| Total | 0 | 1 | 0 | 1 | 0 | 2 |

| Aneth | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-------------------------|------|------|------|------|------|-------|
| Dismissal w/o prejudice | 0 | 0 | 2 | 1 | 2 | 5 |
| Total | 0 | 0 | 2 | 1 | 2 | 5 |

| Chinle | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------------------------|------|------|------|------|------|-------|
| Judgment for the Intervenor | 2 | 0 | 0 | 0 | 0 | 2 |
| Dismissal w/ prejudice | 1 | 0 | 0 | 0 | 2 | 3 |
| Dismissal w/o prejudice | 4 | 0 | 1 | 2 | 0 | 7 |
| Judgment for Petitioner | 7 | 6 | 4 | 4 | 6 | 27 |
| Granted | 4 | 1 | 0 | 0 | 0 | 5 |
| Pending Judgement | 0 | 0 | 0 | 0 | 2 | 2 |
| Total | 18 | 7 | 5 | 6 | 10 | 46 |

| Crownpoint | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|--------------------------|------|------|------|------|------|-------|
| Dismissal by Stipulation | 1 | 0 | 0 | 0 | 0 | 1 |
| Dismissal w/ prejudice | 1 | 0 | 0 | 1 | 0 | 2 |
| Dismissal w/o prejudice | 5 | 4 | 4 | 3 | 1 | 17 |
| Judgment for Petitioner | 4 | 3 | 12 | 3 | 0 | 23 |
| Granted | 3 | 0 | 0 | 0 | 0 | 3 |
| Dismissal | 3 | 0 | 0 | 0 | 0 | 3 |
| Pending Judgement | 0 | 0 | 0 | 1 | 1 | 2 |
| Total | 17 | 7 | 16 | 8 | 2 | 51 |

| Dilkon | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|--------------------------|------|------|------|------|------|-------|
| Dismissal by Stipulation | 1 | 0 | 0 | 0 | 0 | 2 |
| Dismissal w/ prejudice | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|-------------------------|----|---|---|---|---|----|
| Dismissal w/o prejudice | 3 | 0 | 0 | 3 | 2 | 8 |
| Judgment for Petitioner | 0 | 1 | 0 | 0 | 0 | 1 |
| Granted | 6 | 0 | 0 | 0 | 0 | 6 |
| Dismissal | 0 | 0 | 0 | 0 | 0 | 0 |
| Pending Judgement | 0 | 0 | 0 | 1 | 2 | 3 |
| Total | 10 | 1 | 0 | 4 | 4 | 18 |

| Kayenta | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|--------------------------|------|------|------|------|------|-------|
| Dismissal by Stipulation | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissal w/ prejudice | 0 | 0 | 0 | 0 | 1 | 1 |
| Dismissal w/o prejudice | 1 | 1 | 2 | 1 | 0 | 4 |
| Judgment for Petitioner | 0 | 0 | 0 | 0 | 1 | 1 |
| Granted | 1 | 0 | 0 | 0 | 0 | 1 |
| Dismissal | 0 | 0 | 0 | 0 | 0 | 0 |
| Vacated | 0 | 0 | 1 | 0 | 0 | 1 |
| Pending Judgement | 0 | 1 | 0 | 1 | 0 | 2 |
| Total | 2 | 2 | 3 | 1 | 2 | 10 |

| Ramah | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|---------|------|------|------|------|------|-------|
| Pending | 0 | 0 | 0 | 0 | 1 | 1 |
| Total | 0 | 0 | 0 | 0 | 0 | 1 |

| Shiprock | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|----------|------|------|------|------|------|-------|
| | | | | | | |

| | | | | | | |
|--------------------------|----|---|----|---|----|----|
| Dismissal by Stipulation | 5 | 0 | 0 | 1 | 0 | 6 |
| Dismissal w/ prejudice | 1 | 0 | 1 | 0 | 0 | 2 |
| Dismissal w/o prejudice | 1 | 5 | 5 | 5 | 3 | 19 |
| Judgment for Petitioner | 3 | 3 | 5 | 1 | 2 | 14 |
| Granted | 4 | 0 | 0 | 0 | 0 | 4 |
| Dismissal | 0 | 0 | 0 | 0 | 0 | 0 |
| Pending Judgement | 0 | 0 | 1 | 0 | 5 | 6 |
| Total | 14 | 8 | 12 | 7 | 10 | 51 |

| Tuba City | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|--------------------------|------|------|------|------|------|-------|
| Dismissal by Stipulation | 1 | 0 | 1 | 0 | 0 | 2 |
| Dismissal w/ prejudice | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissal w/o prejudice | 2 | 0 | 0 | 2 | 1 | 5 |
| Judgment for Petitioner | 1 | 5 | 1 | 2 | 2 | 11 |
| Granted | 2 | 0 | 0 | 0 | 0 | 2 |
| Dismissal | 0 | 0 | 0 | 0 | 0 | 0 |
| Pending Judgement | 0 | 0 | 0 | 1 | 1 | 2 |
| Total | 6 | 5 | 2 | 5 | 4 | 22 |

| Tohajiilee | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|--------------------------|------|------|------|------|------|-------|
| Dismissal by Stipulation | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissal w/ prejudice | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|-------------------------|---|---|---|---|---|---|
| Dismissal w/o prejudice | 0 | 1 | 1 | 0 | 1 | 3 |
| Judgment for Petitioner | 2 | 0 | 1 | 1 | 0 | 4 |
| Granted | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissal | 0 | 0 | 0 | 0 | 0 | 0 |
| Pending Judgement | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 2 | 1 | 2 | 1 | 1 | 7 |

| Window Rock | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|--------------------------------|------|------|------|------|------|-------|
| Dismissal by Stipulation | 1 | 0 | 0 | 1 | 0 | 2 |
| Dismissal w/ prejudice | 0 | 0 | 1 | 0 | 0 | 1 |
| Dismissal w/o prejudice | 3 | 1 | 1 | 3 | 3 | 11 |
| Judgment for Petitioner | 0 | 3 | 11 | 4 | 7 | 25 |
| Granted | 6 | 0 | 0 | 0 | 0 | 6 |
| Judgment from Multiple Parties | 0 | 0 | 0 | 1 | 0 | 1 |
| Dismissal | 0 | 0 | 0 | 0 | 0 | 0 |
| Pending Judgement | 0 | 1 | 0 | 2 | 2 | 5 |
| Total | 10 | 5 | 13 | 11 | 12 | 51 |

- 3) Type of representation for people with disabilities (attorney, guardian ad litem, none?).

The Court system does not have any way to determine whether a litigant has a disability from the current records.

After the efforts of IT, there were only four closed cases in our records showing a Guardian ad litem appointed in Guardianship cases. Three of these resulted in a judgment for the petitioner. The Fourth case was dismissed without prejudice.

There are 97 cases which list attorneys. 12 of those cases are still open. However, it is not clear if that attorney represented the petitioner or the respondent. Therefore, at this point it is not possible to draw correlation between the outcome and representation. The remainder of the cases cannot be determined from current records.

- 4) **The relationship between type of representation and outcome** – outside the scope of Judicial Branch Records and likely not contained in Judicial Branch records. The current records show only that there was an attorney or guardian ad litem.

As above, it is not clear if that attorney represented the petitioner or the respondent. Therefore, at this point it is not possible to draw correlation between the outcome and representation.

| Guardian Ad litem | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------------------------|------|------|------|------|------|-------|
| Judgment for the Petitioner | 0 | 1 | 1 | 1 | 0 | 3 |
| Dismissal w/o prejudice | 0 | 0 | 1 | 0 | 0 | 1 |
| total | 0 | 1 | 2 | 1 | 0 | 4 |

- 5) **The origin of the proceeding** – This information is not contained in our records, although we can name the petitioner in these actions, we cannot determine the source of the referral from the information in the Judicial Branch records.
- 6) **Whether Navajo Social workers receive training on the Adult Guardianship Act** – outside the scope of Judicial Branch Records and not contained in Judicial Branch records.
- 7) **The date of the most recent training** – outside the scope of Judicial Branch Records and not contained in Judicial Branch records.

III. Vulnerable Adult Protection Act

For Vulnerable Adult Protection Act for the period 2011-2019, the Judicial Branch has very little of the requested information.

- 1) **The number of reported incidents of suspected abuse or neglect of vulnerable adults in each agency** – outside the scope of Judicial Branch Records and not contained in Judicial Branch records.

2) **The number of cases brought under the Vulnerable Adult Protection Act-**

The Judicial Branch organizes its records by judicial district and not by agency. IT is attempting to determine this number by writing a unique query and running it through our database. This activity took more than one hour and yielded only results from KYFC. It is unclear if this is the only court tracking, entering, or whether these cases were filed under another statute.

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|----------------------|------|------|------|------|------|------|------|------|-------|
| Kayenta Family Court | 0 | 0 | 7 | 2 | 2 | 1 | 0 | 8 | 20 |

There is also the possibility that some of these cases may also be filed under DAPA.

3) **Origin of the Vulnerable Adult Protection Act cases—**

To the extent that this is in Justware we have the information on the cases listed above (see, Number 1). Currently, the information that is available for the cases listed above:

| Kayenta Family Court | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|----------------------|------|------|------|------|------|------|------|------|-------|
| Nation filed | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 5 |
| Victim filed | 0 | 0 | 7 | 2 | 2 | 1 | 0 | 3 | 15 |
| Total | 0 | 0 | 7 | 2 | 2 | 1 | 0 | 8 | 20 |

Although these cases are filed either by a victim or the Navajo Nation it is not clear where that case originated. The court system does not keep records as to the complaints, referrals, calls or any other source concerning the origin of these cases.

4) **Types of outcomes--**this information is in the Judicial Branch records. However, there are only outcomes to the cases that are in Justware. This means that there are less than 20 cases tracked. Of those, only 16 show as closed in our records.

| Kayenta Family Court | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Total |
|-----------------------------|------|------|------|------|------|------|------|------|-------|
| Dismissal Without Prejudice | 0 | 0 | 3 | 1 | 1 | 1 | 0 | 4 | 10 |

| | | | | | | | | | |
|-----------------------------------|---|---|---|---|---|---|---|---|----|
| Judgment for the Petitioner | 0 | 0 | 3 | 0 | 2 | 1 | 0 | 0 | 6 |
| Total | 0 | 0 | 6 | 1 | 3 | 2 | 0 | 4 | 16 |

- 5) **The number of social workers trained in VAPA**—outside the scope of Judicial Branch Records and not contained in Judicial Branch records.
- 6) **The number of social workers specifically working on VAPA cases** — outside the scope of Judicial Branch Records and not contained in Judicial Branch records.
- 7) **Date of the most recent training**— outside the scope of the Judicial Branch records.

IV. Conclusion

As I mentioned during our conversation, I am happy to work with you on future request. Please let me know if I can be of further assistance in this matter. I can be reached by email at William.morris@navajo-nsn.gov or by phone at 928-871-7669.