



Navajo Nation Law

CLE Conference

Friday, Oct. 25 • 8:20 a.m. - 5:15 p.m.

Beus Center for Law and Society, Room 240
111 E. Taylor St., Phoenix, AZ 85004

- Navajo Nation Bar Association has approved this conference for 8 NNBA credits, including 2 Navajo Ethics credits.
- New Mexico MCLE has approved this conference for 6 general credits and 2 Ethics credits.
- 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.

Materials

These materials are available
to attendees on the
conference website:
law.asu.edu/navajolaw
password: hozhooji

Thank You to our Sponsors



Shawn Attakai (Speaker Travel)
Arash Moalemi (Speaker Travel)

Conference Planning Committee:

Diandra Benally
Eric N. Dahlstrom
Judith M. Dworkin
Mary Shirley
Tyson Yazzie
Candace French
Kris Beecher
Kate Rosier



law.asu.edu/ilpblog



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Indian Legal Program at ASU

Navajo Nation Law CLE Conference Friday, October 25, 2019

Indian Legal Program / Sandra Day O'Connor College of Law / Arizona State University
Beus Center for Law and Society, Room 240
111 E. Taylor Street, Phoenix, AZ 85004

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AGENDA

7:30 – 8:20 am	Check-In & Continental Breakfast
8:20 – 8:30 am	Welcome from the Indian Legal Program <u>Kate Rosier</u> , Executive Director, Indian Legal Program
8:30 – 10:00 am	Navajo Nation Legislative Update (1 hour) <u>Candace French</u> ('17), Attorney, Sacks Tierney Navajo Nation Court Update (0.5 hour) <u>Jordan Hale</u> ('09), Staff Attorney, Dilkon Judicial District
10:00 – 11:00 am	Update on the Most Recent Navajo Fundamental Law Cases (1 hour Navajo ethics) <u>Shawn Attakai</u> ('00), Staff Attorney, Crownpoint District Court Review the most recent Navajo Nation Supreme Court cases involving and discussing the Navajo Fundamental Law. Identify and, where appropriate, explain the Dine Bibeehaz'aanii principles. This presentation relates to Title 1 of the Navajo Nation Code and would involve the cases involving Dine Bibeehaz'aanii principles.
11:00 – 11:15 am	Morning Break

11:15 – 12:45 pm	<p>Nuts & Bolts of Criminal Law for Those Who Have Purposely Chosen Not to Practice Criminal Law (1.5 hours)</p> <p><u>Jennifer Henry</u>, Acting Chief Prosecutor, Navajo Office of the Prosecutor</p> <p>This presentation will walk participants through the criminal process. This is especially helpful to those who do not regularly work in the criminal law field.</p>
12:45 – 1:00 pm	Boxed Lunch Provided
1:00 – 2:00 pm	<p>Is There An “Obligation” To Unrepresented Parties in the Navajo Court System? (1 hour)</p> <p><u>Bernadine Martin</u>, Attorney</p> <p>A discussion on common issues within the Navajo Court system. What is required of practitioners to make sure justice is served?</p>
2:00 – 3:00 pm	<p>Doing Business on Navajo – Small and Large Projects (1 hour)</p> <p><u>Brian Lewis</u> ('09), Attorney, Brian Lewis Legal LLC</p> <p>A step-by-step guide to setting up business projects on the Navajo Nation. The discussion will include small projects to larger more complex projects.</p>
3:00 – 3:15 pm	Afternoon Break
3:15 – 4:15 pm	<p>Light Up Navajo (1 hour)</p> <p><u>Arash Moalemi</u>, Navajo Tribal Utility Authority</p> <p>The Light Up Navajo initiative is a pilot effort to begin electrifying the 15,000 Navajo households that still do not have power. This spring, volunteer crews from over 20 public power utilities across the country will be building electric lines for projects that will connect over a hundred new customers to the grid. The hope is that the pilot effort will serve as a successful model for future electrification projects. This discussion will share more about the project and give an overview of the legal issues involved.</p>
4:15 – 5:15 pm	<p>Attorney’s Fees and the Court/Administrative Regulation on Attorneys (1 hour Navajo ethics)</p> <p><u>Colin Bradley</u> ('14), Attorney, Bradley Law, PLLC</p> <p>The presentation will discuss when a court or administrative body on the Navajo Nation can award attorney's fees. The presentation will discuss the cases and statutes that allow the courts and administrative tribunals to award attorney's fees. The presentation also discusses how the Court's</p>

enforce the NNBA Rules of Professional Conduct. The relevant statutes and cases will be referenced and discuss.

5:15 pm

Adjourn

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Attorney’s Fees and the Court/Administrative Regulation on Attorneys (Colin Bradley)*

(*) Addendum material under separate cover

These materials are available to attendees in digital form on the conference website at:

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Navajo Nation Law CLE

Section 1

Conference Speaker
Biographies

Navajo Nation Law CLE Conference Friday, October 25, 2019

Indian Legal Program / Sandra Day O'Connor College of Law / Arizona State University
Beus Center for Law and Society, Room 240
111 E. Taylor Street, Phoenix, AZ 85004

Speaker Biographies



Shawn Attakai ('00)

Staff Attorney, Crownpoint District Court, Navajo Nation Judicial Branch

Shawn Attakai is a Staff Attorney for the Navajo Nation Judicial Branch. He is licensed in the Navajo Nation, Arizona, and has degrees from Arizona State University and Dartmouth College. To balance his western education, Mr. Attakai has undergone formal rigorous apprenticeship training over several different mentors over more than a decade, and has extensive knowledge in his Diné ways. He considers this as his “post-secondary education.”

Over 17 years, Mr. Attakai has been an attorney for the Navajo Nation, other tribes and in private practice. He is presiding judge for Yavapai Apache Nation, a peacetime Marine veteran, former culture instructor at Diné College and a trainer for Diné judges on Fundamental Law and other subjects. He is Bit'ahnii (Folded Arm) and Tabaaha (Edge Water), and married to To Aheedliinii (Water Flows Together Clan). Mr. Attakai currently resides with his family in Crownpoint, NM.



Colin Bradley ('14)

Attorney, Bradley Law, PLLC

Colin Bradley is the owner/founder of Colin Bradley Law, PLLC—which is a boutique law firm specializing in litigation and Indian law. Mr. Bradley has extensive litigation experience in the courts, and administrative tribunals, on the Navajo Nation. Prior to starting his own firm, he was a member of the Litigation Unit of the Navajo Nation Department of Justice.

Outside of his practice, Mr. Bradley is a member of the board of bar commissioners for the Navajo Nation Bar Association (NNBA). He also regularly teaches courses for the NNBA's bar review course.

Mr. Bradley is a member of the Navajo Nation (Nation) and attended the Sandra Day O'Connor College of Law at Arizona State University (ASU Law). He is admitted to practice in Arizona, various tribal courts, federal district court, and the 9th Circuit Court of Appeals.



Jordan Hale ('09)

Staff Attorney, Dilkon Judicial District, Navajo Nation Judicial Branch

Jordan Hale is from the community of Sundance, near Churchrock, New Mexico. Jordan received his BA in English & Studio Art from Georgetown University, and his Juris Doctorate with a certificate in Indian Law from the Sandra Day O'Connor College of Law at Arizona State University.

Jennifer Henry

Acting Chief Prosecutor, Navajo Office of the Prosecutor

Jennifer Henry is currently the Acting Chief Prosecutor for the Navajo Nation. She's juggling that position along with her role as the prosecuting attorney in the Ramah Judicial District. Ms. Henry never thought she'd be a prosecutor, and her former journeys include private law practice in Colorado, staff attorney for the Navajo Nation Judicial Branch, staff attorney for the Navajo Nation Human Rights Commission, starting and folding a private civil and family law practice in the Navajo Nation, and then as a partner at Rosebrough Law in Gallup focusing on civil transactional law in AZ and NM for 6 years before returning to serve the Navajo Nation as a prosecutor.



Candace French ('17)

Attorney, Sacks Tierney

Candace French has more than ten years of experience working in Native American communities and has dedicated herself and her legal career to serving Indian Country.

Originally from Anadarko, Oklahoma, Candace is an enrolled member of the Wichita and Affiliated Tribes and is of Navajo, Comanche, and Blackfeet descent.

Prior to joining Sacks Tierney, Candace was an attorney in the Navajo Nation Office of Legislative Counsel. In that capacity, she provided legal representation and legislative services to the 24-member Navajo Nation Council, standing committees and other programs within the legislative branch.

Admitted to practice in Arizona and the Navajo Nation, Candace is a member of the State Bar of Arizona Indian Law Section.

Candace received bachelor's degrees in Political Science and American Indian Studies, a master's degree in Criminal Justice, and her J.D. with a certificate in Indian Law, all from Arizona State University.



Brian Lewis ('09)

Attorney, Brian Lewis Legal LLC

Brian Lewis is a member of the Navajo Nation Bar Association whose practice of the law has focused on economic development, including the development and operation of various projects and commercial operations within the Navajo Nation. He has advised and represented the Navajo Nation government, tribally-owned instrumentalities, and private commercial entities as a government attorney with the Navajo Nation Department of Justice and in private practice.

Bernadine Martin

Attorney at Law

Bernadine Martin received her bachelor's degree from the University of Denver and her law degree from the University of Arizona. She served McKinley County as first an Assistant District Attorney and then a Deputy District Attorney before being named Chief Prosecutor of the Navajo Nation. Today she lives in Gallup, NM with her 8 cockatiels and practices family law.

Ms. Martin is licensed in New Mexico and Navajo Nation courts.



Arash N. Moalemi

General Counsel, Navajo Tribal Utility Authority

Since 2013, Arash N. Moalemi has managed the legal team of the NTUA, the largest tribally owned and operated multi-utility entity in the United States. The NTUA's service territory is over 27 thousand square miles, spreading across northern Arizona, northwestern New Mexico and a small portion of southeastern Utah (roughly equal to the size of the state of West Virginia). Mr. Moalemi obtained his degree in Business Administration, Operations Management from California State University Fullerton and later earned his Juris Doctorate from Florida Coastal School of Law. He is licensed to practice law in CA, AZ, NM, UT and the Navajo Nation. Mr. Moalemi serves on the Board of the Colorado River Energy Distributors Association, the Transmission and Access Policy Study Group and is the voting member of the American Public Power Association Legislative and Regulatory Committee. He has spent his entire 10 years legal career serving his Navajo people.

Navajo Nation Law CLE

Section 2

**Navajo Nation
Legislative Update**
(Candace French)

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NAVAJO NATION

LEGISLATIVE RESEARCH AND UPDATE

A rectangular graphic with a white background and a large, stylized 'V' shape formed by two gray triangles meeting at the center. The text is centered within the white area.

OFFICE OF LEGISLATIVE COUNSEL

DANA BOBROFF, CHIEF LEGISLATIVE COUNSEL
MARIANA KAHN, SENIOR ATTORNEY
RON HAVEN, SENIOR ATTORNEY
JENNIFER SKEET, PRINCIPAL ATTORNEY
KRISTEN LOWELL, PRINCIPAL ATTORNEY

OFFICE OF LEGISLATIVE COUNSEL

The purpose of the Office of Legislative Counsel is to provide legal advice, legal representation and legislative services to the Navajo Nation Council, standing committees, commissions, and boards of the Navajo Nation Council, offices and programs of the Legislative Branch of the Navajo Nation, independent of the Department of Justice. 2 N.N.C. § 961

OFFICE OF LEGISLATIVE COUNSEL

Authorities, duties and responsibilities

- To provide legal representation to the Navajo Nation Council, standing committees, commissions and boards of the Navajo Nation Council, offices and programs of the Legislative Branch, independent of the Department of Justice, through Office of Legislative Counsel and outside counsel contracted by the Office of Legislative Counsel, to represent the legal interests of the Legislative Branch of the Navajo Nation

2 N.N.C. § 964(A)(5)

Five Standing Committees

- Budget & Finance (BFC) 2 N.N.C. § 300 et seq.
- Health, Education & Human Services (HEHS) 2 N.N.C. § 400 et seq.
- Resources & Development (RDC) 2 N.N.C. § 500 et seq.
 - Law & Order (LOC) 2 N.N.C. § 600 et seq.
 - Naabik'íyáti' (NABI) 2 N.N.C. § 700 et seq.

LEGISLATIVE RESEARCH

- Supplement/pocketpart covers partial 2014 to partial 2017
- Everything after 2017 available on DiBB
- DiBB covers 2015 and after
- Legislative Archives
 - 2 N.N.C. § 88 (F), the Office of Legislative Services shall respond to public record request(s) P within the specified time frame of 90 days.
 - 2 N.N.C. § 88 (H), reasonable costs may be assessed for photocopying and other duplicating activities.
- For resolutions before 2014
 - Try to have resolution number
 - -Sometimes you can find an old resolution you want attached as an Exhibit or at least find the resolution number
 - Navajo Nation Records Management

RESOLUTION NUMBERING SYSTEM

Helpful Information:

CD-68-89

Resolutions

- ❖ C = Council
- ❖ D = December
- ❖ 68 = 68th resolution of the year
- ❖ 89 = year (1989)

Examples:

LOCJY-14-18
RDCJN-56-18
BFAU-34-18
HEHSCF-04-18
NABIS-50-18

LEGISLATIVE RESEARCH

Navajo Nation
Office of Legislative Services

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We provide exceptional legislative services
to strengthen the Navajo Nation.

The mission of the Office of Legislative Services is to serve as a resource providing uniform and adaptive professional services to assist Navajo Nation legislators in the development of public policy.

3/15/2019

[Request For Public Records Form](#)

4/22/2019

[Public Comments](#)

LEGISLATIVE RESEARCH

Legislative Tracking

DIBB Dine Bibeelha'aaanii
binaaltsoos

DIBB is a web-based information service to accommodate public access to Navajo Nation Legislative records.

[Click for DIBB](#)

Office of Legislative Services

200 Parkway Bldg. #4
P.O. Box 3390
Window Rock, AZ 86515
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F: (928) 871-7259

Resources

[Employee Tool Kit](#)

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Legislation No.	Resolution No.	Title	Sponsor	Co-Sponsor(s)	Status	View
0310-19		An Action Relating to Resources and Development and Budget and Finance Committees; Approving a change in project in Resolution CAP-35-18, Exhibit D Project 125; Approving A change in Project type for The Greenhouse Project	Vince R. James		5 Day Hold	View
0311-19		An Action Relating to Resources and Development and Budget and Finance Committees; Approving a change in project funding in Resolution CAP-35-18 for Cornfields Chapter; Amending the funds to be expended for Exhibit D No. 123 Deer Point Development and Exhibit D No. 126 Backhoe purchase Project	Vince R. James		5 Day Hold	View
0312-19		An Action Relating to Resources and Development and Budget and Finance Committees; Approving a change in Project in Resolution CAP-35-18, Exhibit D Project 125; Approving a change in project type for Rural Addressing E911 Project	Vince R. James		5 Day Hold	View

LEGISLATIVE RESEARCH

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0310-19		An Action Relating to Resources and Development and Budget and Finance Committees; Approving a change in project in Resolution CAP-35-18, Exhibit D Project 125; Approving A change in Project type for The Greenhouse Project	Vince R. James		5 Day Hold	View

LEGISLATIVE RESEARCH

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Legislation Details

RESOLUTION NUMBER
CS-30-19

LEGISLATION NUMBER
0257-19

LEGISLATION TITLE
An Action Relating To Budget And Finance Committee, Naabik'iyat' Committee, And Navajo Nation Council; Approving The Navajo Nation Fiscal Year 2020 Comprehensive Budget; Waiving 12 N.N.C. §§ 820(i) And 860, Council Resolution CF-07-11, And 12 N.N.C. §§ 2001 et seq.

LEGISLATION DESCRIPTION
The purpose of this resolution is to approve the Navajo Nation Fiscal Year 2020 comprehensive budget.

HEAD TEXT

[View](#)
Last Updated 09/16/2019, 11:22 am

SPONSOR

Raymond Smith Jr.

CO-SPONSOR(S)

N/A

STATUS

Resolution

EXECUTIVE BRANCH (164/SAS NO.)

N/A

VOTE REQUIREMENTS

N/A

LEGISLATION ENTERED BY

Leona Begay

APPROVED COMMITTEES

1. Budget & Finance Committee
2. Naabik'iyat' Committee
3. Navajo Nation Council

OLC NUMBER


19-479-01

Legislation Documents

Search:

Show [10](#) entries

Date	Uploaded By	Document Title
09/16/2019, 11:22 am	Julissa Johnson	CS-30-19.pdf



CD-60-13

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

22ND NAVAJO NATION COUNCIL -- THIRD YEAR, 2013

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND
NAABIK'YATI'; APPROVING AN ALTERNATIVE FORUM FOR ENFORCEMENT OF
BINDING ARBITRATION AND ANCILLARY PROCEEDINGS BROUGHT PURSUANT TO
THE NAVAJO NATION SOVEREIGN IMMUNITY ACT IN THE GENERAL INDEMNITY
AGREEMENTS BETWEEN THE NAVAJO NATION AND 1) ZURICH AMERICAN
INSURANCE COMPANY AND 2) ARCH INSURANCE COMPANY RELATED TO THE


ALWAYS OPEN AND CHECK THE RESOLUTION

Legislation No.	Resolution No.	Title	Sponsor	Co-Sponsor(s)	Status	View
0257-18	18	An Action Relating to Naabik'iyati' and Navajo Nation Council, Overriding the Navajo Nation President's Veto of Navajo Nation Council Resolution CO-70-18	Kee Allen Begay Jr.	Olin Keyoyoma	Failed	View
0467-17	CO-70-18	An Act Relating to the Health, Education and Human Services, Law and Order and Naabik'iyati' Committees; and the Navajo Nation Council Amending 2 N.N.C. §§ 1013, 1015, 1016, 1018, and 1019 Relating to the Veterans Advisory Council.	Kee Allen Begay Jr.	Jonathan Hale Raymond Smith Jr.	Resolution	View

Showing 1 to 2 of 2 entries (filtered from 1,813 total entries)

MEMORANDUM

TO: Honorable Lorenzo Bates, Speaker
23rd Navajo Nation Council

FROM: 
Russell Begay
THE NAVAJO NATION

DATE: November 2, 2018

SUBJECT: Resolution No. CO-70-18: AN ACT RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER AND NAABIK'YATI' COMMITTEES AND THE NAVAJO NATION COUNCIL AMENDING 2 N.N.C. §§ 1013, 1015, 1016, 1018 AND 1019 RELATING TO THE VETERANS ADVISORY COUNCIL.

Pursuant to 2 N.N.C. § 1005(C)(5), action for Resolution No. CO-70-18 is being submitted to the Navajo Nation Council, through the Office of the Speaker, within the ten (10)-day requirement.

After thorough review of Resolution No. CO-70-18, I hereby exercise my veto authority pursuant to 2 N.N.C. § 1005(C)(1), in Resolution No. CO-70-18: AN ACT RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER AND NAABIK'YATI' COMMITTEES AND THE NAVAJO NATION COUNCIL AMENDING 2 N.N.C. §§ 1013, 1015, 1016, 1018 AND 1019 RELATING TO THE VETERANS ADVISORY COUNCIL. The justification for the use of the President's veto authority is set forth below:

Resolution No. CO-70-18 is premature as it was drafted and passed by the Navajo Nation Council without input from all the Navajo Nation Agencies. Resolution No. CO-70-18 is a device as evidenced by the Eastern Navajo Agency Veterans Organization's Resolution No. ENA-CVO-001018 (one vote) strongly opposing the amendments of 2 N.N.C. §§ 1013, 1015, 1016 and 1019, and regarding the Health, Education and Human Services Committee, Law and Order Committee and the Naabik'iyati' Committee and the Navajo Nation Council to oppose the proposed legislation in the best interests of the Eastern Navajo Agency Veterans Organization.

6. No. Kee Allen Begay, the sponsor of the legislation has not come before us the Eastern Navajo Agency Veterans Organization meeting to estimate the proposed legislation in our (ENAV) Chapter Veterans Organization, and


CO-70-18

Section Six. Savings Clause

Should any portion of the amendment enacted herein be determined invalid by the Navajo Nation Supreme Court, or the District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions not determined invalid shall remain in law of the Navajo Nation.

CERTIFICATION

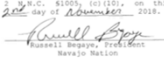
I, hereby, certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 13 in favor and 03 opposed, on this 18 day of October, 2018.


Lorenzo C. Bates, Speaker
23rd Navajo Nation Council
10/23/18
Date

Motion: Honorable Davis Filired
Second: Honorable Seth Damon
Speaker Lorenzo C. Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005, (1)(1), on this 20th day of November, 2018.


Russell Begay, President
Navajo Nation

Page 6 of 7

MAJOR STEPS

- Initiating / Drafting legislation
- Office of Legislative Services legislation intake and review
- Office of the Speaker review
- Initiate legislation public comment (on DiBB)
- Digital distribution of legislation
- Public comment review (OLS Director)
- Standing Committee referral(s)
- Navajo Nation Council referral
- On the floor
 - Amendments, tabling motions, votes, etc
- If passes, depending on authority, Speaker or President signs resolution
- NABIMA-16-17

TIPS TO PUSH YOUR LEGISLATION ALONG

- Work with the sponsoring Delegate
- Do your homework and provide all necessary documents for the specific type of legislation i.e. UUFB, Sihasin Funds, CLUP, ROW, etc.
 - Reviews
 - Budget forms
 - Chapter house resolution(s)
 - Other helpful information
- Start early
- If there is a deadline-let the Delegate and OLC know
- Call Office of Legislative Counsel (and be nice)
- Be ready for questions at Committee or Council

Track your legislation using DiBB

Navajo Nation Initiative

- 88 Delegates to 24 Delegates

CAP-10-11

- Reflects changes from 88 to 24 including reduction in standing committees and modifies legislative process to include public comment and emergency legislation

CO-45-12:

- Reflects reduction to 24 and revised quorum and committee directives

SELECT STANDING COMMITTEE RESOLUTIONS – by statute, Standing Committees have final authority over certain matters.

RDCD-104-18: An Action Relating to Resources and Development Committee; Amending the Navajo Nation Ranches Grazing Fee from \$4.00 per animal unit per month to \$8.00 per animal unit per month

LOCS-19-18

An Action Relating to Law and Order Committee; Approving Rules and Regulations Governing Delegation of Authority from the Law and Order Committee to the Judicial Conduct Commission on the Screening of Applicants and Recommendations for Probationary Appointment of Judges and Justices; Approving Delegation of Authority as set forth at 2 N.N.C. §§ 601 (B)(7) and (B)(8)(a); Amending the Plan of Operation for the Judicial Conduct Commission

SELECT STANDING COMMITTEE RESOLUTIONS

CODE AMENDMENTS

OCT 2018 TO PRESENT

CO-71-18 An Action Relating to Resources and Development, Law and Order and Naabik'iyati' Committees and the Navajo Nation Council; Authorizing the Kayenta Township Commission ("KTC") to Form Wholly Owned Entities of the Kayenta Township under Navajo Law, Including for Participation in the U.S. Small Business Administration 8(a) Business Development Program; Extending the Navajo Nation's Privileges and Immunities (Including their Sovereign Immunity) Upon a Finding such Waiver would be in the Best Interest of the Township and Upon Prior Notice to the President of the Navajo Nation and the Speaker of the Navajo Nation Council; Amending 1 N.N.C. § 552(O) of the Navajo Sovereign Immunity Act and 2 N.N.C. §§ 4084 And 4085 of the Kayenta Township Home Rule Statute

CO-72-18 An Act Relating to Resources and Development and Naabik'iyati' Committees, and the Navajo Nation Council; Amending 5 N.N.C. § 1707, Navajo Nation Gaming Enterprise Board Composition, qualification and confirmation

CO-73-18 An Action relating to Budget and Finance, Law and Order, Naabik'iyati' Committees and the Navajo Nation Council; Amending 12 N.N.C. § 203, Duties, Responsibilities and Authority of the Controller

CO-74-18 An Action Relating to Law and Order Committee, Budget and Finance Committee, Naabik'iyati' Committee and the Navajo Nation Council; Amending CJA-07-18, Amending 24 N.N.C. § 620 of the Navajo Nation Sales Tax to the Navajo Nation Fire and Rescue Services; Amending the effective date

CO-75-18 An Act Relating to Health, Education and Human Services, Resources and Development, Law and Order and Naabik'iyati' Committees and the Navajo Nation Council; Enacting the "Controlled Substance Definition Act of 2018"; amending Title 17 Chapter 3, Controlled Substances at 17 N.N.C. §§ 390, 394

CO-76-18 An Act Relating to Law and Order, Resources and Development, Naabik'iyati' Committees; Adopting "The Navajo Gaming Ordinance Amendment Act of 2018" Amending 5 N.N.C. §2001 Et. Seq., Navajo Gaming Ordinance

*CN-79-18 An Action Relating to Law and Order, Naabik'iyati' and the Navajo Nation Council; Amending the Navajo Nation Election Code at 11 N.N.C. §241(A) to lower percentage of signatures requirement on recall petitions from 60 to 30% of voters voting in last election for position in question

ALWAYS CHECK THE RESOLUTION!

CN-79-18
RESOLUTION OF THE
NAVAJO NATION COUNCIL
23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018
AN ACT

RELATING TO LAW AND ORDER, NAABIK'İYATI' AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION ELECTION CODE AT 11 N.N.C. § 241(A) TO LOWER PERCENTAGE OF SIGNATURE REQUIREMENT ON RECALL PETITIONS FROM 60 TO 45% OF VOTERS VOTING IN LAST ELECTION FOR POSITION IN QUESTION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 601. Among its statutory duties and responsibilities are to "review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code," 2 N.N.C. § 601(B)(14).
- B. Pursuant to 2 N.N.C. § 164 (A)(9), a proposed resolution that requires final action by the Navajo Nation Council must be assigned to the Naabik'iyati' Committee before it is considered by the Navajo Nation Council.
- C. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. § 102 (A). It enacts laws and sets policy for the Navajo Nation.

SECTION TWO. FINDINGS

- A. Within the Navajo Nation, Diné voters, as in any democratic society, freely elect their leaders. 11 N.N.C. § 1 et seq. Those elected serve a representative role.

SECTION THREE. AMENDING ELECTION CODE

The Navajo Nation hereby amends the Navajo Election Code as follows:

*Title 11. Elections
Chapter 1. Navajo Election Code of 1990
Subchapter 12. Removal of Officials; Placement of
Officials on Administrative Leave; Recall; Filling
Vacancy*

§ 241. Officials subject to recall; recall affidavit; recall petition

- A. All elected officials may be removed from office if at least ~~forty-five~~ percent of the registered voters who voted in the last election for the office in question file a petition seeking the official's removal.

SECTION FOUR. EFFECTIVE DATE; APPLICABILITY

The amendments enacted herein shall be effective upon its approval pursuant to 2 N.N.C § 221.

CD-81-18 An Act Relating to Law and Order, Naabik'íyáti' and the Navajo Nation Council; Amending 2 N.N.C. § 1352 and 17 N.N.C. §§ 1851 Through 1854; Amending Coroner Provisions and Establishing a Department of Medical Examiners within the Division of Public Safety; Authorizing the Law and Order Committee to Approve a Plan of Operation for the Department of Medical Examiners

CD-87-18 An Action Relating to Law and Order, Naabik'iyati' and Navajo Nation Council; Amending Challenge and Election Dispute provisions of the Navajo Nation Election Code at 11 N.N.C. §§ 21, 23, 24, 240, 341 and 342

CJY-25-19 An Act Relating To Law And Order, Health, Education And Human Services, And Naabik'íyáti' Committees, And The Navajo Nation Council; Amending 2 N.N.C. § 403, Meeting Day For The Health, Education And Human Services Committee

NAVAJO NATION COUNCIL FALL SESSION 2019



Office of Legislative Counsel
Legislative Branch/Navajo Nation
P.O. Box 3390
Window Rock, AZ 86515
PH: 928/871-7166
Fax: 928/871-7576

NAVAJO NATION CODE 2014 Annotated

ORDER FORM

NAME ORGANIZATION: _____
ADDRESS: _____
CONTACT PERSON: _____
CONTACT TELEPHONE: _____
EMAIL: _____

Order Preference -- Please check box!

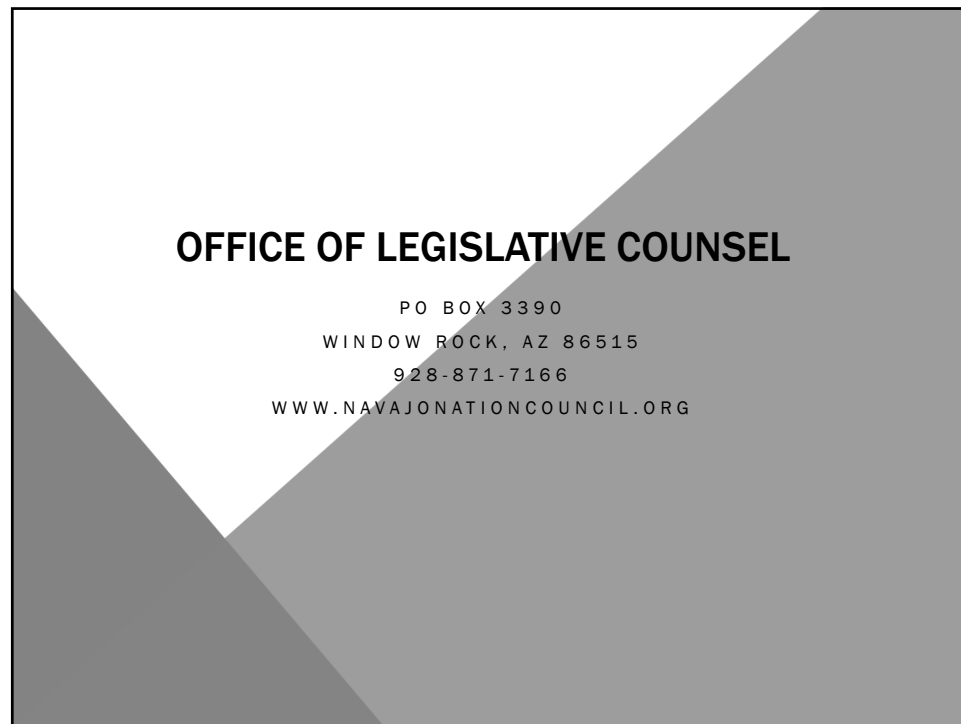
[Navajo Nation Sales Tax @ 6%; and Shipping/Handling additional fees]

** PURCHASE PRICE **

[] 2014 Pocket Part (Supplement Set Only)	\$100.00
Shipping and Handling	10.00
Navajo Nation Sales Tax	6.00
[] 2014 CD ROM Only	\$100.00
Shipping and Handling	10.00
Navajo Nation Sales Tax	6.00
[] BOTH (Supplement & CD)	\$200.00
Shipping and Handling	20.00
Navajo Nation Sales Tax	12.00

Make checks or money orders payable to: Office of Legislative Counsel

Note: For NN Programs process order(s) through ICRs include NN Tax @ 6% (effective on July 1, 2018)



Navajo Nation Law CLE

Section 3

Navajo Nation Court Update
(Jordan Hale)

Navajo Nation Case Law Update

2019 Navajo Nation Law CLE Conference

Jordan Hale
Staff Attorney, Dilkon Judicial District
Navajo Nation Judicial Branch

Vincent Yazzie v. Jonathan Nez

No. SC-CV-47-18 (10/24/18)

- Yazzie filed a grievance asserting Nez was unqualified to run for Navajo Nation president for failure to report a 2002 misdemeanor DUI conviction.
 - Yazzie filed a motion with OHA to recuse the Chief Hearing Officer
 - Nez filed a motion to deem the grievance insufficient.
- OHA denied the motion for recusal and determined 11 N.N.C. § 8(A)(6)&(7) must be read in combination with 11 N.N.C. § 21(B)(3) and that accordingly Nez did not violate the Navajo Election Code when he did not disclose the 2002 DUI conviction.
- Issues on Appeal:
 - Whether Chief Hearing Officer abused his discretion by not recusing himself
 - Whether OHA erroneously applied the law when determining the 2 statutory sections must be read in combination.

Vincent Yazzie v. Jonathan Nez

No. SC-CV-47-18

-
- The Supreme Court found Yazzie's attorney's representation represented a former OHA employee (Chief Hearing Officer was a witness) was insufficient to warrant recusal. No evidence was offered to support the recusal.
 - 11 N.N.C. § 8(A)(6)&(7):
 - 6. Must not have been convicted of a felony within the past 5 years.
 - 7. Must not have been convicted of (various misdemeanor crimes and other violations) within the last 5 years...
 - 11 N.N.C. § 21(B)(3):
 - 3. Any convictions for felonies and misdemeanors affecting qualifications for office.

Vincent Yazzie v. Jonathan Nez

No. SC-CV-47-18

-
- Holding: OHA read the 2 provisions together properly, "Thus, in application, presidential candidates must disclose any conviction for felonies or misdemeanors affecting qualifications for office within the last five (5) years. Reading this statement as requiring disclosure of convictions beyond the five-year limit would conflict with the clear language of the statute and the intentions of the Navajo Nation Council."
 - OHA decision affirmed.

Darren Yazzie v. Navajo Nation Department of Law Enforcement

No. SC-CV-41-13 (11/30/18)

-
- Navajo Nation Department of Personal Management referred 2 applicants for Sergeant position. The applicants had an interview and written test. Yazzie scored highest (329.5 points to 322 points). However, Acting Captain for the Police District selected the other applicant.
 - The Acting Captain conducted a background and history inquiry, and stated, “Based on the testing, background and inquiry, position title, work experience as Acting Sergeant, and exceptional leadership skills” the other applicant was selected.
 - Yazzie challenged the decision but the Labor Commission dismissed Yazzie’s Complaint after an evidentiary hearing.
 - Issue: Whether the Labor Commission’s decision to uphold the non-selection of Yazzie was supported by sufficient evidence when the NNDLE failed to adhere to its hiring policy and was based on an investigation that did not comply with hiring policy.

Darren Yazzie v. Navajo Nation Department of Law Enforcement

No. SC-CV-41-13

-
- The Acting Captain’s independent investigation (rather than usual practice of an investigation conducted by the Department of Internal Affairs) was not authorized by policy. Further, the investigation report was not part of the Labor Commission record as NNDLE did not move to admit the investigation report.
 - Bias: testimony indicated Yazzie’s position on domestic violence put him at odds with the Acting Captain, and the investigation was further undermined because it was conducted by personnel with a conflict.
 - Ultimately, the “comparative analysis to justify the non-selection of Yazzie was not supported by substantial evidence.”

Corp. of the President of the Church of Jesus Christ of Latter-Day
Saints v. Window Rock District Court, And Concerning: BN, RPI
SC-CV-42-18 (12/28/18)

- RPI filed compliant in Window Rock District Court alleging 8 causes of action. Petitioners filed Rule 12(b)(1) motion to dismiss in Window Rock District Court (denied); Petitioners sought injunction in District Court in Utah (denied); filed Petition for Writ of Prohibition with Navajo Nation Supreme Court. Alternative Writ was issued and hearing set.
- Attorney listed on Petition as “*pro hac vice* forthcoming” appeared with counsel of record to argue before Navajo Nation Supreme Court.

Corp. of the President of the Church of Jesus Christ of Latter-Day
Saints v. Window Rock District Court, And Concerning: BN, RPI
SC-CV-42-18

- Threshold Issue: Whether district court clearly lacked jurisdiction sufficient to warrant the issuance of a permanent Writ of Prohibition.
- Where the parties had not conducted discovery and no answer had been filed, the Petitioners failed to meet the burden to have the alternative writ made permanent—the Supreme Court found “reason to believe that at least some of the allegations fall within the Window Rock District Court’s subject matter jurisdiction.”
- Secondary Issue: clarification of process for attorney licensed in another jurisdiction but not licensed in the Navajo Nation to appear *pro hac vice* before a Navajo court.
 - Conditions met & necessary documentation submitted to the NNBA.
 - NNBA Admissions Committee Chair issues a certificate of compliance.
 - Sponsoring NNBA member motions with supporting documentation to obtain permission from the court prior to the visiting attorney’s appearance.

Jerrilene Begay v. Navajo Nation Department of Self Reliance

No. SC-CV-03-19 (5/23/19)

-
- Grievance action under NPEA filed by government employee, OHA dismissed. Employee appealed. Notice of Appeal filed with Supreme Court on February 14, 2019 with certification copy of Notice of Appeal filed with the Hearing Officer on the same day.
 - Hearing Officer or Grievance Board is required to submit record of proceeding within 10 calendar days of filing of Notice of Appeal. 15 N.N.C. § 614 (D)(4).
 - “Failure of the hearing officer or hearing board to file the record within that [ten day] period shall not be grounds for dismissal of the appeal.” 15 N.N.C. § 614 (D)(4).
 - The record was due by February 25, 2019, but had not been filed with the Supreme Court by the date of the decision (May 23, 2019). Employee did not contact the Supreme Court regarding the status of her case.

Jerrilene Begay v. Navajo Nation Department of Self Reliance

No. SC-CV-03-19

-
- Issue: Whether the Court on its own motion may dismiss an appeal initiated under 15 N.N.C. § 614 when the record is not filed at all with the Supreme Court
 - Holding: The Supreme Court can dismiss an appeal initiated under 15 N.N.C. § 614 when no record is filed with the Supreme Court and “the burden lies with the appellant to ensure the hearing officer or hearing board transmits the record.”
 - The Supreme Court pointed out that the record is necessary for an appeal to proceed, the Council intended these type of appeals to be expedited, and stressed *t’áá hwó áji t’éego* (traditional teaching described as personal responsibility and personal accountability) “requires the appellant to move their own case along or face consequences.”

In the Matter of Admission to Practice Law on the Navajo Nation
and Admission to the Navajo Nation Bar Association, Inc. of:

Robert Frank Gentile

No. SC-NB-05-18 (7/3/19)

- Petition for Admission to Practice Law on the Navajo Nation and Admission to the NNBA asked Supreme Court to admit applicant. Applicant did not appear for the hearing set. Motion to Withdraw the Petition was filed, followed by a Motion to Grant the Petition.
- District Court Judge appointed as Associate Justice by Designation withdrew because District Court Judge was presiding over case where applicant was appearing as counsel in lower court proceeding. Supreme Court stayed matter to allow District Court to make findings from related Order to Show Cause hearing .
- District Court found applicant in civil contempt. Applicant had made appearance, filed motions, and acted as legal counsel before *pro hac vice* certificate issued.
- Issue: “Whether, after finding of civil contempt for the unauthorized practice of law, an applicant for admission to practice before the Navajo Courts can meet the high standards of the profession required to protect Navajo people who seek legal representation.”³³

In the Matter of Admission to Practice Law on the Navajo Nation
and Admission to the Navajo Nation Bar Association, Inc. of:

Robert Frank Gentile

No. SC-NB-05-18

- Holding: Supreme Court saw “no alternative to the denial of this applicant.”

Effie Edsitty v. Office of Navajo Nation Tax Commission

No. SC-CV-01-19 (7/22/19)

-
- Edsitty filed a grievance with OHA asserting discriminatory questions were asked during her interview. OHA's December 17, 2018 Order dismissing Edsitty's grievance was sent to Edsitty by first class mail. Edsitty filed a Notice of Appeal with the Navajo Nation Supreme Court on January 2, 2019, and asserted she had received the Order on December 21, 2018. Title 15 N.N.C. § 614(D) provides, "any party to the grievance may appeal a final decision of the hearing officer or hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of receipt of the decision..."
 - Issue on Appeal: Whether the Navajo Nation Supreme Court has jurisdiction over an employment action where the timeframe for receipt of the decision cannot be verified.

Effie Edsitty v. Office of Navajo Nation Tax Commission

No. SC-CV-01-19

-
- Holding: OHA shall send copies of its final written decision to all parties of record by certified mail, return receipt requested, which will be a part of the lower court record upon transmittal.
 - The Supreme Court accepted Edsitty's asserted receipt date of OHA's dismissal (Edsitty's date was not contested by the Appellee).

Henio v. Navajo Nation and Baca/Prewitt Chapter

No. SC-CV-49-13 (8/8/19)

- Appellants mother fell on a concrete slab outside building under control of Baca/Prewitt Chapter and the Navajo Nation and died from complications 10 days later. Window Rock District Court dismissed wrongful death action filed against the Navajo Nation and Baca/Prewitt Chapter of the Navajo Nation when President, Attorney General, and Chief Legislative Counsel were served by personal service rather than by registered mail.
- Primary issue before the Navajo Nation Supreme Court:
 - Whether the Navajo Nation Sovereign Immunity Act's requirement that a complaint and summons be served on the President, the Attorney General, and the Chief Legislative Counsel by registered mail is a jurisdictional condition precedent to an action against the Navajo Nation.
- Secondary issues:
 - Whether Navajo Nation waived defense of insufficiency of service of process by failure to timely raise the defense;
 - Whether service of summons and complaint on President, Attorney General, and Chief Legislative Counsel by personal service rather than registered mail meets the requirements of the Sovereign Immunity Act.
 - Whether dismissal was proper under Nav. R. Civ. P. 6(f) where subsequent service by registered mail was completed nearly 9 months after complaint filed.

Henio v. Navajo Nation and Baca/Prewitt Chapter

No. SC-CV-49-13

- Holdings:
 - The procedures of 1 N.N.C. § 555(c) are not a jurisdictional condition precedent.
 - The Navajo Nation waived defense of insufficiency of service of process by failing to raise the defense by motion or responsive pleading within the timelines of Nav. R. Civ. P. 12(i)(1) & 15(a).
 - Personal service, by exceeding the requirement for service by registered mail, meets the requirement of the Sovereign Immunity Act.
 - Dismissal for untimely service of process was not justified.



Navajo Nation Law CLE

Section 4

**Update on the Most Recent
Navajo Fundamental Law
Cases**
(Shawn Attakai)

FUNDAMENTAL LAW OF DINÉ IN RECENT CASES

Shawn Antakari
October 16, 2019
ASU Sandra Day O'Connor College of Law

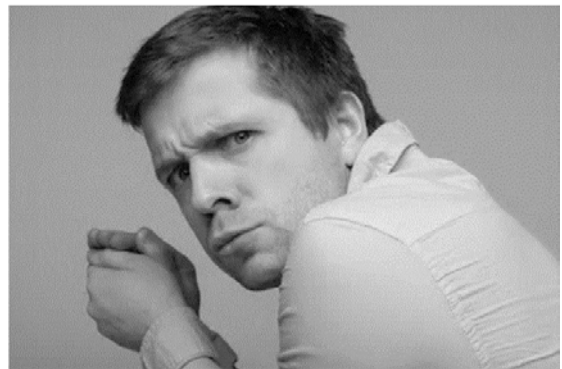
Saad Ła'ii – K'é



2019

K'é governs Navajo due process

- Effie Edsitty v. Office of Navajo Nation Tax Commission. SC-CV-01-19. (July 22, 2019).
- *Ííshjání adoolnií* (to make things clear) so that *Doo naaki niliida* (there is no doubt).



K'é governs Navajo due process

- Jerrilene Begay v. Navajo Nation Department of Self Reliance, SC-CV-03-19. (May 23, 2019).
- T'áá hwó' ají t'éego ('It is up to you' stresses personal responsibility and personal accountability. Each person is responsible for our actions and inaction and the positive and negative effects in all aspects of life). Appellant must move along his case.
- Similarly, if one goes to a medicine man and is told to gather materials to allow judicial review, one's failure to do so will make it difficult or impossible for the medicine man to perform. Begay vs. Board of Election Supervisors, 2 Nav. R. 120 (1979)



Hashkeeji Naat'áanii

- Vincent Yazzie v. Joe Shirley, Jr. SC-CV-41-18 (October 10, 2018)
- Role of Judicial Branch as *Hashkeeji Naat'áanii* – Teacher, interpreter, disciplinarian. To uphold the values and principles of FLD in the practice of peacemaking, obedience, discipline, punishment, interpreting laws, rendering decisions. 1 NNC 203.
- Government must learn, practice and educate the Dine on values and principles of these laws. Benally vs. Benally, 8 Nav. R. 796, 902 (Kay. Fam. Ct. 2003). To explain these concepts so we can all learn. To resolve, teach, and discipline.
- Three branches. Shared leadership. Each branch to function in “a proper way for the public good”.
- Separation of function. So deeply rooted in Navajo culture. It is essential to maintain balance and harmony. Tuba City Judicial vs. Sloan, 8 Nav. R. 159, 167 (2001) Premised on FLD.
- Court does not make law, does not legislate from the bench.
- Title 2 amendment can only be changed by the people.
 - *Separation of powers*
 - *Checks and balances*
 - *Accountability to the people*
 - *Anti-corruption*
- FLD controls Nat'áanii terms and time limits



Nat'áanii term and time limits?

- What are they?
 - 2 terms @ 4 years *per term*
 - 2 "consecutive" terms



2018

K'é governs Navajo due process

- Mun Kang v. Chinle Family Court and Concerning Chastity Kang, RPI. SC-CV-37-18. (September 21, 2018)
- Under FLD, K'é controls Navajo due process.
- K'é - fairness through mutual respect.
- K'é requires service by publication *where the Petitioner resides*. Petitioner would likely not see the publication in the Navajo Times.
- K'é toward Haadaani.



Source of Navajo due process

- “We are mindful that the concept of due process **was not brought to the Navajo Nation by federal law or codified Navajo law** for “the Navajo people have an established custom for notifying all involved parties in a controversy and allowing them, and even other interested parties, an opportunity to present and defend their positions.” Begay vs. Navajo Nation, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).



Nat'aanii's duty

- Austin Bahe v. NNLC and Concerning Navajo Engineering and Construction Authority, RPI. sc-cv-15-18. (June 29, 2018).
- The NNLC works for and on behalf of the collective Navajo People, Meadows vs. NNLC, 9 Nav. R. 597, 601 (Nav. Sup. Ct. 2012).
"Access and due process is the sacred duty"
 - Collective vs. individual (K'eh stresses 'collective')
- Nat'aanii's duty - to always work and seek a solution for the people, especially when the Anahoot'i' concerns ones daily livelihood and requires a harmonious resolution.
 - a hard worker - cannot be lazy.
 - a problem solver - must understand the problem
 - Must be educated (Bilaagana way and Diné way)
 - Be able to listen and communicate.
 - Anahoot'i' - problem or issue
 - Harmonious resolution - Hózhó nahasdlii (in beauty it is finished)



2017

Nat'áanii's duty

- Terlyn Sherlock v. Navajo Election Administration. SC-CV-64-17. (December 26, 2017).
- Candidate cannot circumvent express conditions by keeping silent.
 - 2 types of lawyers
- Application for candidacy ~ Entrance into a Hogan
 - East side (good way)
 - Make presence known to all
- Must enter an election with complete transparency.
- Standard of conduct are higher and stricter.
- Nat'áanii is expected to be honest, faithful, and truthful in dealing with the people
 - K'é
- Sneaking around ~ Betrayal of trust → Removal
 - Side door
- People will keep Nat'áanii to his words
 - Words are sacred



Right to a speaker

- Earl Apachito v. Navajo Election Administration. SC-CV-32-17. (July 14, 2017)
- The person facing allegation has the right to have someone speak for him or her. Navajo Nation vs. Macdonald Sr., 6 Nav. R. 432, 436 (Nav. Sup. Ct. 1991)
 - Navajo cultural standard is more strict than the ICRA standard.
 - Goes to Due Process.



2016

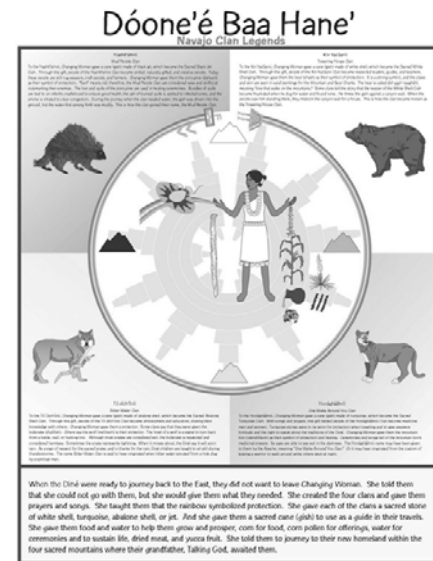
Baahajooba'iyee'

- Nancy Martine-Alonzo and Martha Garcia v. Carolyn C. Jose and Concerning NEA.
SC-CV-37-16. (November 3, 2016).
- Candidate running for elected office not disqualified because deferred sentencing scheme and restorative justice is consistent with *Baahajooba'iyee'*
 - Theories of justice
 - Rehabilitation



Baahajooba'iyee' (2)

- Baahajooba'iyee' – compassion and restoration even after gross misconduct
 - K'eh (Clans)
 - Heightened duties of Nat'áanii to seek alternatives to jail
 - Dine justice “throws no one away”
 - FLD gives greater responsibilities and options, other than strictly applying punishment
 - No unreasonable burden on defendant – k'eh
 - Close monitoring of defendant
 - Emphasis on services
 - Effect – gives community Siihasin (hope)



Duty of Nat'áanii



- Navajo Nation v. Roy Tso, Jr. SC-CR-03-16. (October 25, 2016)
- A leader does not ever lay down the trust and the laws of the people he or she serves. Thinn vs. Navajo Generating Station, 9 Nav. R. 140 (Nav. Sup. Ct. October 19, 2007)
- *Naat'áanii idlǫ́go éí t'áa nantł'a dóó t'áa náhont'alá, háálá łahgóó t'áa nistła dahwiizt'i' ákondi, Diné Bibeelaz'áanii dóó hane' binahjį baantsáhakeesgo éí choó'įįl dóó hasih ntsáhakeesigii beego éí t'áa bik'ee'aan hodeezt'i' dóó chí'dahwiizt'i', dóó inda bikáa háadahwiizt'i'. Diyin Dine'é Ts'aa' hadeiidiilaagii éí t'áa ákót'éigo yił hadadeiidiilaalá; yah'óót'i', athéehonit'i', dóó ch'éehonit'i', dóó éí t'óó dádeest'ógo da. Binahjį éí t'aa hat'éigi shii hanahat'a' bee nistł'ajiyáago hanahat'a' bee hazhdinoodzii dóó ajisijgoda éí dóó hanahat'a' dóó habeehaz'áanii doo t'óó ni'nizhdooléelda hatsodizin dóó haáne' éí bee bikáa haazhdoodáát dóó bee nistł'ahaz'i' ęę bee hózhógo bik'idiyaa nizdooléet dóó bi'qazh doo gáál.*
- *Being a leader is tough and it butchers you. Because there are many roadblocks, however Diné Law and oral teaching is used and with hopeful thinking there is a way to bypass and a way out, and a way above it. The Holy People created a Navajo basket with the same aspect. There is an opening, a way around and a way out, it is just not closed. Against all things, sometimes you may get stuck with your planning, probably say too much in planning and made a mistake, because of that is no reason to lay your planning and the laws within yourself on the ground. With prayer and teaching you step above the stumbling block and in beauty you can say I have overcome and go around it.*

Nízhónígo hahodit'é

- Falana Haldley v. Navajo Nation Department of Public Safety. SC-CV-20-15. (February 10, 2016).
- Employment
 - Central to living a good life
 - People provide for themselves and their families
- NPEA Purpose
 - To foster economic self-sufficiency of Navajo families
- Requirement
 - *Employer's duty*
 - Duty to maintain a safe and clean working environment
 - Duty to provide employment conditions free of prejudice, intimidation, and harassment



- Burden
 - On employer
 - To show *Nízhónígo hahodit'é* –
 - Place of employment is maintained in harmony
- Like a home
 - Work place ~ Home
 - Employees ~ Family
 - Expectation of health, safety, and welfare (both sides)



2015

T'áá hwook'eh jizda

- Dale Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and the Navajo Election Administration, SC-CV-68-14 (April 13, 2015).
- “Hook’ee”



Kwa'asini bahozhdisin

- In the Matter of Raymond DeeRoy Spencer, Decedent, Chenoah Bah Jensen v. Jean LaMarr. SC-CV-09-15. (March 27, 2015).
- Court declined to interfere with funeral
- K'é
 - For deceased
 - For living
- Practice
 - No delay, prompt, reverent attention
 - Burial
 - Distribution of property
- No disputes over body
- Purpose
 - To protect surviving family members
 - To complete the transitional process. Allows deceased to complete life's journey.



Role of a *Hataalii*

- Dale Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and the Navajo Election Administration. SC-CV-68-14. (February 20, 2015).
- Stories are general knowledge to those who have been taught.
- Hataalii expresses these oral narratives.
- Elders and medicine people are the keepers and teachers of FLD.
- Court will not attack Hataalii's credibility without expressing its own interpretation of these stories, despite being presented with the opportunity to do so.



Ha'deet'á

- Forgiveness is a core value
- Pardon power
 - *Comes from Bilagaana history*
 - *We don't share in that same history*
- Closest concept – T'óó ha'deet'á or T'óó hahoo'a'
- Hávik'i adoodzq̓h (Macdonald case)
- Objective – to restore harmony (hózhq̓)
- Ha'at'e' bee ádaahojilnéh – self-disclosure of weaknesses (temper)

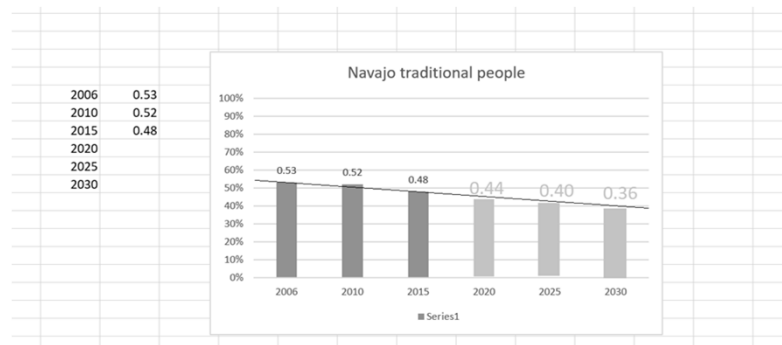


2014

4. The Navajo Nation Council is greatly concerned that knowledge of these fundamental laws is fading, especially among the young people; the Council is also concerned that this lack of knowledge may be a primary reason why the Diné are experiencing the many negative forms of behavior and natural events that would not have occurred had we all observed and lived by these laws; and

Nat'áanii language requirement

- Dale E. Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and Navajo Election Administration, SC-CV-68-14 (October 23, 2014)
- On July 21, 2015, the Navajo Nation voters passed a referendum eliminating the requirement for presidential and vice presidential candidates to be fluent in the Navajo language.



Children are sacred



- Sahar Nouri v. Crownpoint Family Court and Concerning Kyle Dennison, No. SC-CV-41-14 (July 22, 2014)
- Atchíní bi beehaz'áanii



lishjani adoolniil in contempt proceedings

- Benjamin Shorty v. Delores Greyeyes. SC-CV-06-14 (June 16, 2014)
- The need to make things clear
- Goes to k'é
- Court must review the order alleged to have been violated and determine if the order was clear as to the duties imposed on the person alleged to be in contempt.
- Court must exercise contempt power with upmost restraint
 - *Navajo court system – restorative justice, horizontal concepts of power*
 - *Adversarial system – creates tension with traditional dispute resolution, some contempt power may be essential*



lishjani adoolniil re filing requirement under the Sovereign Immunity Act

- Barber v. Navajo Housing Authority; Long v. Navajo Shopping Center, Inc. SC-CV-28-12 (June 12, 2014)
- Clarity and conciseness in important government communications
- Necessary information must be stated on the notice
 - *Nature of claim, Relief sought...*
- Proper conveyance and placement of information



T'áá hwó' aji t'éego - liná Dooninit'i'ii

- lina Ba, Inc.v. Navajo Business Regulatory, SC-CV-60-10 (May 15, 2014)
- Economic development = Business success
- Economic self-sufficiency is a collective tribal interest, or right
 - FLD recognizes both (individual and collective) – Balance
- Economic goal
 - Ancient principle
 - Fundamental and basic to Navajo life and society
 - Higher law
 - Goes to core of tribal sovereignty



- Nat'áanii's duty
 - To safeguard
 - Continuation of our communities and heritage
- Hózhóqo Iiná
 - Doing the harmonious plan
 - Dine shall live together
 - As a viable community
 - On our sacred land
 - To continue our way of life
- Iiná doo ninit'i'ii
 - Immutable principle of FLD



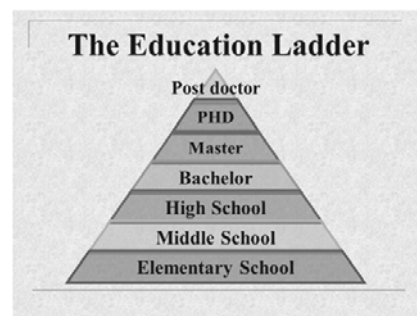
Role of *Nat'áanii*

- Nahat'ą
 - Alleviating the effects of poverty or economic injustice
 - Providing opportunities to prosper on our own lands
 - Providing the means of survival of our people as a community and sovereign nation.
- Obstacles to self-sufficiency
 - Lack of education
 - Poverty
- Remedy
 - Education



Education

- Education
 - *Learning modern skills*
 - *Hard work*
 - *Sacrifices*
- Effects of education
 - *Professionals*
 - *Professional businesses*



-survive
 -not go hungry
 -not be thirsty
 -have a roof over your head
 -have clothes to cover you
 -provide for families

- Self-sufficiency (individual)
 - Basis is T'áá hwó' ají t'éego t'éiyá
 - Take care of self
 - Hard work
 - Sacrifices
- Effects of self-sufficiency
 - Impact on community
 - Supports continuity of community
 - Sustains a prosperous life for an entire community
- Self-sufficiency (communal)
 - *T'áá nihí ak'ineildzil*
 - *Adika' adiilwol*



Role of *Nat'áanii*

- Problem solving – “Find sacred solutions”
- Never lay down people's trust and laws
- Ch'ohonit'i' – opening
- Bi'aa'iidza
- Adhere to laws
- Analyze stories
- Be positive





T'aa akwidi!

Navajo Fundamental Law Cases Update
ASU Navajo CLE Conference - October 25, 2019
Shawn Attakai

2019

Effie Edsitty v. Office of Navajo Nation Tax Commission, SC-CV-01-19 (July 22, 2019)
(*Iishjani adoolniil, Doo naaki niliida* re filing requirement for appeal)

Jerrilene Begay v. Navajo Nation Department of Self Reliance, SC-CV-03-19 (May 23, 2019)
(*T'aa hwo ajit'eego* re filing requirement for appeal)

2018

Vincent Yazzie v. Joe Shirley, Jr., SC-CV-41-18 (October 10, 2018) (Role of Judicial Branch as
Hashkeeki Naat'aanii)

Mun Kang v. Chinle Family Court and Concerning Chastity Kang, RPI, SC-CV-37-18
(September 21, 2018) (*K'eh* and Navajo due process re *Haadaani*)

**Austin Bahe v. Navajo Nation Labor Commission and Concerning Navajo Engineering and
Construction Authority, RPI**, SC-CV-15-18 (June 29, 2018) (Role of Navajo Labor Commission
as *Naat'aanii* vis-à-vis *Anahoot'i*.)

2017

Terlyn Sherlock v. Navajo Election Administration, SC-CV-64-17 (December 26, 2017) (Role
of *Naat'aanii* seeking public office)

Earl Apachito v. Navajo Election Administration, SC-CV-32-17 (July 14, 2017) (Right to have
someone speak for you under Navajo Common Law)

2016

**Nancy Martine-Alonzo and Martha Garcia v. Carolyn C. Jose and Concerning Navajo
Election Administration**, SC-CV-37-16 (November 3, 2016) (Candidate running for elected
office not disqualified because deferred sentencing scheme and restorative justice is consistent
with *Baahajooba'iyee'*)

Navajo Nation v. Roy Tso, Jr., SC-CR-03-16 (October 25, 2016) (Role of Judge as *Naat'aanii*)

Falana Haldley v. Navajo Nation Department of Public Safety, SC-CV-20-15 (February 10,
2016) (Requirement for employer to show *Nizhonigo hahodit'e* in the workplace environment)

2015

Dale Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and the Navajo Election Administration, SC-CV-68-14 (April 13, 2015) (Holding temporary office as akin to *T'aa hwook'eh jizda*)

In the Matter of Raymond DeeRoy Spencer, Decendent, Chenoah Bah Jensen v. Jean LaMarr, SC-CV-09-15 (March 27, 2015) (Court will not entertain disputes over deceased individuals based on *Kwa'asini bahozhdisin*)

Dale Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and the Navajo Election Administration, SC-CV-68-14 (February 20, 2015) (Role of a *Hataalii* and their credibility, Pardoning as akin to *Ha'deet'ah*, and *K'eh*)

2014

Dale E. Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and Navajo Election Administration, SC-CV-68-14 (November 4, 2014, nunc pro tunc as of October 31, 2014) (Navajo as a sovereign nation of laws embedded in identity as Dine.)

Dale E. Tsosie and Hank Whitethorne v. Navajo Board of Election Supervisors and Navajo Election Administration, SC-CV-68-14 (October 23, 2014) (Court's plea to the People re the Nat'aanii language requirement).

Dale E. Tsosie v. Christopher C. Deschene, No. SC-CV-57-14 and Hank Whitethorne v. Christopher C. Deschene, No. SC-CV-58-15 (October 8, 2014, nunc pro tunc as of September 26, 2014) (Navajo fluency requirement for Naat'aaniis under the Fundamental law) (NOTE: On July 21, 2015, the Navajo Nation voters passed a referendum eliminating the requirement for presidential and vice presidential candidates to be fluent in the Navajo language.)

Sahar Nouri v. Crownpoint Family Court and Concerning Kyle Dennison, No. SC-CV-41-14 (July 22, 2014) (Children are sacred under Fundamental law)

Benjamin Shorty v. Delores Greyeyes. SC-CV-06-14 (June 16, 2014) (*Iishjani adoolniil* in contempt proceedings)

Barber v. Navajo Housing Authority; Long v. Navajo Shopping Center, Inc. SC-CV-28-12 (June 12, 2014) (*Iishjani adoolniil* re filing requirement under the Sovereign Immunity Act)

Iina Ba, Inc.v. Navajo Business Regulatory, SC-CV-60-10 (May 15, 2014) (*T'aahwo ajit'eego* as the basis for economic self-sufficiency, *Iina Dooninit'i'ii*, The role of *Nat'aanii* to find the solution using the sacred wedding basket)

Navajo Nation Law CLE

Section 5

**Nuts & Bolts of Criminal Law
for Those Who Have
Purposely Chosen *Not* to
Practice Criminal Law
(Jennifer Henry)**

CRIMINAL LAW: NUTS & BOLTS

AKA: CRIMINAL DEFENSE FOR ATTORNEYS WHO
PURPOSELY CHOSE NOT TO PRACTICE CRIMINAL LAW

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OMG I JUST GOT A CRIMINAL APPOINTMENT!

- Stare at envelope in disbelief and fear
- Check and double-check the court order
- Break out into a sweat
- Consider calling your professional liability insurance provider
- Think of ways you can get out of the appointment
 - I'm too busy and/or I work very far away.
 - This is going to be very burdensome for me/my firm.
 - I'm not competent to represent a criminal defendant.
- Can I sell or trade this appointment?

REMEMBER YOUR OATH(S)?

THINK BACK. TAKE A DEEP BREATH. YOU CAN DO THIS.

SUPREME COURT OF THE NAVAJO NATION

ATTORNEY
OATH OF OFFICE

I, JENNIFER BALIN DO SOLEMNLY SWEAR THAT:

I WILL SUPPORT AND DEFEND THE LAWS OF THE NAVAJO NATION;

I WILL RESPECT THE COURTS AND JUDICIAL OFFICERS OF THE NAVAJO NATION;

I WILL NOT COUNSEL OR MAINTAIN ANY SUIT OR PROCEEDING, WHICH SHALL APPEAR TO ME TO BE UNJUST, NOR ANY DEFENSE, EXCEPT SUCH AS I BELIEVE TO BE HONESTLY DEBATABLE UNDER THE LAWS OF THE NAVAJO NATION;

I WILL EMPLOY FOR THE PURPOSE OF MAINTAINING THE CAUSES CONFIDED TO ME, SUCH MEANS ONLY AS ARE CONSISTENT WITH TRUTH AND HONOR, AND I WILL NEVER SEEK TO MISLEAD THE JUDGE OR JURY, BY ANY ARTIFICE OR FALSE STATEMENT OF FACT OR LAW;

I WILL MAINTAIN THE CONFIDENCE AND PRESERVE INVIOLEATE THE SECRETS OF MY CLIENT, AND WILL ACCEPT NO COMPENSATION IN CONNECTION WITH MY CLIENT'S BUSINESS, EXCEPT FROM MY CLIENT AND WITH MY CLIENT'S KNOWLEDGE AND APPROVAL.

I WILL ABSTAIN FROM ALL OFFENSIVE PERSONALITY, AND ADVANCE NO FACT PREJUDICIAL TO THE HONOR OR REPUTATION OF A PARTY OR WITNESS, UNLESS REQUIRED BY THE JUSTICE OF THE CAUSE WITH WHICH I AM CHARGED;

I WILL NEVER REJECT, FROM ANY CONSIDERATION PERSONAL TO MYSELF, THE CAUSE OF THE DEFENSELESS OR OPPRESSED, OR DELAY ANY PERSON'S CAUSE FOR LUCRE OR MALICE;

SO HELP ME GOD.

PULL YOURSELF TOGETHER

- Review the documents your received – make sure you have the entire case file
 - If you don't, call the Court and *get* all the pleadings.
- Find your Title 17 (or 14)
- Find your Rules of Criminal Procedure and Evidence
- Find your Navajo Bill of Rights

NAVAJO CRIMINAL LAW WHERE IS IT?

1 N.N.C. §§1-9: Navajo Bill of Rights

Title 17: Navajo Nation Criminal Code

Title 14: Motor Vehicle Code
Especially: §§700-724

Navajo Rules of Criminal Procedure
Navajo Nation Supreme Court opinions
Diné bi beehaz' aanii

NAVAJO CRIMINAL LAW WHERE IS IT?

Criminal offenses in Title 14 have not been amended
since 1988

Title 17 (a little more problematic)
Code Books/Website current through 2009

TITLE 17 UPDATES SINCE 2009

- ✓ Extradition and Detainer Act (CJY-29-13)
- ✓ Violence Against Family Act (CJA-04-12)
- ✓ Sex Offender Registration and Notification Act
 - ✓ Amendments: CJA-11-16, CJY-38-16
- ✓ Sentencing Provisions Amendment (CN-52-14)
- ✓ Navajo Nation Law against Human Trafficking (CJY-48-17)
- ✓ Cyberbullying Act," CJA-09-18
- ✓ "Revenge Porn Act," CAP-43-18
- ✓ White Collar Crime Amendments," CO-59-17
- ✓ Sentencing Provisions Amendment CN-52-14 Controlled Substance Definition Act of 2018," CO-75-18

NAVAJO SUPREME COURT OPINIONS

List of Navajo Nation criminal case law included in course materials posted online. Want a copy by email – let me know.

If you'd like a copy of anything we talk about today, let me know.

Research tip: Navajo Nation does not have the right to appeal in criminal cases, so if you're looking for case law it will likely be from writs or defense appeals.

ON TO THE “NUTS AND BOLTS”

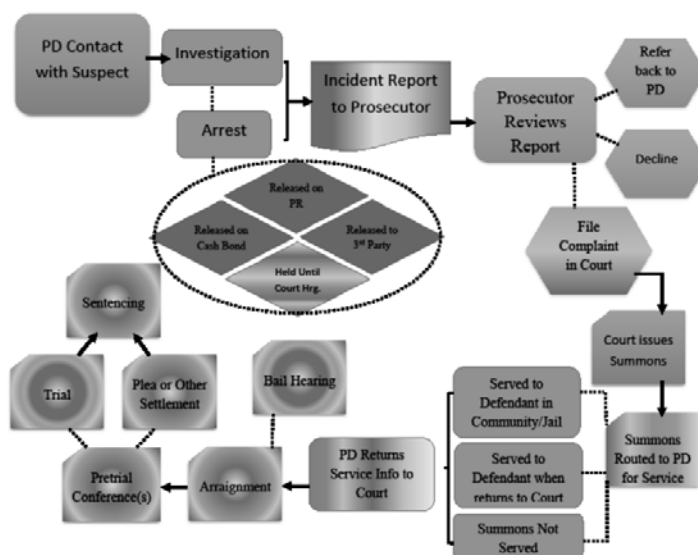
YOU CAN DELAY NO LONGER

FIRST THINGS FIRST

- Do a conflict check on client
- Do a conflict check on witnesses and victims
- Determine date of next hearing
- Contact your client!

CRIMINAL TIMELINE

Prosecutor files complaint(s)
ARRAIGNMENT
 (discovery)
PRETRIAL CONFERENCE(S)
 (more discovery; pretrial motions)
TRIAL
SENTENCING
POST-TRIAL WORK



WHERE IS THE CASE AT WHEN YOU'RE APPOINTED?

ALMOST ALWAYS AFTER ARRAIGNMENT

is your client in custody? If so – GO TO THE JAIL NOW
review the arraignment order
should you make a jury demand?
make a request for discovery

REVIEW THE COMPLAINT

- No joinder of offenses (Rule 7)
- No joinder of defendants (Rule 7)
- Check content of complaint (Rule 8)
 - Client's name (or description that IDs w/ reasonable clarity)
 - Client's census #, if any
 - Client's address
 - Essential facts, including jurisdictional facts
 - Statutory name of offense
 - Section of Code allegedly violated
 - No unnecessary allegations

REVIEW THE SUMMONS & SERVICE

- Was your client served by a Navajo Nation Police officer?
- Was your client served within the territorial jurisdiction of the Navajo Nation?
- Was the summons and complaint handed directly to your client?

IS THERE A JURISDICTION ISSUE?

SERVICE OF PROCESS SUFFICIENT?

LOCATION OF ALLEGED OFFENSE?

CLIENT'S TRIBAL AFFILIATION?

CLIENT CONTACT & COMMUNICATION

When to contact your client?

- ✓ In custody – immediately! (Not ASAP. *Immediately.*)
- ✓ Not in custody

Are you guilty? Did you do it? Client admissions.

Authority to talk to client's family.

Go through criminal process and hearings.

Give your client the discovery.

Get your client's contact information!

Make the next appointment.

Keep your promises to your client.

LET'S TALK ABOUT BAIL

THIS AND DISCOVERY ARE BIG ISSUES

BAIL

17 N.N.C. §1807

"Every person arrested for an alleged offense against the Navajo Nation shall, within a period of 18 hours from the time of commitment, be given an opportunity to be released on bail."

SO WHO OFFERS/DECIDES BAIL?

Judges &/or the Detention Facility

- ✓ Specific bail for each alleged offense (not to exceed maximum fine)
- ✓ Bail *schedule* for various offenses (majority of judges w/ Chief Justice's concurrence)
 - ✓ Police officers authorized by the Director of the Department of Law Enforcement could implement the schedule
 - ✓ Department of Corrections could implement the schedule
- ✓ 17 N.N.C. §1815 Director of the Department of Law Enforcement is authorized and directed to authorize officers to admit persons to bail when Court is not in session
- ✓ 17 N.N.C. §1815 Director of the Department of Law Enforcement is directed to assure that an officer authorized to admit persons to bail be on duty at each jail facility during said times
- ✓ "Consent decree" (1992) and *Navajo Nation v. Holmes* (2013)

BAIL/RELEASE

17 N.N.C. §1805

"No person shall be detained, jailed or imprisoned under any law of the Navajo Nation for a longer period than 36 hours, unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of the Navajo Nation...."

HOLIDAYS AND WEEKENDS

Certain things just seem more likely to happen on holidays and weekends:

- ✓ Kids get sick when the clinic's closed
- ✓ Dogs need medical help when the vet is closed
- ✓ **Your clients will be arrested when the court's closed**



NIZHONI

EASTER WEEKEND, 2005



SHYLAH

SUNDAY EVENING, DECEMBER 6, 2015

BAIL/RELEASE (FRIDAY, WEEKENDS, HOLIDAYS)

17 N.N.C. §1805

"...however, that a person arrested on a Friday, Saturday, Sunday, or a day before a holiday, who, having been given an opportunity within 36 hours after arrest to be released on bail does not provide bail, may be held in custody pending commitment for a reasonable additional period not to exceed eight hours following the opening of court on the next day it is in session."

SHOULD YOU FILE A WRIT?

AND/OR SHOULD YOU CALL THE PROSECUTOR?

BAIL/RELEASE

"...there is a legal presumption for release by personal recognizance unless the Navajo Nation objects and a judge makes 'certain findings' to the contrary at the defendant's initial appearance."

*Wood v. Window Rock Dist. Ct.
slip op. No. SC-CV-20-29
(Nav. Sup. Ct. July 1, 2009)*

BAIL/RELEASE

"Certain findings"

The court has reason to believe:

- ✓ Defendant is dangerous to public safety (Rule 15(d))
- ✓ Defendant will commit a serious crime (Rule 15(d))
- ✓ Defendant will seek to intimidate any witness (Rule 15(d))
- ✓ Defendant will otherwise unlawfully interfere with the administration of justice (Rule 15(d))
- ✓ "For any other reason allowed by law" (Rule 15(d))
- ✓ Defendant is unable to care for his or her personal safety (17 N.N.C. §1812)
- ✓ Defendant will pose a danger to any other person (17 N.N.C. §1812)
- ✓ Defendant will leave the lands subject to the jurisdiction of the Navajo Nation and fail to appear (17 N.N.C. §1812)

BAIL/RELEASE

Rule 15(b) & 17 N.N.C. §1812 findings

Must be made by CLEAR AND CONVINCING evidence

ONE MORE "CERTAIN FINDING" 17 N.N.C. §1812(A)(4)

"When the person charged has allegedly done or committed acts as part of the same design or transaction upon which the alleged offense against the Navajo Nation is charged which would in the officer's or the judge's belief constitute a felonious offense, which shall be for the purposes of this Section, an offense under 18 U.S.C. §1153."

MAJOR CRIMES ACT

18 U.S.C. §1153

Any Indian who commits against the person or property of another Indian or other person:

- ✓ Murder
- ✓ Manslaughter
- ✓ Kidnapping
- ✓ Maiming
- ✓ Felony under chapter 109A (Sexual Abuse)
 - ✓ Incest
- ✓ Assault w/ intent to commit murder
- ✓ Assault w/ a dangerous weapon
- ✓ Assault resulting in serious bodily injury
- ✓ Assault against someone under 16 years old
 - ✓ Felony child abuse or neglect
 - ✓ Arson
 - ✓ Burglary
 - ✓ Robbery
- ✓ Felony under section 661 in Indian Country (Embezzlement/Thefts)

EGREGIOUSNESS OF ALLEGED OFFENSE NOT SUFFICIENT

"...mere seriousness of the alleged offense does not, by itself, justify continued detention."

"To hold a defendant merely because the complaint *alleges* a serious offense improperly treats the defendant as guilty before the trial, by assuming the allegations are true and essentially punishing him or her before the Nation has established beyond a reasonable doubt that the offense occurred. This clearly violated Seaton's right to due process."

Seaton v. Greyeyes

CLEAR AS MUD?

- ✓Your client must be offered bail
 - ✓Bail Agreement – third party release (17 N.N.C. §1808)
 - ✓Cash bond (17 N.N.C. §1809)
- ✓Prosecutor must request denial of bail and findings must be made by clear and convincing evidence
 - ✓Motion to deny bail (written or verbal at arraignment or bail hearing)
 - ✓"Certain findings" by clear and convincing evidence to deny bail
- ✓Most writs are filed because of bail/release issues

ARRAIGNMENT - PURPOSE

Rule 12

- ✓To bring the defendant before the Court
- ✓To advise the defendant of the specific nature of the charges against him or her
- ✓To advise the defendant of his rights under the law
 - ✓To ask the defendant to enter a plea

NOT GUILTY

GUILTY

NO CONTEST

ARRAIGNMENT - PROCEDURE

- English(for the record); Navajo (if necessary)
- ✓Defendant is given a copy of the complaint
- ✓Case name and number is called
- ✓Defendant stands and faces the Bench
- ✓Court asks Defendant's name, DOB, tribal membership, C#, and SS#
- ✓Court reads complaint to defendant and asks if defendant understands
- ✓Judge informs Defendant of rights
- ✓Judge informs Defendant of maximum penalty if found guilty or pleads guilty
- ✓Defendant enters a plea

PLEAS

Pleas must be knowingly, voluntarily and intelligently made.

- ✓Some judges routinely enter not guilty pleas for Defendants
- ✓Some judges accept a guilty plea very (too?) easily
- ✓Some judges colloquy well with Defendants
 - ✓Some judges ... don't
- TALK TO YOUR CLIENT ABOUT ARRAIGNMENT/PLEA
 - REVIEW THE ARRAIGNMENT ORDER
- MAKE SURE YOUR CLIENT UNDERSTANDS HIS/HER RELEASE CONDITIONS

DISCOVERY

(RULES 24-28)

DISCLOSURE BY THE NAVAJO NATION

AT THE TIME OF ARRAIGNMENT

- ✓ **GIVE TO DEFENDANT** List of witnesses with their addresses which Navajo Nation intends to use against Defendant
- ✓ "No other witnesses shall be allowed to testify against him except on notice to the defendant and with permission of the court." Rule 25(a)

DISCLOSURE BY THE NAVAJO NATION

NO LATER THAN 10 DAYS AFTER ARRAIGNMENT

**✓MAKE AVAILABLE TO THE DEFENDANT FOR
EXAMINATION AND REPRODUCTION THE FOLLOWING
MATERIAL AND INFORMATION WITHIN THE
PROSECUTION'S POSSESSION OR CONTROL:**

(Rule 25(b))

DISCLOSURE BY THE NAVAJO NATION

NO LATER THAN 10 DAYS AFTER ARRAIGNMENT

1. All statements of the defendant
2. Names and addresses of any experts who have examined the defendant or any evidence in the case; results of physical examinations or tests; written reports or statements made by those experts
3. List of all papers, documents, photographs or tangible objects which Prosecutor intends to use or which were obtained from or purportedly belonged to the defendant

DISCLOSURE BY THE NAVAJO NATION

NO LATER THAN 10 DAYS AFTER ARRAIGNMENT

4. A list of all prior convictions of the defendant which Prosecutor will use at trial
5. A list of all prior acts of the defendant which Prosecutor intends to use to prove motive, intent, knowledge or otherwise use at trial
6. All material or information, which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce his punishment thereof, including all prior convictions of witnesses whom the prosecutor expects to call at trial

MORE DISCLOSURE BY THE NAVAJO NATION

WITHIN 10 DAYS AFTER ARRAIGNMENT Rule 25(c) POSSIBLE COLLATERAL ISSUES

MAKE AVAILABLE TO DEFENDANT information as to whether:

- ✓there was any electronic surveillance of the defendant, or defendant's business/residence
- ✓Whether a search warrant has been executed in connection with the case
- ✓Whether or not the case has involved an informant

EXTENT OF PROSECUTOR'S DUTY TO OBTAIN INFORMATION

Rule 25(e)

The prosecutor's obligation under this Rule extends to material and information in the possession or control of members of his staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

REQUEST FOR ADDITIONAL DISCLOSURE

Rule 25(d)

Defendant may request additional disclosure from the prosecution by a motion.

MOTION MUST SPECIFY:

- ✓ Nature of the additional disclosure
- ✓ Need for the additional disclosure

My advice: *call* or *email* the prosecutor before seeking intervention from the Court

DISCLOSURE BY DEFENDANT

Rule 26

WITHIN 20 DAYS OF ARRAIGNMENT

Must serve Prosecutor notice of any affirmative defenses and identify witnesses in support of affirmative defenses

ALIBI

ENTRAPMENT

SELF-DEFENSE

COMPETENCY (BUT SEE RULE 29(c))

CONTINUING DUTY TO DISCLOSE

Rule 24(d)

Both parties have ongoing duty of disclosure throughout the discovery process

STATEMENT OF COMPLIANCE

Rule 25(f)

Prosecutor must file statement of compliance w/in 20 days of trial.

"We have fully met our obligations in disclosing discovery."

OTHER DISCOVERY ISSUES

"Open File" Rule

Depositions – Rule 27

Subpoenas

Motions to compel

Motions to suppress

PRETRIAL MOTIONS (I)

WITHIN 15 DAYS OF ARRAIGNMENT – RULE 29(b)

- ✓Change of venue
- ✓Jury Demand
- ✓Conditions of pretrial release
 - ✓Defective complaint
 - ✓Amend the complaint

GENERAL MOTIONS PRACTICE

- ✓Responding party has 10 days from service to respond
- ✓Continuances granted for “good cause shown”
- ✓Trial continuances less than 10 days before trial require “unforeseeable or exigent circumstances,” with no unreasonable delay in seeking the continuance
- ✓Rule 29(d): waiver because of untimeliness may be rebutted by 1) good cause for lateness and 2) interest of substantial justice

PRETRIAL CONFERENCE(S)

Rule 31

Discretionary except when jury demand

Defendant's presence mandatory (Rule 31(d)(4))

Specify/argue pretrial motions

Stipulations of fact or legal issues to be tried

Jury instructions

Finalize lists of witnesses

Finalize lists of exhibits

PRETRIAL MOTIONS (II)

AT LEAST 20 DAYS BEFORE TRIAL – RULE 29(c)

- ✓Discovery motions
- ✓Disqualification of judge
- ✓Name additional witnesses
- ✓Speedy trial
- ✓Evidentiary motions (including to suppress)
- ✓Raising mental capacity

JURISDICTION MAY BE CHALLENGED AT ANY TIME

TRIAL

Rules 34-46

Order of proceedings

- ✓ Complaint read into record and plea stated
- ✓ Prosecutor makes opening statement
- ✓ Defense makes opening statement or defers
- ✓ Prosecutor offers evidence
- ✓ Defense offers evidence in rebuttal
- ✓ Parties present closing arguments

SENTENCING

Rule 50

Sentence shall be imposed "without unreasonable delay."

Court may order a presentence report by PPS

- ✓ Defendant receives copy and may comment on it

Defendant has the right to make a statement

- ✓ Present any information, even hearsay, in mitigation

Defendant's counsel and Prosecutor have the right to speak

Court may continue bail or commit Defendant prior to sentencing

APPEALS

Defendant has 30 days to appeal a *final* judgment or order

- ✓ Cannot appeal if client "sentenced to imprisonment or labor for less than fifteen days or a fine of less than \$26, or both." N.R.A.P. 2(e)

Can request stay of jail, fine or probation pending appeal

FINAL THOUGHTS

PUBLIC DEFENDERS
OTHER NAVAJO BAR MEMBERS
OTHER LAWYERS

TALK TO THE PROSECUTOR

TALK TO YOUR CLIENT

Navajo Nation Supreme Court opinions involving or discussing criminal law issues

1. Navajo Nation v. Franklin Harrison Jones; 1 Nav. R. 14 (Nav. Sup. Ct. 1971)
2. Navajo Nation v. Marilyn Littleman; 1 Nav. R. 33 (Nav. Sup. Ct. 1971)
3. Navajo Nation v. Kenneth Bahe; 1 Nav. R. 37 (Nav. Sup. Ct. 1972)
4. Navajo Nation v. Orlando Helicopter Airways, Inc. & Indian Airways; 1 Nav. R. 40 (Nav. Sup. Ct. 1972)
5. Navajo Nation v. Richard George; 1 Nav. R. 45 (Nav. Sup. Ct. 1972)
6. Navajo Nation v. Clementine Gorman Salway; 1 Nav. R. 47 (Nav. Sup. Ct. 1972)
7. Navajo Nation v. Paul McCabe; 1 Nav. R. 63 (Nav. Sup. Ct. 1971)
8. Navajo Nation v. Ida Holyan; 1 Nav. R. 78, (Nav. Sup. Ct. 1973)
9. Navajo Nation v. David Todecheene; 1 Nav. R. 87 (Nav. Sup. Ct. 1973)
10. Navajo Nation v. Leonard Yazzie; 1 Nav. R. 139 (Nav. Sup. Ct. 1977)
11. Navajo Nation v. Marie Franklin; 1 Nav. R. 145 (Nav. Sup. Ct. 1977)
12. Navajo Nation v. Alex Carty; 1 Nav. R. 296 (Nav. Sup. Ct. 1978)
13. Navajo Nation v. Kee Browneyes; 1 Nav. R. 300 (Nav. Sup. Ct. 1978)
14. Navajo Nation vs. Floyd Lawrence; 2 Nav. R.17 (Nav. Sup. Ct. 1979)
15. Navajo Nation v. Ervin Mike Keeswood et al.; 2 Nav. R. 115 (Nav. Sup. Ct. 1979)
16. Navajo Nation v. Bedonie and Anderson; 2 Nav. R. 131 (Nav. Sup. Ct. 1979)
17. Eugene LaMone v. Navajo Nation; 3 Nav. R. 87 (Nav. Sup. Ct. 1982)
18. Benjamin Johnson v. Navajo Nation; 5 Nav. R. 152 (Nav. Sup. Ct. 1987)
19. Navajo Nation v. Wilson Devore Jr.; 5 Nav. R. 155 (Nav. Sup. Ct. 1987)
20. Navajo Nation v. Wilbert Murphy; 6 Nav. R. 10 (Nav. Sup. Ct. 1988)
21. Alex Begay v. Navajo Nation; 6 Nav. R. 20 (Nav. Sup. Ct. 1988)
22. Reynolds Lee v. Navajo Nation; 6 Nav. R. 124 (Nav. Sup. Ct. 1989)
23. Lew Chee Begay v. Navajo Nation; 6 Nav. R. 132 (Nav. Sup. Ct. 1989)
24. In re Application of Jerry D. Johnson; 6 Nav. R. 186 (Nav. Sup. Ct. 1990)
25. Mary Stanley v. Navajo Nation; 6 Nav. R. 284 (Nav. Sup. Ct. 1990)
26. Navajo Nation v. Patrick Platero; 6 Nav. R. 422 (Nav. Sup. Ct. 1991)
27. Navajo Nation v. Peter McDonald Sr.; 6 Nav. R. 432 (Nav. Sup. Ct. 1991)
28. Navajo Nation v. Peter MacDonald Jr.; 7 Nav. R. 1 (Nav. Sup. Ct. 1992)
29. Navajo Nation v. William Charles Yellow; 7 Nav. R. 81 (Nav. Sup. Ct. 1994)
30. Navajo Nation v. Cynthia Hunter (1995); 7 Nav. R. 166 (Nav. Sup. Ct. 1995)
31. Navajo Nation v. Cynthia Hunter (1996); 7 Nav. R. 194 (Nav. Sup. Ct. 1996)
32. Navajo Nation v. Walter Blake; 7 Nav. R. 233 (Nav. Sup. Ct. 1996)
33. In the Matter of the Petition of Jimmie Austin Sr.; 7 Nav. R. 346 (Nav. Sup.Ct. 1998)
34. Russell Means v. District Court of the Chinle Judicial District; 7 Nav. R. 383 (Nav. Sup. Ct. 1999)
35. Theodore Curley v. Navajo Nation; 8 Nav. R. 269 (Nav. Sup.Ct. 2002)
36. Erby Apachito v. Navajo Nation; 8 Nav. R. 339 (Nav. Sup. Ct. 2003)
37. Frankie Martin, Sr. v. Wilbur Antone; 8 Nav. R. 346 (Nav. Sup. Ct. 2003)
38. Leo Thompson v. Delores Greyeyes; 8 Nav. R. 476 (Nav. Sup. Ct. 2004)
39. Navajo Nation v. Ryan Badonie; 8 Nav. R. 507 (Nav. Sup. Ct. 2004)
40. Navajo Nation v. Rafael Rodriguez; 8 Nav. R. 604 (Nav. Sup. Ct. 2004)
41. Carole Eriacho v. Ramah District Court; 8 Nav. R. 617 (Nav. Sup. Ct. 2004)
42. Navajo Nation v. Casey Morgan; 8 Nav. R. 732 (Nav. Sup. Ct. 2005)

43. Navajo Nation v. James Kelly; No. SC-CR-04-05 (Nav. Sup. Ct. July 24, 2006)
44. Myron Seaton v. Delores Greyeyes; No. SC-CV-04-06 (Nav. Sup. Ct. March 28, 2006)
45. Navajo Nation v. Ryan Badonie; No. SC-CR-06-05 (Nav. Sup. Ct. March 7, 2006)
46. Seperina Dawes v. Wendell Eriacho; SC-CV-09-08 (Nav. Sup. Ct. 2008)
47. Navajo Nation v. Aaron John; No. SC-CR-01-09 (Nav. Sup. Ct. October 30, 2009)
48. Rodriguez Wood v. Window Rock District Court; No. SC-CV-20-09 (Nav. Sup. Ct. July 1, 2009)
49. Dail F. Cody v. Delores Greyeyes; No. SC-CV-09-09 (Nav. Sup. Ct. March 11, 2009)
50. Vincent Johnny v. Delores Greyeyes; No. SC-CV-52-08 (Nav. Sup. Ct. February 27, 2009)
51. Evelyn Acothley, et al.. v. Navajo Nation; No. SC-CV-08-11 (Nav. Sup. Ct. 2011)
52. Aaron John v. Navajo Nation; No. SC-CR-01-09 (Nav. Sup. Ct. July 21, 2011)
53. Lynley Bitsie v. Delores Greyeyes; No. SC-CV-55-11 (Nav. Sup. Ct. December 29, 2011)
54. Bowman v. Greyeyes; No. SC-CV-63-11 (Nav. Sup. Ct. January 24, 2012)
55. Roger Baker v. Delores Greyeyes; SC-CV-34-12 (Nav. Sup. Ct. 2012)
56. Haungooah v. Greyeyes; No. SC-CV-06-13 (Nav. Sup. Ct. June 4, 2013)
57. Navajo Nation v. Kayenta District Court and Concerning Benson Holmes; No. SC-CV-50-13, (Nav. Sup. Ct. March 5, 2014)
58. Shorty v. Greyeyes; No. SC-CV-06-14, (Nav. Sup. Ct. June 16, 2014)
59. Navajo Nation v. Roy Tso, Jr.; No. SC-CR-03-16, (Nav. Sup. Ct. Oct. 25, 2016)

Navajo Nation Law CLE

Section 6

**Is there an “Obligation” to
Unrepresented Parties in the
Navajo Court System?
(Bernadine Martin)**

IS THERE AN “OBLIGATION” TO UNREPRESENTED PARTIES IN THE NAVAJO COURT SYSTEM

BY: BERNADINE MARTIN, ESQ.

“Obligation” is defined as “[a] legal or moral duty to or not to do something. Black’s Law Dictionary, 10th Ed.

Answer: Yes. Navajo Nation has a legal duty to provide representation to defendants (parties) in the Navajo criminal and civil justice systems.

Navajo Common Law is based on communal relationships, not individual rights. Navajo custom and tradition have the force of law in Navajo courts.

Codified Navajo law is found in: Navajo Bill of Rights, Navajo Nation Code, Navajo Rules of Criminal Procedure, Navajo Rules of Civil Procedure, and Navajo Rules of Evidence.

INDIAN CIVIL RIGHTS ACT OF 1968

25 U.S.C. § 1302

(a) ... No Indian tribe in exercising powers of self-government shall –

(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

INDIAN CIVIL RIGHTS ACT OF 1968 25 U.S.C. §1302

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person 1 a criminal proceeding a total penalty of punishment greater than imprisonment for a term of 9 years;

(8) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

PLAIN MEANING RULE

Navajo Nation follows the “plain meaning rule” when interpreting statutes and rules. Navajo further follows the principle “words are sacred, never frivolous” which aids in legal interpretation of the law.

AMENDMENT VI, BILL OF RIGHTS, U.S. CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained bylaw, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence”.

POWELL V. ALABAMA, 287 U.S. 45 (1932)

“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime [sic], he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have [sic] a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

GIDEON V. WAINWRIGHT, 372 U.S. 35 (1963)

Clarence Earl Gideon was charged with burglarizing a poolroom in Panama City, Florida. He appeared in court without funds and without counsel and asked the court to appoint counsel for him. The trial judge refused because Florida lawyers were appointed for indigent defendants only in capital crimes. Gideon presented his defense; he made an opening statement, presented witnesses, and cross-examined the prosecution's witnesses. He was found guilty and sentenced for 5 years in state prison. He appealed.

Gideon was retried, represented by a lawyer and was acquitted.

GIDEON V. WAINWRIGHT, 372 U.S. 35 (1963)

U.S. Supreme Court stated:

The Sixth Amendment provides, "in all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defence".

... any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

The government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.

GIDEON V. WAINWRIGHT, 372 U.S. 35 (1963)

(cont.)

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.

This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

HENDERSON V. CROWNPOINT FAMILY COURT SC-CV-47-17

Court changed physical custody of a 5-year old child from mother to father. Father was pleading a review hearing regarding visitation.

During a hearing, counsel for father advised the Court that changing custody was within the discretionary power of the Court; Court then entered an Interim Order changing child custody. Mother was not represented by legal counsel (and did not understand Navajo).

Mother filed a Writ to Navajo Supreme Court and after a hearing, the Court ordered that child be returned to mother immediately.

HENDERSON V. CROWNPOINT FAMILY COURT SC-C-47-17

The Supreme Court found the order changing custody was unlawfully entered into and without notice. The Court stated that “[i]n modification of child custody, proper notice to the adverse party and an opportunity to be heard are required whether or not provided for by statute. *Lente v. Notah*, 3 Nav.R. at 74.

The Supreme Court concluded that the Family Court failed to act in the child’s best interest. Accordingly, the Supreme Court declared the Interim Order and Final Order void. And “[w]hen faced with important matters, it is inappropriate to rush to conclusion or to push a decision without explanation and consideration of those involved.

NAVAJO NATION V. BENALLY CHINLE DISTRICT COURT

Public Sexual Indecency, 17 N.N.C. §442:

A. A person commits public sexual indecency if he or she intentionally or knowingly, in public view, engages in:

1. A sexual act; or
2. Sexual contact.

Defendant pled guilty at arraignment.

NAVAJO NATION V. BENALLY CHINLE DISTRICT COURT

Facts: Intoxicated defendant was seen by passerby squatting and defecating alongside the roadway exposing his genitals to public view. There was no reference to a “sexual act” or “sexual contact” in the police incident report yet a prosecutor signed the criminal complaint and filed it thereby charging defendant with public sexual indelicacy. The date of the crime in the criminal complaint was September 9, 2019 yet the complaint was filed in January, 2019.

Sentence: Any person found guilty of public sexual indecency shall be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days or be ordered to pay a fine not to exceed five hundred (\$500.00) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

NAVAJO NATION V. BENALLY CHINLE DISTRICT COURT

Defendant pled guilty to the crime charged and was sentenced to 90 days jail and was further ordered to register as a sex offender.

A second prosecutor filed a motion to vacate the conviction and motion to dismiss the criminal complaint.

Arguments included no sexual act; no sexual contact; no intent.

NAVAJO NATION V. BENALLY CHINLE DISTRICT COURT

Prosecution standards:

Berger v. U.S., 295 U.S. 78 (1935): The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as its obligation to govern at all; and whose interests, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

NAVAJO NATION V. BENALLY CHINLE DISTRICT COURT

Mr. Benally's conviction was reversed/vacated and his guilty plea vacated and expunged.

NAVAJO NATION V. THOMPSON
CROWNPOINT DISTRICT COURT

17 N.N.C. §541(A) states:

An individual commits sexual assault of a family member by intentionally or knowingly engaging in sexual contact, including sexual intercourse with a family member without his or her consent.

NAVAJO NATION V. THOMPSON
CROWNPOINT DISTRICT COURT

17 N.N.C. §541(B):

Any individual found guilty of sexual assault shall be sentenced to imprisonment for a term of not less than one hundred-twenty (120) days and not to exceed three hundred sixty-five (365) days, and/or be ordered to pay a fine not less than one thousand five hundred dollars (\$1,500.00) and not to exceed five thousand dollars (\$5,000.00).

NAVAJO NATION V. THOMPSON
CROWNPOINT DISTRICT COURT

17 N.N.C. §537 requires mandatory arrest:

A. When a law enforcement officer has probable cause to believe that an individual has committed a crime involving family violence in or outside the presence of a law enforcement officer, the individual shall be arrested without a warrant. The officer may request the individual be held until arraignment or without bond through the Office of the Prosecutor.

NAVAJO NATION V. THOMPSON
CROWNPOINT DISTRICT COURT

17 N.N.C. §541 (C) states “[a]ny individual convicted under this Subsection shall be registered as a sex offender under applicable laws”.

NAVAJO NATION V. THOMPSON CROWNPOINT DISTRICT COURT

Facts:

- =Defendant was charged with §541 on February 20, 2019.
- =Defendant was issued a summons; he was not arrested pursuant to §537.
- =Arraignment was scheduled for June 10, 2019.
- =Defendant filed Appearance, Waiver & Plea on April 2, 2019.

NAVAJO NATION V. THOMPSON CROWNPOINT DISTRICT COURT

Facts (cont'd):

- =Two (2) children were removed from the home by DFS and dependency action filed.
- =Complaining party was DFS social worker who cited an incident "four years ago".
- =Police officer submitted his report and referred the matter to the Criminal Investigators.
- =Police officer did not sign the criminal complaint.

NAVAJO NATION V. THOMPSON CROWNPOINT DISTRICT COURT

Facts (con't):

=Defendant filed motion to dismiss on June 10, 2019 based on defective complaint. *Navajo Nation v. Platero*, 6 Nav.R. 422 (Nav.Sup.Ct. 1991) provides the test to determine the validity of a criminal complaint. Applying the plain meaning rule and the “elements test” to this case, Navajo Nation falls short of meeting its burden of proof. The prosecution must prove each and every element of an offense.

NAVAJO NATION V. THOMPSON CROWNPOINT DISTRICT COURT

Facts not included in above-mentioned docket number:

- Defendant was not arrested per statute. See 17 N.N.C. §537(A);
- Dates the alleged crime(s) occurred in 2018, 2017, 2016, 2015, or 2014;
- Criminal prosecutions for this criminal offense in 2018, 2017, 2016, 2015, or 2014;
- Name(s) of complaining party or parties who contacted Navajo police reporting this alleged crime;
- Date the Navajo police was contacted reporting this alleged crime;

NAVAJO NATION V. THOMPSON CROWNPOINT DISTRICT COURT

- Statements of the victim, witnesses, or alleged offender. See 17 N.N.C. §537(B)(1);
- Physical appearance, condition, and/or demeanor of any individuals present, including the victim, children or household members. See 17 N.N.C. §537(B)(2);
- Physical condition of the premises. See 17 N.N.C. §537(B)(3);
- Complaints by neighbors. See 17 N.N.C. §537(B)(4);
- Other forms of documentation such as use of camera, video, etc. See 17 N.N.C. §537(B)(5).

NAVAJO NATION V. THOMPSON CROWNPOINT DISTRICT COURT

Outcome:

Navajo Nation dismissed this case without prejudice on September 6, 2019.

QUESTIONS?

Thank you for your attention.

Navajo Nation Law CLE

Section 7

**Doing Business on Navajo—
Small and Large Projects**
(Brian Lewis)

OBTAINING AUTHORITY TO TRANSACT BUSINESS AND SITE CONTROL FOR ECONOMIC DEVELOPMENT AND DEVELOPING SOLAR ENERGY PROJECTS IN THE NAVAJO NATION



PURPOSES OF THIS PRESENTATION

- Provide a Background Regarding Economic Development and the Legal / Regulatory Environment in the Navajo Nation;
- Discuss the Requirements and Approaches for Transacting Business in the Navajo Nation;
- Discuss the Requirements and Methods for Obtaining Business Site Leases and Solar Leases for Site Control in the Navajo Nation;
- Provide a Recitation of Selected Navajo Nation Laws and Regulations Impacting Business Operations and Solar Energy Projects in the Navajo Nation, and Discuss How to Comply with These Selected Laws and Regulations;
- Provide an Attorney Perspective of the Legal and Regulatory Processes for Conducting Business and Bringing a Solar Energy Project to Fruition to Contribute to Economic Development; and
- Provide Helpful Practice Points and Suggestions for Conducting Business and Developing Solar Energy Projects in the Navajo Nation.

ECONOMIC DEVELOPMENT IN THE NAVAJO NATION

BIG CONCEPTS

- What is economic development?
 - The creation of conditions necessary to foster and promote a market in which greater economic transactions for goods and services may occur with greater efficiency and frequency, and the actual occurrence of such transactions.
- Why pursue economic development?
 - To increase the production and purchase of goods and services for increased per capita gross domestic product, greater incomes, and--put simply--better standards of living in the Navajo Nation.

ECONOMIC DEVELOPMENT IN THE NAVAJO NATION

BIG CONCEPTS

- Real world conditions, constraints, and opportunities:
 - Lack of available internal capital;
 - Lack of physical infrastructure;
 - Lack of availability and clarity in the rules and legal or regulatory processes;
 - Lack of predictability;
 - Low monetary velocity or dollar turnover;
 - Large land area;
 - Large available workforce; and
 - Navajo Nation government policies supporting economic development and solar energy projects.

ECONOMIC DEVELOPMENT IN THE NAVAJO NATION

BIG CONCEPTS

- The Rule of Law is necessary for the development of a vibrant private sector;
- Investors and entrepreneurs can thrive only where law clearly defines and enforces their rights;
- The rules should be readily available, consistent, clear, and easily understandable;
- Decisions by regulators should be principled and consistent, not arbitrary and *ad hoc*;
- The Nation should embrace certain objectives in the adoption and implementation of its laws and regulations, including -
 - Consistency;
 - Transparency;
 - Public participation (which is, perhaps, where practitioners can have the greatest impact);
 - Accountability (the Nation could have the perfect set of laws and regulations to promote solar energy development, but if these laws and regulations are poorly implemented, then the benefits of perfect laws and regulations are lost. Accountability requires that there be a system that reviews the government's implementation of the law.);
 - Predictability (if the point of the Nation's law, here, or otherwise legal reform is to attract investment and entrepreneurs to the Reservation, then the Nation's laws and regulations need to provide them the ability to predict the risks they are accepting. They cannot accurately predict risks without understanding the precise or exact Navajo Nation laws that will apply to their business. Nor can they accurately predict risk when the outcomes in the Nation's legal and regulatory system are unpredictable.

NAVAJO NATION LEGAL/REGULATORY ENVIRONMENT

- The Navajo Nation governs the authority to transact business and the entities that conduct business within the reservation through the Division of Economic Development pursuant to the Navajo Nation Corporation Act and its other business association/organization codes set forth at 5 N.N.C. §§ 3100 *et seq.*, as amended.
- The Navajo Nation governs and administers surface leases pursuant to the Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. §§ 2301 *et seq.*, as amended, and the Navajo Nation General Leasing Regulations of 2013, 16 N.N.C. §§ 2301 *et seq.*, as amended.
- The Navajo Nation governs labor and employment pursuant to the Navajo Preference in Employment Act, 15 N.N.C. §§ 601 *et seq.*, as amended, and preference for Navajo contractors pursuant to the Navajo Business Opportunity Act, 5 N.N.C. §§ 201 *et seq.*, as amended.

NAVAJO NATION LEGAL/REGULATORY ENVIRONMENT

- Incorporation (pursuant to 5 N.N.C. § 3108), organization (pursuant to 5 N.N.C. § 3621), or formation of partnership (pursuant to 5 N.N.C. § 3811) or limited partnership (pursuant to 5 N.N.C. § 4110) as a Navajo Nation domestic entity;
- Foreign entities must obtain authorization to transact business pursuant to, e.g., 5 N.N.C. § 3166(A) (for corporations) and 5 N.N.C. §§ 3730-3738 (for limited liability companies), file a statement of foreign qualification for a partnership (pursuant to 5 N.N.C. § 3901(A)) or, otherwise, register a foreign limited partnership with the Business Regulatory Department (pursuant to 5 N.N.C. § 4181(A));
- Create a joint venture entity with a Navajo Nation-owned instrumentality pursuant to contractual agreements or creation of a new joint venture entity.

TRANSACTING BUSINESS IN THE NAVAJO NATION

MAJOR POINTS

- File the Required Forms (e.g., Articles of Incorporation or Articles of Organization) with the Navajo Nation Division of Economic Development's Business Regulatory Department
- Forms are Available at: http://www.navajobusiness.com/doing-Business/Registration/NNCC/NNCC_process.htm
- Provide Copies of Bylaws or Operating Agreement to the Business Regulatory Department
- Obtain a Certificate of Existence (e.g., Certificate of Incorporation or Certificate of Organization) from the Business Regulatory Department
- File Required Forms for Subsequent Changes (e.g., Amended Articles, Changes of Registered Agent) and Annual Reports

TRANSACTIONING BUSINESS IN THE NAVAJO NATION

MAJOR POINTS

- Office of the Navajo Tax Commission Filings
 - Form 100 (Designation of Individual)
 - Form 401 (Business Activity Tax Return)
 - Form 402 (Salaries, Wages and Other Compensation Paid to Navajos)
 - Form 403 (Detail of Deductions – For Purchases of Navajo Goods and Services, and Payments Made to the Navajo Nation Government)
 - Form 600 (Sales Tax Return)
 - Form 607 (Sales Construction Activity)
 - Forms Available at: <http://www.tax.navajo-nsn.gov>

JOINT VENTURES WITH NAVAJO NATION ENTERPRISES AND INSTRUMENTALITIES

- (1) Memoranda of Agreement/Understanding and Contractual Agreements; and
- (2) Joint Ventures
 - Joint ventures may provide several benefits that are not, otherwise, available, including -
 - Reduced exposure (overall) to risk and uncertainty pursuant to sovereign immunity from suit;
 - Insulation from state jurisdiction and taxation; and
 - Arguments for insulation from enforcement of certain laws by private party actions; and
 - Enhanced profit margins from insulation from state and (perhaps) certain federal taxes.

FIRST METHOD ABOVE – MEMORANDA OF AGREEMENT/UNDERSTANDING AND CONTRACTUAL AGREEMENTS

KEY POINTS –

- A Memorandum of Agreement/Understanding (“MOA/MOU”) is not a Contractual Agreement.
- Unlike a MOA/MOU, the Parties Intend a Contract to be Enforceable.
- A Contract Must Satisfy the Three (3) Essential Elements for Proper Formation and Enforceability: (1) an offer; (2) an acceptance of that same exact offer; and (3) the exchange of valuable consideration to “seal the deal,” so to speak.

SECOND METHOD ABOVE – JOINT VENTURES

KEY POINTS –

- Most—If Not All—of the Navajo Nation’s Enterprises (or Instrumentalities) and Political Subdivisions May Create Limited Liability Companies (“LLCs”) and Corporations.
- For the sovereign immunity of the Navajo Nation to extend to a corporation or LLC, this must expressly be provided by law.
- Navajo Nation and federal laws provide for the sovereign immunity of the Navajo Nation to extend to majority-owned joint venture entities and instrumentalities created by Navajo Nation enterprises (or instrumentalities) and political subdivisions.

NAVAJO NATION ENTERPRISE AND POLITICAL SUBDIVISION ISSUES AND CONCERNS		
POLITICAL SUBDIVISION	SHARED	ENTERPRISE
<ul style="list-style-type: none"> • Exercising and Augmenting Sovereignty and Local Governance • Maximization of Secondary or Multiplier Benefits • Community Benefits and Advantages 	<ul style="list-style-type: none"> • Fiduciary Responsibilities and Protection of Assets and the Nation's Resources • Contracting and Dispute Resolution Provisions for Minimization of Exposure • Financing, Capital, and Technical Expertise • Profits, ROIs, and Maximization of Portions of Dividends/Distributions • Navajo Membership Employment and Contracting • Minimization of Navajo Nation Central Government and State Encroachment, Overreaching, and Interference • Long Term Stability and Predictability 	<ul style="list-style-type: none"> • Minimization of Local/Chapter Encroachment, Overreaching, and Interference

SAMPLE OF NAVAJO NATION ENTERPRISES AND INSTRUMENTALITIES THAT MAY CREATE JOINT VENTURE ENTITIES
<ul style="list-style-type: none"> • Navajo Arts and Crafts Enterprise; • Navajo Agricultural Products Industry; • Navajo Broadcast Enterprises; • Navajo Nation Gaming Enterprise; • Navajo Nation Hospitality Enterprise; • Navajo Nation Engineering and Construction Authority; • Navajo Tribal Utility Authority; • Navajo Nation Oil and Gas Company; and • Navajo Transitional Energy Company.

SAMPLE OF NAVAJO NATION POLITICAL SUBDIVISIONS AND THEIR EXISTING INSTRUMENTALITIES THAT MAY CREATE JOINT VENTURE ENTITIES

- Shonto Economic Development Corporation;
- Shonto Commercial LLC;
- LeChee Community Development LLC;
- Ndziil Commerce LLC;
- Whitecone Advisory Council Incorporated;
- With the Kayenta Township and LGA-Certified Chapters Not Prohibited or Precluded by Law From Creating Entities and, Otherwise, Joint Ventures.

JOINT VENTURES PROVIDE SEVERAL BENEFITS, INCLUDING –

- Reduced exposure (overall) to risk and uncertainty pursuant to:
 - Sovereign immunity from suit;
 - Insulation from state jurisdiction and taxation; and
 - Insulation from enforcement of laws by private party actions;
- and
- Enhanced profit margins pursuant to insulation from state and (certain) federal taxes.

FOR THESE PROTECTIONS, PRIVILEGES, AND BENEFITS TO BE HAD, A JOINT VENTURES MUST BE MAJORITY-OWNED BY THE NAVAJO NATION ENTERPRISE OR POLITICAL SUBDIVISION (OR ITS ENTITY) AND –

- Must be Created Under the Laws of the Navajo Nation (the Navajo Nation Corporation Act, 5 N.N.C. §§ 3100 *et seq.*, or the Navajo Nation Limited Liability Company Act, 5 N.N.C. §§ 3600 *et seq.*);
- Must be Created for the Purpose of Economic Development and, Otherwise, Economic Benefits to the Navajo Nation, its Enterprise, Political Subdivision, or Members;
- Must be Directed or Controlled—Whether Directly or Indirectly—by the Navajo Nation’s Enterprise or Political Subdivision (or its Entity) Commensurate with its Amount or Proportion of Ownership or Membership;
- Must Expressly State in its Creation and Governing Instruments and Documents the Intention to Extend Sovereign Immunity From Suit to the Joint Venture Entity;
- Must be Considered an Asset of the Navajo Nation Enterprise or Political Subdivision (or its Entity) and Must Have a Substantial Relationship With the Navajo Nation Enterprise or Political Subdivision (or its Entity); and
- The Purposes of Tribal Sovereign Immunity Must be Served by Extension of Sovereign Immunity to the Joint Venture Entity.

THORNY ISSUES THAT MAY ARISE AND SOME POSSIBLE APPROACHES TO ADDRESS (AND, PERHAPS, RESOLVE) THESE –

- Capital and Financing (Most-Often From the Private-Side);
- Resolving Disparities Between Ownership or Membership and Economic/Financial Assignee/Transferee Interests or Entitlements to Dividends and Distributions;
 - Equity Interest Acquisition/Purchase Options and Deposit Account Control Agreements;
- Valuating and Calculating the Benefits Sovereign Immunity and Being Insulated From State Jurisdiction, Being Free From State and (Certain) Federal Taxes, and the Overall Reduction in Exposure to Risk and Uncertainty;
 - While Calculating the Value of Insulation From Taxes and Fees can be (Relatively) Straightforward, Calculating the Value Associated with Overall Reduced Exposure to Risk and Uncertainty is More Difficult; and
- Dispute Resolution Provisions and Mechanisms in Agreements Associated with the Joint Venture Entity (Operating Agreements, Shareholder Agreements, and Otherwise);
 - Commercial Arbitration, Limiting De Novo Review, and Setting Mechanisms for Enforcement of Awards by Contract.

SITE CONTROL

LAND WITHDRAWAL

- Land Withdrawal (in accordance with the Land Withdrawal Designation Regulations issued pursuant to Council Res. No. RDCJN-33-15 (June 16, 2015);
 - Letter of Application or Cover Letter;
 - Legal Survey or GPS Reading;
 - Chapter Resolution in support;
 - Consent from grazing/customary use rights holder(s);
 - Biological Resource Compliance Form approved by Navajo Nation Fish and Wildlife; and
 - Cultural Resource Compliance Form approved by Navajo Heritage and Historic Preservation Department.

SITE CONTROL

BUSINESS SITE LEASE

- Business Site Leases are Governed by the Navajo Nation Business Site Leasing Act, 5 N.N.C. §§ 2301 *et seq.*, the Navajo Nation Business Leasing Regulations of 2005, and the Economic Development Committee Uniform Business Leasing Regulations of 2008.
- Standardized Terms and Conditions Set Forth in Parts I and II of the Navajo Nation Standard Business Site Lease
- Land Description
- Appraisal
- Fair Annual Lease Value
- Security
- Insurance

SITE CONTROL SOLAR LEASE

- Lease pursuant to the Navajo Nation General Leasing Regulations of 2013, 16 §§ 2301-2397 (see id. at § 2305(A) (“These regulations apply to all leases and permits for the use or possession of Navajo Nation Trust Lands . . . , including renewable energy leases”)).
- “except business site leases which are authorized pursuant to the Navajo Nation Business Leasing Regulations of 2005”

OTHER SELECTED NAVAJO NATION LAWS TO CONSULT WHEN UNDERTAKING PROJECT DEVELOPMENTS AND OPERATIONS

- Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 et seq., as amended;
- Navajo Nation Environmental Policy Act, 4 N.N.C. §§ 901 et seq., as amended;
- Navajo Nation Clean Water Act, 4 N.N.C. §§ 1301 et seq., as amended;
- Control of Business Within the Navajo Nation, 5 N.N.C. §§ 401 et seq., as amended;
- Navajo Preference in Employment Act, 15 N.N.C. §§ 601 et seq., as amended;
- Use and Disposition of Land Generally, 16 N.N.C. §§ 601 et seq., as amended;
- Compensation for Improvements and Customary Use Rights Upon Adverse Disposition of Lands, 16 N.N.C. §§ 1101, 1151-1164, as amended;
- Permits and Leases, 18 N.N.C. §§ 601 et seq., as amended;
- Navajo Tax Code, 24 N.N.C. §§ 101 et seq., as amended; and
- Navajo Nation Local Governance Act, 26 N.N.C. §§ 1 et seq., as amended.

QUESTIONS AND COMMENTARY

Navajo Nation Law CLE

Section 8

Light Up Navajo
(Arash Moalemi)



Light Up Navajo

A project to extend electricity to Families living without on the Navajo Nation
 Arash N. Moalemi
 General Counsel



Navajo Tribal Utility Authority

- Created in 1959
- A not-for-profit enterprise of the Navajo Nation
- Service Territory – 27,000 square miles across the Navajo Nation
- Extends – Electricity, Water, Wastewater Treatment, Natural Gas, Renewable Energy
- Recently added: Communications – Internet, Cell Phone, and Data Storage Services



Navajo Nation – Southwest USA

- 186,500 Citizens
- Territory larger than West Virginia
- Unemployment rate of 48.5% - (9 times current U.S. average)
- 38% of Navajo people live below poverty line
- Avg per capita income of \$10,695 vs U.S. Avg of \$48,377



31% of all Navajo homes lack plumbing
32% lack electricity

38% lack water
86% lack natural gas

60% lack landline phone services

3

While one family celebrates a turning on a light switch for the very first time

There are still approximately 15,000 families throughout the region who do not have electricity



4

Thousands of families still haul water at least three times a week – often driving more than 20 miles one way



And thousands more also rely on wood and coal to heat their homes



11-year Residential Electric Connections

Year	Families
2018	335
2017	409
2016	322
2015	256
2014	308
2013	407
2012	509
2011	782
2010	748
2009	677
2008	460

On average, NTUA employs 91 staff members for construction and construction support activities

Since 2008, NTUA has contributed \$7,819,500 to electric connections @ \$1,500 per home

5,213 families connected
Average 474 homes per year

7

In the last three years - the average cost to connect one family - \$40,000

- 15,000 families without electricity @ \$40k = \$600 million
- \$350 million for transmission lines and electric substations



➤ \$950 million to \$1.0 Billion to connect all 15,000 families

To connect all families in 10 years with borrowed money from RUS over 40 years - @ zero interest rate

The average annual NTUA residential bill - will go from \$630 per year to over \$6,000 per year

8

Public Power Helps Public Power



9



10

2 Week Trial Run - March 25th - April 6th
- 20 Families connected - 2.34 miles of line

First week - April 8th - April 13th
- 34 Families connected - 3.84 miles of line

Second week - April 15th - April 19th
- 36 Families connected - 6.76 miles of line

Third week - April 22nd - April 26th
- 30 Families connected - 3.82 miles of line

Fourth week - April 29th - May 4th
- 32 Families connected - 6.62 miles of line

Fifth week - May 6th - May 11th
- 30 Families connected - 5.43 miles of line

Sixth week - May 13th - May 18th
- 46 Families connected - 13.45 miles of line

Seventh Week - May 19 - May 25th
- 5 Families connected - 7.02 miles of line

Light Up Navajo Pilot Project Construction completed as of May 25, 2019

**233 Families connected
50.28 miles of line**



An Appreciation Dinner – Chinle

11

28 U. S. Communities/Utility Companies Represented



1. City of Milford (DE)
2. City of Santa Clara (UT)
3. City of St George (UT)
4. City of Wadsworth (OH)
5. Conway Corporation (AR)
6. Heber Light & Power (UT)
7. Lawrenceburg Municipal Utilities (IN)
8. Lehi City Power (UT)
9. Littleton Light Department (MA)
10. Farmington Electric Utility System (NM)
11. Grand River Dam Authority (OK)
12. Greenville Electric Utility System (TX)
13. Murray City Power (UT)
14. Painesville Electric Department (OH)

15. Paxton Municipal Light Department (MA)
16. Piqua Power System (OH)
17. Rochelle Municipal Utilities (IL)
18. Sacramento Municipal Utility District (CA)
19. Salt River Project (AZ)
20. Scottsburg Municipal Electric Utility (IN)
21. Sterling Municipal Light Department (MA)
22. Town of Smyrna (DE)
23. Washington City Power (UT)
24. West Boylston Municipal Light Plant (MA)
25. Arizona Public Service Company (AZ)
26. Public Service Company of New Mexico (NM)
27. City of Fallon (NV)
28. American Public Power Association, (DC)

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Light Up Navajo II Volunteer Crew Composition

Seeking a specialized labor force and crew composition

- Specifically a crew of four (4) comprised of a Foreman and Journeyman Linemen
- Apprentices are welcomed when accompanied by their Foreman or Journeyman
- If you are unable to send a crew of four (4) linemen - we will merge or combine a smaller crew or individuals with another crew



Visit www.ntua.com for crew information

Legal Issues and Challenges: Charitable Contributions From Indian Tribe

- Section 7871 of the Internal Revenue Code (IRC) provided that Indian tribal governments are treated as states for purposes of determining whether a contribution is deductible under IRC Section 170.
- Federally recognized Indian tribes and its political subdivisions are determined by the IRS to be an organization to which contributions may be tax deductible, as provided in IRC section 170

Legal Issues and Challenges:

Waivers of Liability

- Working with legal counsel for other utilities and cities regarding waivers of liability
- Are volunteer utility linemen covered under NTUA insurance policy or host utility/city insurance policy?
- Waivers of liability for injuries, equipment, benefits, etc.

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Legal Issues and Challenges:

Securing Land Rights

- NTUA must obtain approval from BIA under 25 C.F.R. 169 in order to obtain rights of way (ROW) over Indian land.
- Total time to obtain a ROW varies from 6 months to 3 years.
- With volunteers on Navajo for a limited amount of time, NTUA faced challenges of security land rights in a very short amount of time.

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For More Information:

Deenise Becenti

928-729-6221

dbecenti@ntua.com

Or Visit:

www.ntua.com – #LightUpNavajo

How you can Donate to LIGHT UP NAVAJO II

Tax deductible donations can be made as a financial contribution or supplies/materials can be shipped directly to the Navajo Tribal Utility Authority

You can also mail checks payable to:

NTUA Light Up Navajo

Navajo Tribal Utility Authority

ATTN: Thomas W. Nelson, CFO

P.O. Box 442

Window Rock, AZ 86515

