

## Navajo Nation Law CLE Conference Friday, October 28, 2016

Indian Legal Program / Sandra Day O'Connor College of Law / Arizona State University  
111 E. Taylor Street, Beus Center for Law and Society, Phoenix, AZ

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- Navajo Nation Bar Association has approved this conference for 8 CLE credits including 2 hours Navajo Ethics or Navajo Law
  - New Mexico MCLE has approved this conference for 6.5 general credits and 1 Ethics credit
  - State Bar of Arizona does not approve CLE activities however this activity may qualify for up to 8 credit hours, including 2 credit hours for Professional Responsibility
  - California MCLE 8 general credits, including 1 Legal Ethics Credit

### AGENDA

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| 7:30 – 8:20 am   | <b>Check-In &amp; Continental Breakfast</b>   |
| 8:20 – 8:30 am   | <b>Welcome from the Indian Legal Program</b><br><u>Kate Rosier</u> , Executive Director, Indian Legal Program   |
| 8:30 – 9:30 am   | <b>Courts Update</b><br><br>Navajo Nation Case Law Update<br><u>Derrick Burbank</u> , Staff Attorney, Shiprock Judicial District<br><br>U.S. Supreme Court & Federal Court Update<br><u>Paul Spruhan</u> , Assistant Attorney General, Navajo Department of Justice                 |
| 9:30 – 10:30 am  | <b>Financing transactions on the Navajo Nation</b><br><br><u>Roxann Gallagher</u> , Attorney, Sacks Tierney<br>An overview of financing on the Navajo Nation  |
| 10:30 – 10:45 am | <b>Morning Break</b>  |
| 10:45 – 11:45 am | <b>The NNBA Rules of Professional Conduct (1 hour ethics)</b><br><br><u>Myles V. Lynk</u> , Professor of Law, Sandra Day O'Connor College of Law<br><br>This presentation provides an overview of the changes to the Navajo Nation Bar Association's Rules of Professional Conduct. |

11:45 am – 12:00 pm **Boxed Lunch Provided**

12:00 – 1:30 pm **Putting the *Diné* Back in the Navajo Jury System** (1.5 hours of Navajo law or Navajo ethics)

Robert Yazzie Chief Justice Emeritus, Navajo Supreme Court  
Troy A. Eid, Shareholder, Greenberg Traurig, LLP

Navajo common law emphasizes the importance of jury trials, as provided by the Navajo Bill of Rights, consistent with traditional *Diné* concepts of participatory democracy. Yet in recent years, few, if any, jury trials have been held in the Navajo trial court system. The presenters attribute the decline in jury trials at Navajo, and lack of popular support for the current jury system, to what they conclude is a fundamentally flawed assumption: that the Navajo Nation's jury system should mirror its Anglo-American counterpart. This assumption is wrong and destructive to *Diné* civilization because the goals of the two justice systems differ. While Anglo-American adjudication focuses on finding fault and assigning blame through an adversarial "trial by battle" process, the purpose of *Diné* Fundamental Law is *Hózhó' Náhoodleel*, or restoring harmonious relations in the community.

1:30 – 2:30 pm **Employment law**

David Jordan, Attorney, Law Office of David Jordan

This presentation will provide an overview of Navajo Nation employment law and Navajo preference.

2:30 – 2:45 pm Afternoon Break

2:45 – 4:15 pm **Assessing the federal assimilation policy and Dine Bibeehaz'áanii** (1.5 hour – Navajo law or Navajo ethics)

Shawn Attakai, Attorney

The biggest threat to Navajo society today is perhaps the federal assimilation policy. Where does this "fundamental law" come from, why was it implemented, why is it so difficult for Navajos to talk about this today, and why was its impact so great in the 2014 Navajo presidential election? We will explore some of these questions in this session.

4:15 – 5:15 pm **The Living Treaty: Navajo and Federal Applications of the Treaty of 1868**

Paul Spruhan, Assistant Attorney General, Navajo Department of Justice

The presentation will be a lecture, with a power point presentation, on the historical background of the Treaty of 1868 and modern legal applications of the Treaty by the Navajo Supreme Court and federal courts. Through a discussion of the interpretive rules applied by both courts, I will discuss how federal law

assumes a static history-based approach to treaty interpretation, by attempting to discern the understanding of tribal negotiators and the meaning behind the text, while Navajo law looks more to modern understanding of the Treaty by the Navajo People. Such slippage between the two approaches can result in different outcomes, particularly in jurisdictional cases. Ultimately, while Navajo law views the Treaty as a living, vibrant document whose meaning continues to develop, federal law sees it as an agreement whose meaning is frozen in 1868.

Materials: The text of the Treaty, the transcript of the negotiations, and illustrative Navajo and federal cases.

5:15 pm

**Adjourn**