

NAVAJO NATION CODE ANNOTATED

Title 1

General Provisions

Chapter 1. Navajo Nation Bill of Rights

United States Code

Civil action for deprivation of rights, 42 U.S.C. §§ 1983, 1984.

Equal rights under the law, 42 U.S.C. § 1981.

Federal civil rights law regarding public accommodations, facilities, education and programs, employment and voting, 42 U.S.C. § 2000a *et seq.*

Offenses, prosecutions and proceedings in vindication of rights, 42 U.S.C. §§ 1985-1991.

Organization of Indian tribes, constitution and bylaws, 25 U.S.C. § 476.

Annotations

1. Authority of Indian governments

While Congress retains paramount authority to legislate for and enforce its laws on all the tribes in certain respects, it has recognized the authority of Indian governments over their reservation and if this power is to be taken away from them it is for Congress to do it. *Oliver v. Udall* (1962) 306 F.2d 819, cert. denied 372 U.S. 908.

Indian tribes have a status higher than that of states and are subordinate and dependent nations possessed of all powers as such only to the extent that they have expressly been required to surrender them by the superior sovereign, the United States. *Native American Church v. Navajo Tribal Council* (1959) 272 F.2d 131.

2. Tribal immunity

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

3. Property interests

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

§ 1. Other rights not impaired; deletion or abridgment only by public referendum

The enumeration herein of certain rights, shall not be construed to deny or disparage others retained by the people. No provision of this Chapter, the Navajo Nation Bill of Rights, shall be abridged or deleted by amendment or otherwise, except by referendum vote of the Navajo electorate, in accordance with applicable provisions of the laws of the Navajo Nation.

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 1 was formerly codified at 1 N.N.C. § 8.

Annotations

1. Purpose

"The Navajo Nation Bill of Rights (1986) is a fundamental, overriding statute which, by its own terms and necessary implication, allows judicial review to decide whether another law or an act of the Navajo Nation Government is void because of a violation of fundamental rights. We have judicial review authority because the Navajo Nation Council made the policy decision that there would be a fundamental law which is superior to other laws, and which cannot be changed without a vote of the Navajo People." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 324 (Nav. Sup. Ct. 1990).

2. Bills of attainder

"... [T]here was no 'punishment' and thus, there was no bill of attainder in violation of 1 N.T.C. § 3, in the disqualification of MacDonald as a candidate [pursuant to 11 N.N.C. § 8(A)(7)]." *MacDonald v. Redhouse*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

"*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), recognizes three tests for determining whether punishment is present. These tests are adopted by this Court. The first test is the historical experience test. This test determines punishment in terms of what historically has been regarded as punishment for purposes of bills of attainder and bills of pains under the law of England and the United States. The historical test may include what historically has been regarded as punishment under Navajo common law. [...] The second test is the functional test. This test considers the extent to which a law challenged as a bill of attainder furthers any nonpunitive purposes

underlying the law. The third test is the motivational test. The inquiry here is whether the legislative record evinces a legislative intent to punish." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"We adopt the common definition of bill of attainder; therefore, under the Indian Civil Rights Act and Navajo Bill of Rights, a bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable person or group without the protections of trial in the Navajo courts. This definition has two elements: first, an element of punishment must be inflicted by some tribal authority other than tribal judicial authority; and second, an element of specificity, that is, a singling out of an individual or identifiable group for infliction of punishment." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"A bill of attainder is apparently unknown to traditional Navajo culture." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

3. Tribal immunity

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

4. Due process

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

§ 2. Equality of rights not abridged by entitlements, benefits or privileges; nor by affirmative action necessary to support rights of the Navajo People to economic opportunity

Recognition, enactment, lawful implementation and enforcement of provisions for specific entitlements, benefits and privileges based upon membership in the Navajo Nation or in other recognized Tribes of Indians and affirmative action in support of Navajo or other Indian preference in employment and business contracting or otherwise necessary to protect and support the rights of Navajo People to economic opportunity within the jurisdiction of the Navajo Nation, shall not be abridged by any provision herein nor otherwise be denied.

History

CD-59-86, December 11, 1986.

Annotations

1. Tribal immunity

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

2. Property interests

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

§ 3. Denial or abridgment of rights on basis of sex; equal protection and due process of Navajo Nation law

Life, liberty, and the pursuit of happiness are recognized as fundamental individual rights of all human beings. Equality of rights under the law shall not be denied or abridged by the Navajo Nation on account of sex nor shall any person within its jurisdiction be denied equal protection in accordance with the laws of the Navajo Nation, nor be deprived of life, liberty or property, without due process of law. Nor shall such rights be deprived by any bill of attainder or ex post facto law.

History

CD-59-86, December 11, 1986.

CF-9-80, February 7, 1980.

Note. 1 N.N.C. § 3 was formerly codified at 1 N.N.C. § 9.

Preamble. CF-9-80 contains the following preamble:

"Whereas: 1. The tradition and culture of the Navajo Nation has always emphasized the importance of the woman in Navajo society; and

"2. Navajo culture and society is both matrilineal and matrilocal; and

"3. The Navajo Tribal Council by Resolution CO-63-67, of October 9, 1967, passed the Navajo Bill of Rights; and

"4. No provision was made in the Navajo Bill of Rights for equal protection of

the laws for both men and women; and

"5. Such a declaration would be in keeping with the tradition of the Navajo People."

Annotations

1. Interpretation

The proper interpretation of the Navajo Equal Rights guarantee is that there can be no legal result on account of a person's sex, no presumption in giving benefits or disabilities gauged by a person's sex and no legal policy which has the effect of favoring one sex or the other. *Help v. Silvers a.k.a. Silver Fox*, 4 Nav. R. 46 (Nav. Ct. App. 1983).

2. Presumptions

"Customary usage is therefore viewed as a property interest by the Navajo Nation." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 81 (Nav. Sup. Ct. 1986).

Under the Navajo Equal Rights Amendment, there can be no presumption, in a child custody dispute, that a young child should be in the care of the mother. *Help v. Silvers a.k.a. Silver Fox*, 4 Nav. R. 46 (Nav. Ct. App. 1983).

3. Tribal immunity

"Due process rights, viewed as quasi-constitutional rights in our system as far as the Indian Civil Rights Act and Navajo Nation Bill of Rights are concerned, may be asserted only if one can show the denial of the right to an *opportunity* to be heard in a meaningful way." *In re: Estate of Plummer, Sr.*, 6 Nav. R. 271, 276 (Nav. Sup. Ct. 1990).

"The rights protected in the Navajo Due Process Clause are fundamental, but they are not absolute, limitless, or unrestricted. They are considered in light of the enjoyment and protection of rights by all Navajos. We require that everyone coming before our courts have an opportunity to be heard at a meaningful time and in a meaningful way. That is the right to one's day in court." *In re: Estate of Plummer, Sr.*, 6 Nav. R. 271, 275 (Nav. Sup. Ct. 1990).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

4. Due process

"Due process under the Navajo Bill of Rights is similar to the same right under

the United States Constitution, in that our courts must provide notice and an opportunity to be heard, including in custody matters." *Miles v. Chinle Family Court, and concerning Miles*, No. SC-CV-04-08, slip op. at 8 (Nav. Sup. Ct. February 21, 2008); citing, *Zuni v. Chinle Family Court*, No. SC-CV-63-06, slip op. at 6-7 (Nav. Sup. Ct. January 12, 2007); *Lente v. Notah*, 3 Nav. R. 72, 73-74 (Nav. Ct. App. 1982).

"The Navajo Nation Bill of Rights recognizes liberty as a fundamental right. Liberty cannot be taken away unless it is done using a fair process ('due process') and the law must be evenly applied ('equal protection of the law'). For purposes of due process of law under Navajo common law, the right to participate in the political process is considered a protected liberty right." *Begay v. Navajo Nation Election Administration*, No. SC-CV-27-02, slip op. at 3 (Nav. Sup. Ct. July 31, 2002).

" ... [E]lected officials have no property interest in their elective office. [...] Thus, fundamental rights are not implicated by the removal of an elected official from office." *Vandever v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 358 (Nav. Sup. Ct. 1998).

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"This court has noted that the concept of due process was not brought to the Navajo Nation by the Indian Civil Rights Act not the Navajo Bill of Rights. Instead, due process is fundamental fairness in a Navajo cultural context." *In the Matter of the Estate of Goldtooth Begay #2*, 7 Nav. R. 29, 31 (Nav. Sup. Ct. 1992).

" ... [T]here is a strong and fundamental tradition that any Navajo can participate in the processes of government, and no person who is not otherwise disqualified by a reasonable law can be prohibited from holding public office. Therefore, there is sufficient liberty interest for the application of the due process rule regarding the invalidity of vague statutes." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 325 (Nav. Sup. Ct. 1990).

"Navajo due process must be interpreted in a way that is beneficial to the Navajo Nation." *Sells v. Espil*, 6 Nav. R. 195, 199 (Nav. Sup. Ct. 1990).

"The Begays' interest in Mutual Help Housing is a property interest." *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

"Fair procedure mandates that a defendant shall be properly charged, arraigned, found guilty and sentenced for an offense that is expressly provided for under a valid Code section." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

"This Court recognizes that a '[a]' substantial liberty interest is at stake in sentencing." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

"Any due process requirements attendant to placing a Chairman or Vice Chairman on administrative leave will depend upon a finding that the official's life, liberty or property interest has been adversely affected by Navajo governmental action." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"An elected official does not have a property right in public office. The office belongs to the voting public. Katenay's due process rights do not stem from his position as a holder of elected office. His due process rights are derived from 2 N.T.C. § 4005, which gives him the right to explain to his constituents the grievances against him and to be voted out of office, or retained, by persons who were present during his explanation." *In re: Removal of Katenay*, 6 Nav. R. 81, 85 (Nav. Sup. Ct. 1989).

"When Navajo sovereignty and cultural autonomy are at stake, the Navajo courts must have broad-based discretion in interpreting the due process clauses of the ICRA and NBR, and the courts may apply Navajo due process in a way that protects civil liberties while preserving Navajo culture and self-government." *Billie v. Abbott*, 6 Nav. R. 66, 74 (Nav. Sup. Ct. 1988).

"Therefore, we hold that a civil forfeiture proceeding must provide due process as set forth in the Navajo Nation Bill of Rights, 1 N.T.C. § 3; the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and Navajo common law." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

"A person alleged to be in indirect civil or criminal contempt of court must be notified of the charges, have a right to be represented by counsel, have a reasonable time to prepare a defense, and have an opportunity to be heard. [...] The rules of criminal procedure are also applicable to indirect criminal contempt proceedings." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

"The power of Navajo courts to punish for contempt must be exercised within the bounds of due process embodied in the Indian Civil Rights Act, [...], and the Navajo Bill of Rights ... " *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 126 (Nav. Sup. Ct. 1987).

"The rule is that in the absence of special rules of procedure adopted by a body, or adopted for it by an outside power having the right to do so, its procedure is governed by parliamentary law." *Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 119 (Nav. Sup. Ct. 1987).

"Due process requires that notice of hearing be given sufficiently in advance of the scheduled date of hearing, so that the party will have reasonable time to prepare." *Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 119 (Nav. Sup. Ct. 1987).

"We refuse to require compliance with procedural due process for agency discussions that do not seek to deprive a person of a property right." *Yazzie v. Jumbo*, 5 Nav. R. 75, 77 (Nav. Sup. Ct. 1986).

5. Contempt proceedings

" ... [N]avajo courts must still afford due process protections in direct

contempt proceedings. The judge must advise the contemnor of the charges and give the contemnor an opportunity to explain the contemptuous conduct. The order of contempt must show that the judge saw or heard the conduct constituting the contempt and that the contempt was committed in the presence of the court. The order must also state the facts constituting the contempt and the punishment imposed." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

6. Trial procedure

"We have never held that a party's right to due process is violated when that party fails to comply with applicable time limits. [...] When a party does not comply with court rules or abuses court process (as in the failure to comply with discovery orders), the courts have the power to rule that the party has given up his right to be heard." *Yazzie, et al. v James, et al.*, 7 Nav. R. 324, 328 (Nav. Sup. Ct. 1998).

"The due process clause of the Navajo Nation Bill of Rights required the special prosecutor to prove to the trial court, in an adversarial hearing, that the evidence it used in preparing its case and the evidence offered at trial were not based on or derived from the information MacDonald gave to any official under either a formal or informal grant of immunity." *Navajo Nation v. Peter MacDonald, Jr.*, 7 Nav. R. 1, 13 (Nav. Sup. Ct. 1992).

"To require a judge, who did not preside over the trial, to enter findings and a final decision in a case with which he is unfamiliar, is to deny the parties due process of law. [...] We hold that, within the Navajo Nation, only the judge who presided at the trial shall enter findings of fact, conclusions of law and the final judgment or order." *Benally v. Black*, 5 Nav. R. 137, 138 (Nav. Sup. Ct. 1987).

7. Notice

"The fundamental rights involved [when and how a court accepts a plea to a criminal charge] are the right to not be deprived of liberty without due process of law, and the right to be informed of the nature and cause of accusation in criminal proceedings." *Stanley v. Navajo Nation*, 6 Nav. R. 284, 285 (Nav. Sup. Ct. 1990).

"The concept of due process was not brought to the Navajo Nation by the Indian Civil Rights Act, 25 U.S.C. § 1302(8), or the Navajo Nation Bill of Rights, 1 N.T.C. § 3. The Navajo people have an established custom of notifying all involved parties in a controversy and allowing them, and even other interested parties, an opportunity to present and defend their positions. This custom is still followed today by the Navajo people in the resolution of disputes." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

"We hold only that the forfeiture of an automobile demands notice and a hearing. Navajo court proceedings must comply with the Navajo Nation Bill of Rights and the Indian Civil Rights Act, and as such, we must ensure compliance with procedural and substantive due process before someone is deprived of their private property." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

"It is an established rule that notice to the counsel of record serves as notice to the client." *Chavez v. Tome*, 5 Nav. R. 183, 189 (Nav. Sup. Ct. 1987).

8. Retroactive and ex post facto laws

"The election reforms of 1989 and 1990 are not ex post facto laws, made to punish MacDonald, but laws which are well within the competence of the Council and are designed to promote the integrity of public office." *MacDonald v. Redhouse*, 6 Nav. R. 342, 346 (Nav. Sup. Ct. 1991).

"Ex post facto laws are prohibited by the Navajo Nation Bill of Rights at 1 N.T.C. § 3." *MacDonald v. Redhouse*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

"There is no property right to hold public office, although a candidate may have a due process right which arises out the Navajo Nation election law." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 325 (Nav. Sup. Ct. 1990).

" ... [T]he Navajo Nation has no statute which authorizes an award for past child support in a paternity action." [] "Due process under the Navajo Nation Bill of Rights, 1 N.T.C. § 3 (1986 amend.), and the Indian Civil Rights Act, 25 U.S.C. § 1302(8) (1968), dictates that Mariano not be ordered to make up for something which he had no legal duty to do originally." *Descheenie v. Mariano*, 6 Nav. R. 26, 29 (Nav. Sup. Ct. 1988).

9. Statutory due process rights

"However as in *Katenay*, a statutory scheme can be the source of due process rights for an elected official. [...] There are a number of basic protections that the Navajo Tribal Council should afford while placing a Chairman or Vice Chairman on administrative leave. These are: (1) the Navajo Tribal Council must act in a properly convened session with a quorum as established in the Navajo Tribal Code; (2) an agenda must be properly adopted by the Council, although procedures for presentation of resolutions and for voting on resolutions are within the power of the Tribal Council; (3) the resolution placing a Chairman or Vice Chairman on administrative leave must pass by a majority vote of the Navajo Tribal Council present, [...]; and (4) the resolution placing a Chairman or Vice Chairman on administrative leave must not be a bill of attainder." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

10. Jurisdiction

"Given the clear mandate of the long arm statute [7 N.N.C. § 253a], the District Court would have to find the statute invalid as a violation of Appellees' due process rights under the Navajo Bill of Rights." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 6 (Nav. Sup. Ct. April 30, 2007).

"If the long arm statute [7 N.N.C. § 253a] allows jurisdiction over Appellees, the District Court must further analyze whether the long arm statute is consistent with Navajo concepts of fairness embedded in the Due Process Clause of the Navajo Bill of Rights. As stated previously by this Court, the Navajo

concept of due process is unique, in that it applies concepts of fairness consistent with Navajo values." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 7 (Nav. Sup. Ct. April 30, 2007).

"The due process provision in the Navajo Bill of Rights is not a statute which gives this Court its appellate jurisdiction." *Vandever, v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 357 (Nav. Sup. Ct. 1998).

"In the Navajo Nation, the [minimum] contacts of a defendant shall be evaluated on a case-by-case basis ... " *Sells v. Espil*, 6 Nav. R. 195, 198 (Nav. Sup. Ct. 1990).

11. Vagueness

"Statutes which confer rights grounded upon Navajo liberties must contain ascertainable standards. That is, they must sufficiently describe standards and requirements for the exercise of the right so that the ordinary person will know what they are and be able to satisfy them." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 327 (Nav. Sup. Ct. 1990).

12. Civil judgments

"We hold that Section 3 of the Navajo Nation Bill of Rights prohibited her incarceration for failure to pay the judgment on a contract as an unreasonable deprivation of liberty." *Pelt v. Shiprock District Court*, No. SC-CV-37-99, slip op. at 7 (Nav. Sup. Ct. May 4, 2001).

" ... [G]iven the difficulty in framing a general rule, we will restrict our focus to the question of whether a judgment debtor who fails to pay a civil judgment on a contract for a loan may be incarcerated for failure to pay the judgment, whether the judgment debtor is indigent or not." *Pelt v. Shiprock District Court*, No. SC-CV-37-99, slip op. at 3-4 (Nav. Sup. Ct. May 4, 2001).

13. Bill of attainder

" ... [T]here was no 'punishment' and thus, there was no bill of attainder in violation of 1 N.T.C. § 3, in the disqualification of MacDonald as a candidate [pursuant to 11 N.N.C. § 8(A)(7)]." *MacDonald v. Redhouse*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

"*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), recognizes three tests for determining whether punishment is present. These tests are adopted by this Court. The first test is the historical experience test. This test determines punishment in terms of what historically has been regarded as punishment for purposes of bills of attainder and bills of pains under the law of England and the United States. The historical test may include what historically has been regarded as punishment under Navajo common law. [...] The second test is the functional test. This test considers the extent to which a law challenged as a bill of attainder furthers any nonpunitive purposes underlying the law. The third test is the motivational test. The inquiry here is whether the legislative record evinces a legislative intent to punish." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"We adopt the common definition of bill of attainder; therefore, under the

Indian Civil Rights Act and Navajo Bill of Rights, a bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable person or group without the protections of trial in the Navajo courts. This definition has two elements: first, an element of punishment must be inflicted by some tribal authority other than tribal judicial authority; and second, an element of specificity, that is, a singling out of an individual or identifiable group for infliction of punishment." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"A bill of attainder is apparently unknown to traditional Navajo culture." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

14. Habeas corpus

"This Court holds that the jail sentence imposed does not have a definite term. The Petitioner was jailed for 55 days although he kept informing the District Court that he does not have the money, nor can he raise the money if he is incarcerated. Under these circumstances, the sentence is contrary to 17 N.N.C. § 223, constituting cruel and unusual punishment." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 4 (Nav. Sup. Ct. March 11, 2009).

"We therefore hold that the Navajo Nation Bill of Rights prohibited Petitioner's incarceration for his inability to pay the court imposed fines and fees in a criminal proceeding; under these circumstances, the sentence constitutes cruel and unusual punishment and an unreasonable deprivation of liberty." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 5 (Nav. Sup. Ct. March 11, 2009).

"The Court now clarifies that written reasons are not required, as long as the district court judge clearly and adequately explains his or her reasons for denying release to the defendant, and such reasons are available in the record of the case. The primary purpose of requiring reasons is so that the defendant understands why he or she will continue to be held pending trial, and may contest those reasons before the district court, and, if necessary, before this Court in a habeas corpus proceeding." *Dawes v. Eriacho*, No. SC-CV-09-08, slip op. at 4-5 (Nav. Sup. Ct. May 5, 2008).

"By violating Rule 15(d) [of the Navajo Rules of Criminal Procedure], the District Court detained Dawes without notice or opportunity to be heard, and also therefore violated her right to due process under the Navajo Bill of Rights." *Dawes v. Eriacho*, No. SC-CV-09-08, slip op. at 7 (Nav. Sup. Ct. May 5, 2008).

§ 4. Freedom of religion, speech, press, and the right of assembly and petition

The Navajo Nation Council shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Navajo Nation government for a redress of grievances.

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 4 was formerly codified at 1 N.N.C. § 1.

Cross References

The Foundation of the Diné, Diné Law and Diné Government; 1 N.N.C. § 201 *et seq.* (CN-69-02), contains the following preamble:

"Whereas:

"6. The Navajo Nation Council finds that the acknowledgment, recognition and teaching of these laws do not contravene 1 N.N.C. § 4; the incorporation of these fundamental laws into the Navajo Nation Code is not governmental establishment of religion nor is it prohibiting the free exercise of religion; the Navajo Nation Council and the Diné have always recognized and respected the principle of these fundamental laws and the Diné Life Way that all Diné have the right and freedom to worship as they choose; and the Navajo Nation Council and the Diné recognize that the Diné Life Way is a holistic approach to living one's life whereby one does not separate what is deemed worship and what is deemed secular in order to live the Beauty Way."

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense, 35 A.L.R.3d 939 (1971).

Annotations

1. Freedom of press, generally

"The decision to print a retraction rests with the publisher, and the court is prohibited by the Navajo Bill of Rights and the Indian Civil Rights Act from ordering a retraction." *Chavez v. Tome*, 5 Nav. R. 183, 190 (Nav. Sup. Ct. 1987).

2. Tribal immunity

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

3. Due process

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there

was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

§ 5. Searches and seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

History

CD-9-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 5 was formerly codified at 1 N.N.C. § 4.

Annotations

1. Construction and application

"The Navajo Nation Bill of Rights (1 N.N.C. § 5 (1995)), like the Fourth Amendment to the United States Constitution, and Section 1301 of the Indian Civil Rights Act, protects the right of the people to be secure in their persons and property against unreasonable searches and seizures of government, including unreasonable arrest and detention. A person may not be subject to incarcerations except by clear authority of the law. A person is entitled to prompt judicial determination of probable cause soon after arrest, but in no event later than 36 hours, if in custody during business days, or 48 hours if on a weekend or holiday. The probable cause determination examines whether arrest and detention are justified. However, a determination of probable cause only justifies initial arrest and detention incident to the arrest. When pretrial release is opposed, the question then becomes whether the defendant, if release, will seek to interfere with the proper administration of justice, or is a danger to the community. Our rules of criminal procedure require a finding that 'the defendant is dangerous to public safety or that the defendant will commit a serious crime, or will seek to intimidate any witness, or will otherwise unlawfully interfere with the administration of justice if released, or for any other reason allowed by law...' Nav. R. Cr. P. 15(d). To ensure fairness and propriety the court must also, 'state the reasons for the record.' " *Apachito v. Navajo Nation*, No. SC-CV-34-02, slip op. at 3 (Nav. Sup. Ct. August 13, 2003).

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

Re: Double Jeopardy: "The applicable rule is that where the same act or

transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446 (Nav. Sup. Ct. 1991).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

§ 6. Right to keep and bear arms

The right of the people to keep and bear arms for peaceful purposes, and in a manner which does not breach or threaten the peace or unlawfully damage or destroy or otherwise infringe upon the property rights of others, shall not be infringed.

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 6 was formerly codified at 1 N.N.C. § 2.

Annotations

1. Construction and application

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

§ 7. Rights of accused; trial by jury; right to counsel

In all criminal prosecutions, the accused shall enjoy the right to a

speedy and public trial, and shall be informed of the nature and cause of the accusation; shall be confronted with the witnesses against him or her; and shall have compulsory process for obtaining witnesses in their favor. No person accused of an offense punishable by imprisonment and no party to a civil action at law, as provided under 7 N.N.C. § 651 shall be denied the right, upon request, to a trial by jury of not less than six persons; nor shall any person be denied the right to have the assistance of counsel, at their own expense, and to have defense counsel appointed in accordance with the rules of the courts of the Navajo Nation upon satisfactory proof to the court of their inability to provide for their own counsel for the defense of any punishable offense under the laws of the Navajo Nation.

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 7 was formerly codified at 1 N.N.C. § 6.

United States Code

Right to speedy trial, 42 U.S.C. § 1992.

Annotations

1. Sufficiency of complaint

"Fair procedure mandates that a defendant shall be properly charged, arraigned, found guilty and sentenced for an offense that is expressly provided for under a valid Code section." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

This Section requires that prosecutors prepare criminal complaints which allege the basic parts of the statute creating the crime and sufficient facts fitting within the statute to enable the defendant and his defense attorney to prepare their case. *Navajo Nation v. Benson Lee*, 4 Nav. R. 185, (W.R. Dist. Ct. 1983).

2. Due process

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"A person alleged to be in indirect civil or criminal contempt of court must be notified of the charges, have a right to be represented by counsel, have a reasonable time to prepare a defense, and have an opportunity to be heard. [...] The rules of criminal procedure are also applicable to indirect criminal contempt proceedings." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

3. Appointed counsel

"We have cited two statutes enacted by the Navajo Tribal Council that govern appointment of attorneys in criminal cases." *Boos v. Yazzie*, 6 Nav. R. 211, 216 (Nav. Sup. Ct. 1990).

"The Navajo Nation Bill of Rights also guarantees appointment of counsel for indigent criminal defendants charged in Navajo courts." *Boos v. Yazzie*, 6 Nav. R. 211, 214 (Nav. Sup. Ct. 1990).

4. Delay

"In determining whether the right to a speedy trial has been violated, the Court applies four factors: 1) the length of the delay, 2) the reason for the delay, 3) the defendant's assertion of the right, and 4) the prejudice to the defendant caused by the delay." *Navajo Nation v. Badonie*, No. SC-CR-06-05, slip op. at 4 (Nav. Sup. Ct. March 7, 2006).

"Considering the four factors in this case, Badonie's speedy trial right was violated. The District Court took about a year to comply with the Supreme Court's remand, which specified that the findings and conclusions were necessary. Nothing in the record explains why the District Court took so long and no effort was made to provide any justification. Further, as noted above, Badonie several times asserted his right to a speedy trial, and even the Navajo Nation sought to move the case forward by seeking intervention by this Court. The first three factors therefore support Badonie's argument." *Navajo Nation v. Badonie*, No. SC-CR-06-05, slip op. at 5 (Nav. Sup. Ct. March 7, 2006).

"The fourth factor, prejudice to the defendant, is also clearly shown. The fourth factor reflects that the speedy trial right exists to protect the criminal defendant's ability to defend himself or herself, primarily by preventing the loss of witnesses, their memory of events, or other evidence through the passage of time." *Navajo Nation v. Badonie*, No. SC-CR-06-05, slip op. at 5 (Nav. Sup. Ct. March 7, 2006).

"Under the four factors, the Court holds that the District Court violated Seaton's right to a speedy trial. Under the first factor, as of the hearing on Seaton's petition before this Court, Seaton had been in detention for approximately 172 days without a trial. Under the third factor, Seaton himself, with no assistance from his attorney, filed a writ of habeas corpus with this Court, claiming a violation of his speedy trial right. Under the fourth factor, Seaton experienced significant prejudice, as the District Court's orders of temporary commitment coupled with the seven continuances meant that he remained in jail with no resolution of his case for nearly six months." *Seaton v. Greyeyes*, No. SC-CV-04-06, slip op. at 5-6 (Nav. Sup. Ct. March 28, 2006).

"Delay was not excessive considering the circumstances of the case." *Navajo Nation v. MacDonald, Jr.*, 7 Nav.R. 1, 11 (Nav. Sup. Ct. 1992).

5. Tribal immunity

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither

the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R.57, 61 (Nav. Sup. Ct. 1988).

6. Jury trial

"Fairness requires that parties not be denied their right to a jury trial merely because they cannot immediately afford the costs of holding one. However, the Court holds that the requirement to prepay jury costs is not, in and of itself, a violation of a party's right to a jury trial." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 9 (Nav. Sup. Ct. November 7, 2007).

§ 8. Double jeopardy, self-incrimination; deprivation of property

No person shall be subject for the same offense to be twice put in jeopardy of liberty, or property; nor be compelled in any criminal case to be a witness against themselves; nor shall private property be taken nor its lawful private use be impaired for public or governmental purposes or use, without just compensation.

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 8 was formerly codified at 1 N.N.C. § 5.

United States Code

Double jeopardy, 42 U.S.C. § 2000h-1.

Annotations

1. Eminent domain

The Navajo Tribe has the power to take or authorize the taking of property without the consent of the owners of the property or of any interest therein, provided that the owners are given due process of law and just compensation. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95, (Nav. Ct. App. 1974).

Under the customary division of governmental power into three separate branches, a division which exists in the Navajo Nation, the right to exercise the power of eminent domain may be authorized only by the legislature and there can be no taking of private property for public use against the will of the owner without direct authority from the legislature and then the taking must be only in the manner prescribed by the legislature. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95, (Nav. Ct. App. 1974).

Where Chairman of the Navajo Tribe, on behalf of the tribe, granted gas and electric company a right-of-way across land of plaintiffs, who had a grazing permit and had a home and other improvements on the land, to build and maintain a power line, and just compensation was not given plaintiffs, the taking of the land was illegal and not in accord with 16 N.T.C. §§ 551 *et seq.*, and defense of sovereign immunity from suit was not available to the tribe in plaintiffs suit for damages, an injunction against further trespass and cancellation of their allegedly fraudulently obtained consent to the taking. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95 (Nav. Ct. App. 1974).

2. Property interests

" ... [E]lected officials have no property interest in their elective office. [...] Thus, fundamental rights are not implicated by the removal of an elected official from office." *Vandever, v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 358 (Nav. Sup. Ct. 1998).

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no "taking" by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"The Begays' interest in Mutual Help Housing is a property interest." *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

"An elected official does not have a property right in public office. The office belongs to the voting public. Katenay's due process rights do not stem from his position as a holder of elected office. His due process rights are derived from 2 N.T.C. § 4005, which gives him the right to explain to his constituents the grievances against him and to be voted out of office, or retained, by persons who were present during his explanation." *In re: Removal of Katenay*, 6 Nav. R. 81, 85 (Nav. Sup. Ct. 1989).

3. Civil forfeitures

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [...] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R.57, 61 (Nav. Sup. Ct. 1988).

"Therefore, we hold that a civil forfeiture proceeding must provide due process as set forth in the Navajo Nation Bill of Rights, 1 N.T.C. § 3; the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and Navajo common law." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

4. Double jeopardy, generally

"The Court will apply heightened scrutiny to provisions that allegedly create separate offenses based on a single action, and in the absence of clear intent that the statutory offenses indeed punish separate conduct, multiple convictions for the same action will be barred by double jeopardy. The mere fact that the elements of the two or more statutory offenses are fulfilled by a defendant's action does not, by itself, show clear intent." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 8 (Nav. Sup. Ct. July 24, 2006).

"The *Diné* concept of 'double jeopardy' also means that even if the Council creates two separate offenses that clearly punish the same conduct, it cannot nonetheless mandate multiple punishments, even if its intent is clear." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 8 (Nav. Sup. Ct. July 24, 2006).

"In future cases, a prosecutor must file the complaint with double jeopardy in mind, and understand that an offender cannot be convicted of both reckless driving or DUI and homicide by vehicle when such conduct causes a death. If the Prosecutor charges the defendant with reckless driving or DUI and homicide by vehicle, and establishes the elements of reckless driving or DUI, and that a death resulted from those actions, the district court may only convict the defendant for the homicide offense." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 10 (Nav. Sup. Ct. July 24, 2006).

5. Takings

"Requiring uncompensated representation of indigent criminal defendants by NNBA members is not a taking of private property without just compensation, but a reasonable condition of Bar membership." *Boos v. Yazzie*, 6 Nav. R. 211, 220-221 (Nav. Sup. Ct. 1990).

§ 9. Cruel and unusual punishment; excessive bail and fines

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

Note. 1 N.N.C. § 9 was formerly codified at 1 N.N.C. § 7.

Annotations

1. Sentencing

"A jail sentence rendered outside the authority of a district court is cruel and unusual punishment under the Navajo Bill of Rights." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"This Court has previously established that a criminal sentence not according to law is cruel and unusual punishment prohibited by the Navajo Nation Bill of Rights." *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2 (Nav. Sup. Ct. August 13, 2003); *citing*; *Navajo Nation v. Jones*, 1 Nav. R. 14, 18 (1971),

Johnson v. Navajo Nation, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

"As a general matter, a criminal sentence [including a consecutive sentence] is not cruel and unusual punishment as long as it falls within the boundaries set by the legislature." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

"This Court recognizes that a '[a]' substantial liberty interest is at stake in sentencing." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

2. Treatment of juveniles

"The Court therefore interprets [9 N.N.C.] Section 1152(A)(2) to only allow incarceration when allowed for adults. Incarceration of a minor when unauthorized for an adult is cruel and unusual punishment in violation of the Navajo Bill of Rights." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 4-5, (Nav. Sup. Ct. April 16, 2008).

" ... [W]e also hold that at the minimum a detained juvenile must be provided with a padded area to lie on, a blanket, and food to eat to comply with the Navajo Bill of Rights Section against cruel and unusual punishment." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

3. Due process

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [...] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [....] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

4. Child in Need of Supervision

"The use of contempt to incarcerate a CHINS child improperly treats that child as delinquent, violates the Council's clear prohibition on incarceration of such children, and amounts to cruel and unusual punishment under the Navajo Bill of Rights." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 4 (Nav. Sup. Ct. March 14, 2007).

5. Habeas corpus

"This Court holds that the jail sentence imposed does not have a definite term. The Petitioner was jailed for 55 days although he kept informing the District

Court that he does not have the money, nor can he raise the money if he is incarcerated. Under these circumstances, the sentence is contrary to 17 N.N.C. § 223, constituting cruel and unusual punishment." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 4 (Nav. Sup. Ct. March 11, 2009).

"We therefore hold that the Navajo Nation Bill of Rights prohibited Petitioner's incarceration for his inability to pay the court imposed fines and fees in a criminal proceeding; under these circumstances, the sentence constitutes cruel and unusual punishment and an unreasonable deprivation of liberty." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 5 (Nav. Sup. Ct. March 11, 2009).

6. Denials of release

"We therefore hold that being incarcerated for 21 days without court action on motions for release constitutes cruel and unusual punishment under the Navajo Bill of Rights. 1 N.N.C. § 9." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 10 (Nav. Sup. Ct. July 1, 2009).

Chapter 2. The Foundation of the Diné, Diné Law and Diné Government

History

CN-69-02, November 1, 2002.

Preamble. CN-69-02 contains the following preamble:

"Whereas: 2. The Diné have always been guided and protected by the immutable laws provided by the Diyin, the Diyin Diné'é, Nahasdzáán and Yádi[hi]; these laws have not only provided sanctuary for the Diné Life Way but has guided, sustained and protected the Diné as they journeyed upon and off the sacred lands upon which they were placed since time immemorial; and

"3. It is the duty of the Nation's leadership to preserve, protect and enhance the Diné Life Way and sovereignty of the people and their government; the Nation's leaders have always lived by these fundamental laws, but the Navajo Nation Council has not acknowledged and recognized such fundamental laws in the Navajo Nation Code; instead the declaration and practice of these fundamental laws have, up to this point in time, been left to those leaders in the Judicial Branch; and

"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

"5. The Navajo Nation Council finds that the Diné Life Way must be protected and assured by incorporating these fundamental laws into the Navajo Nation Code in a manner that will openly acknowledge and recognize their importance and would generate interest to learn among all Diné; and

"6. The Navajo Nation Council finds that the acknowledgment, recognition and

teaching of these laws do not contravene 1 N.N.C. § 4; the incorporation of these fundamental laws into the Navajo Nation Code is not governmental establishment of religion nor is it prohibiting the free exercise of religion; the Navajo Nation Council and the Diné have always recognized and respected the principle of these fundamental laws and the Diné have the right and freedom to worship as they choose; and the Navajo Nation Council and the Diné recognize that the Diné Life Way is a holistic approach to living one's life whereby one does not separate what is deemed worship and what is deemed secular in order to live the Beauty Way; and

"7. The Navajo Nation Council further finds that it is entirely appropriate for the government itself to openly observe these fundamental laws in its public functions such as the installation or inauguration of its leaders and using and placing the appropriate symbols of the Diné Life Way in its public buildings and during legislative and judicial proceeding; and

"8. The Navajo Nation Council further finds that all elements of the government must learn, practice and educate the Diné on the values and principles of these laws; when the judges adjudicate a dispute using these fundamental laws, they should thoroughly explain so that we can all learn; when leaders perform a function using these laws and the symbols of the Diné Life Way, they should teach the public why the function is performed in a certain way or why certain words are used; and

"9. The Navajo Nation Council further finds that all the details and analysis of these laws cannot be provided in this acknowledgment and recognition, and such as effort should not be attempted; the Navajo Nation Council finds that more work is required to elucidate the appropriate fundamental principles and values which are to be used to educate and interpret the statutory laws already in place and those that may be enacted; the Council views this effort today as planting the seed for the education of all Diné so that we can continue to Walk in Beauty."

§ 201. Diné Bi Beehaz'áanii Bitsé Siléí—Declaration of the Foundation of Diné Law

We, the Diné, the people of the Great Covenant, are the image of our ancestors and we are created in connection with all creation.

Diné Bi Beehaz'áanii Bitsé Siléí

Diyin Dine'é,

Sin dóó sodizin,

Bee

Nahasdzáán dóó yádi[hi] nitsáhákees yi[hadeidiilaa,

Tó dóó dzi[diyinii nahat'á yi[hadeidiilaa,

Ni[ch'i dóó nanse' a[taas'éi iiná yi[hadediilaa,

K- ', adinídíín dóó nt['iz náádahaniihjì' sihasin yi[hadediilaa.

Díí ts'idá aláají' nihi beehaz'áanii bitse siléí nihá' ályaa.

Nitsáhákees éí nahat'á bitsé silá.

Tiná éí sihasin bitsé silá.

Hanihi'diilyaadi díí nihiihdaahya' dóó bee hadíníit'é.

Binahji' nihéého'dílzingíí éíí:

Nihízhí',

Ádóone'é niidliinii,

Nihinéí',

Nihee ó'ool íí[,

Nihi chaha'oh,

Nihi kék'ehashchíín.

Díí bik'ehgo Diyin Nohookáá Diné nihi'doo'niid.

Kodóó dah'adiníisá dóó dah'adiidéél.

Áko díishjíigi éí nitsáhákees, nahat'á, iiná, saad, oodla',

Dóó beehaz'áanii a['aa ádaat'éego nihitah nihwiileeh,

Ndi nihi beehaz'áanii bitsé siléí nhá ndaahya'áá t'ahdii doo [ahgo
ánéehda.

Éí biniinaa t'áá nanihi'deelyáháa doo ní[ch'i diyin hinááh nihiihdaahya'áa
ge'át'éigo,

T'áá Diné niidliígo náásgóó ahoool'á.

The Holy People ordained,

Through songs and prayers,

That

Earth and universe embody thinking,

Water and the sacred mountains embody planning,

Air and variegated vegetation embody life,

Fire, light, and offering sites of variegated sacred stones embody

wisdom.

These are the fundamental tenets established.

Thinking is the foundation of planning.

Life is the foundation of wisdom.

Upon our creation, these were instituted within us and we embody them.

Accordingly, we are identified by:

Our Diné name,

Our clan,

Our language,

Our life way,

Our shadow,

Our footprints.

Therefore, we were called the Holy Earth-Surface-People.

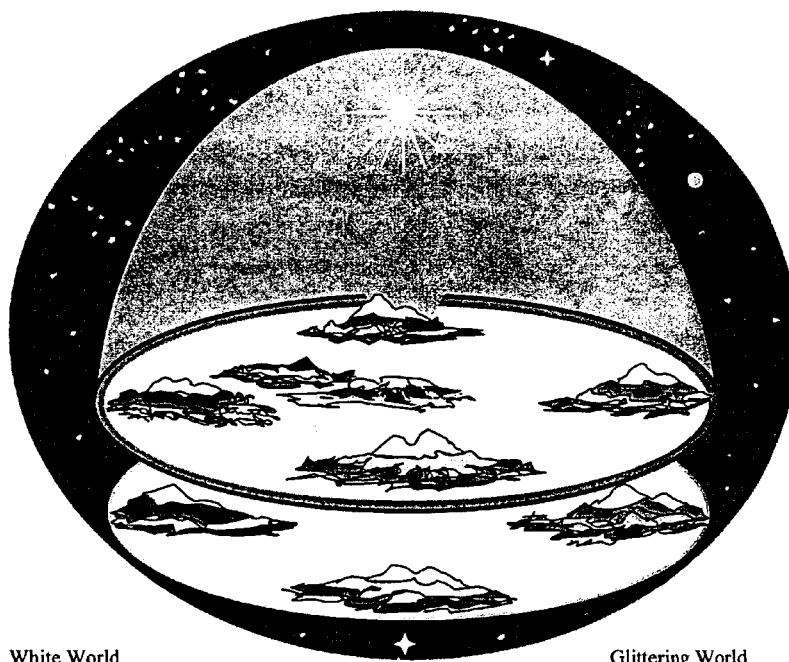
From here growth began and the journey proceeds.

Different thinking, planning, life ways, languages, beliefs, and laws appear among us,

But the fundamental laws placed by the Holy People remain unchanged.

Hence, as we were created and with living soul, we remain Diné forever.¹

Mother Earth and Father Universe



White World

Glittering World

History

CN-69-02, November 1, 2002.

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is

raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

2. Probate

"While the Navajo Probate Code states that state law should apply unless custom is 'proved,' 8 N.N.C. § 2(B) (2005), the subsequent passage of the statute affirming the Fundamental Laws of the Diné, 1 N.N.C. § 201, *et seq.* (2005) (passed by Navajo Nation Council Resolution No. CO-72-03, (October 24, 2003)), means that a trial court may take judicial notice of *Diné bi beenahaz'áanii*." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 7 (Nav. Sup. Ct. May 18, 2006).

"This Court's previous decision in this case, that state law applies if custom is not proven, *see Kindle*, No. SC-CV-38-99, slip op. at 4, predates these statutory changes. In light of these new statutory developments, the choice of law provision in the probate Code cannot be reconciled with the clear mandate to apply *Diné bi beenahaz'áanii* first, and state law only in the absence of Navajo law, and must therefore yield." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 7 (Nav. Sup. Ct. May 18, 2006).

§ 202. Diné Bi Beenahaz'áanii

The Diné bi beenahaz'áanii embodies Diyin bits33d66' beehaz'áanii (Traditional Law), Diyin Dine'é bits33d66' beehaz'áanii (Customary Law), Nahasdzáán dóó Yádi[hi] bits33d66' beehaz'áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz'áanii (Common Law).

These laws provide sanctuary for the Diné life and culture, our relationship with the world beyond the sacred mountains, and the balance we maintain with the natural world.

These laws provide the foundation of Diné bi nahat'á (providing leadership through developing and administering policies and plans utilizing these laws as guiding principles) and Diné sovereignty. In turn, Diné bi nahat'á is the foundation of the Diné bi naat'á (government). Hence, the respect for, honor, belief and trust in the Diné bi beenahaz'áanii preserves, protects and enhances the following inherent rights, beliefs, practices and freedoms:

A. The individual rights and freedoms of each Diné (from the beautiful child who will be born tonight to the dear elder who will pass on tonight from old age) as they are declared in these laws; and

B. The collective rights and freedoms of the Diyin Nihookáá Diné as a distinct people as they are declared in these laws; and

C. The fundamental values and principles of Diné Life Way as declared in these laws; and

D. Self-governance; and

E. A government structure consisting of Hózhó%3Eó%3Eójí Nahat'á (Executive Branch), Naat'ájí Nahat'á (Legislative Branch), Hashkééjí Nahat'á (Judicial Branch), and the Naayee'jí Nahat'á (National Security Branch); and

F. That the practice of Diné bi nahat'á through the values and life way embodied in the Diné bi beenahaz'áanii provides the foundation of all laws proclaimed by the Navajo Nation government and the faithful adherence to Diné bi nahat'á will ensure the survival of the Navajo Nation; and

G. That Diné bi beenahaz'áanii provides for the future development and growth of a thriving Navajo Nation regardless of the many different thinking, planning, life ways, languages, beliefs, and laws that may appear within the Nation; and

H. The right and freedom of the Diné to be educated as to Diné bi beenahaz'áanii; and

I. That Diné bi beenahaz'áanii provides for the establishment of governmental relationships and agreements with other nations; that the Diné shall respect and honor such relationships and agreements and that the Diné can expect reciprocal respect and honor from such other nations.

History

CN-69-02, November 1, 2002.

Annotations

1. Failure to plead

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and

opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

2. Harassment

"Lacking any guidance in the NPEA, the Court adopts Anderson's suggested definition of 'harassment' as consistent with the policies of the statute and *Diné bi beenahaz'áanii*." *Kesoli v. Anderson Security Agency*, No. SC-CV-01-05, slip op. at 5 (Nav. Sup. Ct. October 12, 2005).

3. Rights

"Just as there are fundamental rights and freedoms of individuals as acknowledged by the Council in the Navajo Bill of Rights, there are fundamental rights of the collective People, the tribal nation, as acknowledged and recognized in the Fundamental Law statute." *Thinn v. Navajo Generating Station, Salt River Project*; and *Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 8 (Nav. Sup. Ct. October 19, 2007).

§ 203. Diyin Bits'áádée' Beehaz'áanii-Diné Traditional Law

The Diné Traditional Law declares and teaches that:

A. It is the right and freedom of the Diné to choose leaders of their choice; leaders who will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; and leaders who will also ensure the rights and freedoms of the generations yet to come; and

B. All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of *Dine bi beenahazáanii*; and

C. The leader(s) of the Executive Branch (Al33j9' Hózh==jí Naat'ááh) shall represent the Navajo Nation to other peoples and nations and implement the policies and laws enacted by the legislative branch; and

D. The leader(s) of the Legislative Branch (Al33j9' Naat'ájí Naat'ááh and Al33j9' Naat'ájí Ndaanit'áii or Naat'aanii) shall enact policies and laws to address the immediate and future needs; and

E. The leader(s) of the Judicial Branch (Al33j9' Hashkééjí Naat'ááh) shall uphold the values and principles of *Diné bi beenahaz'áanii* in the practice of peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments; and

F. The leader(s) of the National Security Branch (Al33j9' Naayéé'jí Naat'ááh) are entrusted with the safety of the people and the government. To this end, the leader(s) shall maintain and enforce security systems and operations for the Navajo Nation at all times and shall provide services and guidance in the event of severe national crisis or military-type disasters;

and

G. Our elders and our medicine people, the teachers of the traditional laws, values and principles must always be respected and honored if the people and the government are to persevere and thrive; the teachings of the elders and medicine people, their participation in the government and their contributions of the traditional values and principles of the Diné life way will ensure the growth of the Navajo Nation; and from time to time, the elders and medicine people must be requested to provide the cleansing, protection prayers, and blessing ceremonies necessary for securing healthy leadership and the operation of the government in harmony with traditional law; and

H. The various spiritual healings through worship, song and prayer (Nahaghá) must be preserved, taught, maintained and performed in their original forms; and

I. The Diné and the government must always respect the spiritual beliefs and practices of any person and allow for the input and contribution of any religion to the maintenance of a moral society and government; and

J. The Diné and the government can incorporate those practices, principles and values of other societies that are not contrary to the values and principles of Diné Bi Beenahaz'áanii and that they deem is in their best interest and is necessary to provide for the physical and mental well-being for every individual.

History

CN-69-02, November 1, 2002.

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim.

Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

2. Elections

"In Navajo thinking, the selection of a person by voters is one of two requirements for a candidate to become a *naat'áanii*. That person must also accept the position, and, to accept, must take an oath to serve the laws of the sovereign government within whose system he or she will serve the people-'naat'áanii ádee hadidziih.' Only when a person accepts through an oath will all of the Navajo people say that a person has been properly installed as a *naat'áanii*-'*naat'áanii idl9 bee bitsoosz99*.' In other words, 'Diné binant'a'í bee bi'doosz99d or *Diné binaat'áanii bee bi'doosz99d*' [...] The oath is absolute, and allows no conflict in loyalty. This requirement of absolute loyalty is reiterated in the Election Code itself, as one of the qualifications for a council delegate is that he or she must 'maintain unswerving loyalty to the Navajo Nation.' 11 N.N.C. § 8(B)(5) (2005). Under these principles, a person may not swear allegiance to obey and serve simultaneously the laws of the Nation and the State of New Mexico. The prohibition is then consistent with our Fundamental Law, and it is not improper for the Election Code to require Tsosie to serve only one government." *In the Matter of the Grievance of: Wagner, and concerning, Tsosie*, SC-CV-01-07, slip op. at 7-8 (Nav. Sup. Ct. May 14, 2007).

"The Council may establish requirements for elected offices, but such requirements must conform to *Diné bi beenahaz'áanii*. There is a basic right, highlighted in the Fundamental Law statute, the the *Diné* have the right to choose leaders of their choice." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 5 (Nav. Sup. Ct. August 11, 2006).

"Further, under *Diné bi beenahaz'áanii*, Navajo candidates have a liberty interest to participate in the political process by running for office." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 5 (Nav. Sup. Ct. August 11, 2006).

"The residency requirement must be considered in light of these fundamental rights. If it is in irreconcilable conflict with those rights, that is, if it defeats the ability of the people to elect leaders of their choosing and candidates to run for office, it must yield." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 5 (Nav. Sup. Ct. August 11, 2006).

§ 204. Diyin Dine'é Bits33d66' Beehaz'áanii-Diné Customary Law

The Diné Customary Law declares and teaches that:

A. It is the right and freedom of the people that there always be holistic education of the values and principles underlying the purpose of living in balance with all creation, walking in beauty and making a living; and

B. It is the right and freedom of the people that the sacred system of k'é, based upon the four clans of Kiiyaa'áanii, Todíich'iínii, Honagháahnii and Hasht[ishnii and all the descendant clans be taught and preserved; and

C. It is the right and freedom of the people that the sacred Diné language (nihiinéi') be taught and preserved; and

D. It is the right and freedom of the people that the sacred bonding in marriage and the unity of each family be protected; and

E. It is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse; and

F. It is the right and freedom of the people that our children are provided with education to absorb wisdom, self-knowledge, and knowledge to empower them to make a living and participate in the growth of the Navajo Nation.

History

CN-69-02, November 1, 2002.

Annotations

1. Application

"Just as there are fundamental rights and freedoms of individuals as acknowledged by the Council in the Navajo Bill of Rights, there are fundamental rights of the collective People, the tribal nation, as acknowledged and recognized in the Fundamental Law statute." *Thinn v. Navajo Generating Station, Salt River Project*; and *Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 8 (Nav. Sup. Ct. October 19, 2007).

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in

their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

2. Child support

The role of the mother and father must complement each other so that what was acquired through the joint labor is for the support, benefit, and safety of the children. *Watson v. Watson*, No. SC-CV-40-07, slip op. at 15 (Nav. Sup. Ct. December 14, 2009).

§ 205. Nahasdzaán dóó Yádi[hi] Bits'33d66' Beehaz'áanii—Diné Natural Law

Diné Natural Law declares and teaches that:

A. The four sacred elements of life, air, light/fire, water and earth/pollen in all their forms must be respected, honored and protected for they sustain life; and

B. The six sacred mountains, Sisnaajini, Tsoodzi[, Dook'o'oosliíd, Dibé Nitsaa, Dzi[Na'oodi[i], Dzi[Ch'ool'í'í, and all the attendant mountains must be respected, honored and protected for they, as leaders, are the foundation of the Navajo Nation; and

C. All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist; and

D. The Diné have the sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward for these relatives through our use of the sacred gifts of language and thinking; and

E. Mother Earth and Father Sky is part of us as the Diné and the Diné is part of Mother Earth and Father Sky; The Diné must treat this sacred bond with love and respect without exerting dominance for we do not own our mother or father; and

F. The rights and freedoms of the people to the use of the sacred elements of life as mentioned above and to the use of land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné life way; and

G. It is the duty and responsibility of the Diné to protect and preserve the beauty of the natural world for future generations.

History

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

§ 206. *Diyin Nohookáá Diné Bi Beehaz'áanii*—Diné Common Law

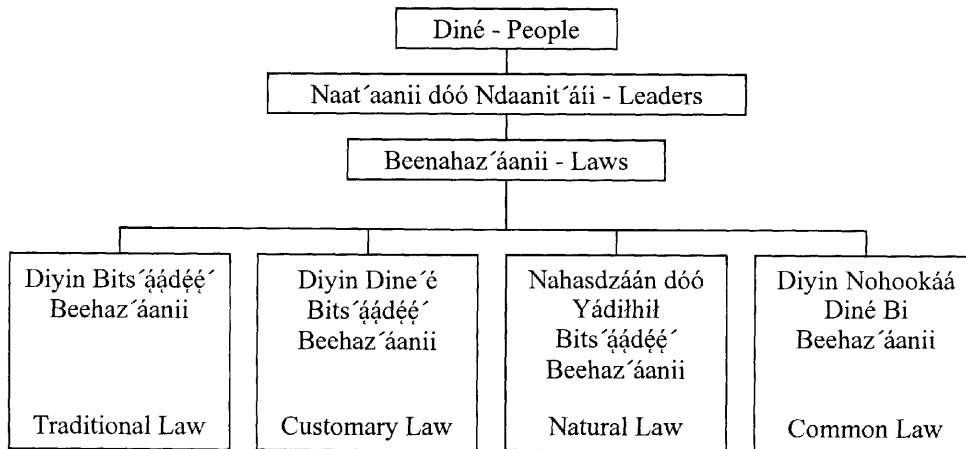
The Diné Common Law declares and teaches that:

A. The knowledge, wisdom, and practices of the people must be developed and exercised in harmony with the values and principles of the *Diné Bi Beenahaz'áanii*; and in turn, the written laws of the Navajo Nation must be developed and interpreted in harmony with Diné Common Law; and

B. The values and principles of Diné Common Law must be recognized, respected, honored and trusted as the motivational guidance for the people and their leaders in order to cope with the complexities of the changing world, the need to compete in business to make a living and the establishment and maintenance of decent standards of living; and

C. The values and principles of Diné Common Law must be used to harness and utilize the unlimited interwoven Diné knowledge, with our absorbed knowledge from other peoples. This knowledge is our tool in exercising and exhibiting self-assurance and self-reliance and in enjoying the beauty of happiness and harmony.

Diné Original Law Structure



History

CN-69-02, November 1, 2002.

Annotations

1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

Chapter 3. Great Seal and Flag

History

Revision note. Sections 101-107 were redesignated §§ 301-307 for numerical consistency.

§ 301. Great Seal

The entry submitted by John Claw, Jr. as reproduced below, is adopted as the Great Seal of the Navajo Nation.



History

CMY-18-88, May 3, 1988.

CJA-9-52, January 18, 1952.

Note. Two additional arrowheads were added to signify protection within the 50 states. Also, the word Tribe was changed to Nation.

Annotations

1. Construction and application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in

their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

§ 302. Flag

The Navajo Nation Council accepts and adopts the selected flag for the Navajo Nation to symbolize the tradition, sovereignty and heritage of the Navajo People.

History

CO-49-06, October 20, 2006. Added the word "sovereignty."

CMY-75-68, May 21, 1968.

§ 303. Display of the flag

A. The Navajo Nation flag shall be displayed, except on days when the weather is inclement, within, on, or near the main building or entrance of every Navajo Nation facility, institution, or Navajo Nation Administration building.

B. The Navajo Nation flag may be displayed within buildings, or outside where it shall be displayed only from sunrise to sunset, and only on flagstaves or staffs affixed to buildings. The flag may be otherwise displayed in an appropriate manner on special occasions.

C. The flag should be displayed during school days in or near every school house or school yard.

History

CJA-6-70, January 8, 1970.

§ 304. Manner of display

A. The manner in which the Navajo Nation flag is displayed with or near the flag of the United States shall be in conformance with laws governing the display of the flag of the United States.

B. The Navajo Nation flag should be displayed in a proper and respectful manner, conspicuously placed and well secured. When the flag is displayed other than being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fan as free as though the flag were staffed.

C. The Navajo Nation flag should be hoisted briskly and lowered ceremoniously.

D. The Navajo Nation flag should be displayed above any flags on a single staff, except the United States flag. If several flags are displayed together with the Navajo Nation flag on different staffs, the Navajo Nation flag should occupy the place of central or greatest prominence, except when the United States flag is displayed. When displayed with the United States flag, the Navajo Nation flag should be displayed immediately to the left of the United States flag.

E. The President of the Navajo Nation is hereby authorized to order that the Navajo Nation flag be displayed at half staff, whenever appropriate, and to prescribe the length of time the flag should be so displayed. The flag, when displayed at half staff, should first be hoisted to the peak of the staff for an instant and then lowered to the half-staff position. The flag should again be raised to the peak of the staff before it is lowered for the day.

History

CO-49-06, October 20, 2006. Amended Subsection (D).

CJA-6-70, January 8, 1970.

§ 305. Proper methods of handling, storage, or destruction

A. The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise, and should always be kept or placed in a clean container or wrapping used for the purpose of keeping the flag.

B. The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free.

C. The flag should never be fastened, displayed, used, or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

D. The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

E. The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

F. The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning by the Department of Navajo Veterans Affairs or a bonafide veterans organization.

History

CO-49-06, October 20, 2006. Amended Subsection (F).

CJA-6-70, January 8, 1970.

§ 306. Desecration of the Navajo Nation flag

Any person who knowingly casts contempt upon the Navajo Nation flag by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be deemed to have committed an offense.

History

CJA-6-70, January 8, 1970.

§ 307. Penalties

Any person found to have committed the offense, defined and established by 1 N.N.C. § 306, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than 30 days, or both.

History

CO-49-06, October 20, 2006.

CJA-6-70, January 8, 1970.

Chapter 5. Navajo Nation

History

Revision note. Sections 301 and 302 were redesignated §§ 501 and 502 for numerical consistency.

Revision note. Sections 351-355 were redesignated §§ 551-555 for numerical consistency.

Subchapter 1. Designation

§ 501. Use of term "Navajo Nation"; certification of resolutions; address

A. The President of the Navajo Nation and all departments, divisions, agencies, enterprises, and entities of the Navajo Nation shall use the phrase "Navajo Nation" in describing the lands and people of the Navajo Nation.

B. All resolutions of the Navajo Nation government shall be certified as being duly enacted at "Window Rock, Navajo Nation (Arizona)".

C. All correspondence, stationery and letterhead, of all divisions, agencies, etc., of the Navajo Nation shall use the designation "Navajo Nation." For example, Navajo Nation letterhead should read "The Navajo Nation, Window Rock, Navajo Nation (Arizona) 86515," or "Navajo Police Department, Crownpoint, Navajo Nation (New Mexico) 87313".

History

CJY-55-85, July 25, 1985.

ACAP-101-69, April 15, 1969.

Revision note. Reworded for grammatical content, statutory form, and clarity.

§ 502. Spelling of "Navajo"

All use of the name "Navajo" shall use the spelling "j", not "h".

History

CJY-55-85, July 25, 1985.

ACAP-101-69, April 15, 1969.

Revision note. Reworded for grammatical content, statutory form, and clarity.

Subchapter 2. Navajo Sovereign Immunity Act

History

Redesignation. Sections 351-355 were redesignated §§ 551-555 for numerical consistency.

§ 551. Establishment

There is established the Navajo Sovereign Immunity Act.

History

CMY-42-80, May 6, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Annotations

1. Construction and application

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

Re: previous sov. Imm. Act at 7 N.T.C. §§ 851-855. "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [...] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its

immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

§ 552. Definitions

For the purposes of this Subchapter, "Navajo Nation" means:

- A. The Navajo Nation Council;
- B. The President, Navajo Nation;
- C. The Vice-President, Navajo Nation;
- D. The Delegates to the Navajo Nation Council;
- E. The Certified Chapters of the Navajo Nation;
- F. The Grazing Committees of the Navajo Nation;
- G. The Land Boards of the Navajo Nation;
- H. The Executive Branch of the Navajo Nation government;
- I. The Judicial Branch of the Navajo Nation government;
- J. The Commissions of the Navajo Nation government;
- K. The Committees of the Navajo Nation Council;
- L. The Legislative Branch of the Navajo Nation government;
- M. The Enterprises of the Navajo Nation;
- N. Navajo Community College;
- O. The Kayenta Township and the Kayenta Township Commission;
- P. Navajo Housing Authority;
- Q. Navajo Nation Gaming Enterprise;
- R. Tribal Gaming Enterprises.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006. Added Subsection (R), Tribal Gaming Enterprises.

CS-34-06, September 26, 2006. Added Subsection (Q), Navajo Nation Gaming Enterprise.

CO-55-04, October 19, 2004.

CAU-47-03, August 29, 2003.

CJY-42-03, July 25, 2003.

CMY-28-88, May 6, 1988.

CMY-42-80, May 6, 1980.

Annotations

1. Construction and application

"Based on this history, it is clear that the Resolution did not merely 'clarify' an ambiguity, but altered the legal landscape by purporting to bring NHA under the Sovereign Immunity Act." *Phillips v. Navajo Housing Authority*, No. SC-CV-13-05, slip op. at 6 (Nav. Sup. Ct. December 8, 2005).

"NHA is not considered the 'Navajo Nation' in the act, but instead its immunity is covered by a separate Section of the Navajo Nation Code directly related to NHA, 6 N.N.C. § 616(b)(1)." *NHA v. Bluffview Resident Management Corporation, Board of Directors, et al.*, No. SC-CV-35-00, slip op. at 9 (Nav. Sup. Ct. December 17, 2003).

"For the reasons stated, CIT was not covered by the Sovereign Immunity Act's umbrella of "enterprises of the Navajo Nation" in April 1995." *Blaze Construction, Inc. v. Crownpoint Institute of Technology*, 7 Nav. R. 296, 299 (Nav. Sup. Ct. 1997).

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

Re: previous sov. Imm. Act at 7 N.T.C. §§ 851-855. "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [...] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

2. Navajo Housing Authority

"This case concerns whether a monetary judgment against the Navajo Housing Authority (NHA) may be enforced, or whether sovereign immunity, Navajo statutory exemption from execution, or a circular issued by the U.S. Office of Management and Budget (OMB) prohibits the enforcement. The Court holds that only certain NHA funds are exempt from execution, and that the judgment must be satisfied with those that are non-exempt." *Tso v. Navajo Housing Authority*, No. SC-CV-20-06, slip op. at 1 (Nav. Sup. Ct. December 6, 2007).

§ 553. General principles of sovereign immunity

A. The Navajo Nation is a sovereign nation which is immune from suit.

B. Sovereign immunity is an inherent attribute of the Navajo Nation as a sovereign nation and is neither judicially created by any court, including the Courts of the Navajo Nation, nor derived from nor bestowed upon the Navajo Nation by any other nation or government.

C. The Courts of the Navajo Nation are created by the Navajo Nation Council within the government of the Navajo Nation and the jurisdiction and powers of the courts of the Navajo Nation, particularly with regard to suits against the Navajo Nation, are derived from and limited by the Navajo Nation Council as the governing body of the Navajo Nation.

D. The special authority of the Congress of the United States relating to Indian affairs derives from and is consistent with the recognition and fulfillment of its unique trust obligations to protect and preserve the inherent attributes of Indian tribal self-government.

E. The Navajo Nation Council has enacted the Navajo Nation Bill of Rights in recognition of the interests and rights of the People of the Navajo Nation, from whom the sovereignty of the Navajo Nation derives, as express self-limitations upon the exercise of its sovereign powers and has provided herein for specific remedies and redress for individuals from the government of the Navajo Nation as only the governing body of the Navajo Nation is empowered and responsible to determine on behalf of the People of the Navajo Nation.

F. Neither the President, Navajo Nation, the Vice-President, Navajo Nation, nor the delegates to the Navajo Nation Council may be subpoenaed or otherwise compelled to appear or testify in the courts of the Navajo Nation or any proceeding which is under the jurisdiction of the courts of the Navajo Nation concerning any matter involving such official's actions pursuant to his/her official duties.

History

CMY-28-88, May 6, 1988.

CMY-42-80, May 6, 1980.

Annotations

1. Construction and application

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

Re: *previous sov. Imm. Act at 7 N.T.C. §§ 851-855.* "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [...] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

2. Immunity

"Under the Navajo Sovereign Immunity Act, the Navajo Nation is immune from suit. This immunity from suit is an inherent attribute of Navajo sovereignty and not judicially created by any court, including the Navajo courts, and is not bestowed upon the Nation by the United States government, or any other government." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

Re: *Sov. Imm. Act definition of Navajo Nation:* "The suit challenges certain resolutions passed by the Navajo Tribal Council. When the Navajo Tribal Council and the delegates to that body are performing legislative functions they fall within the definition of Navajo Nation and the [Navajo Sovereign Immunity] Act applies." *Plummer v. Brown II*, 6 Nav. R. 88, 91 (Nav. Sup. Ct. 1989).

3. Powers of council

"The Navajo Nation Council, as the governing body of the sovereign Navajo Nation, has the power to limit the jurisdiction of the Navajo courts, especially in suits against the Nation." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

4. Remedies

"The Act recognizes that the People of the Nation have rights and interests (as enacted in the Navajo Nation Bill of Rights), and that these rights and interests are limitations of the Nation's sovereign powers. Thus, the Act provides individuals with specific remedies and redress from governmental actions which are violative of the people's rights." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

5. Jurisdiction

Formerly 1 N.T.C. §§ 353 & 354. "We will not adopt Chairman MacDonald's argument that, because this is a unique case where the Navajo Nation has sued itself, we must ignore the express tribal code law on suits against the Navajo Nation. If we ignore the provisions in the Act, in effect the Navajo courts would be creating their own jurisdiction—a power Navajo courts do not have. Navajo code law expressly provides that the Navajo courts can exercise jurisdiction over suits against the Navajo Nation only when authorized by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

§ 554. Exceptions to the general principles of sovereign immunity; purpose and

intent

A. The purpose and intent of the Navajo Sovereign Immunity Act is to balance the interest of the individual parties in obtaining the benefits and just redress to which they are entitled under the law in accordance with orderly process of the Navajo government, while at the same time protecting the legitimate public interest in securing the purpose and benefits of their public funds and assets, and the ability of their government to function without undue interference in furtherance of the general welfare and the greatest good of all people. All of the provisions of this Act shall be applied as hereinafter set forth in order to carry out this stated purpose and intent of the Navajo Nation Council, as the governing body of the Navajo Nation.

B. The Navajo Nation may be sued in the courts of the Navajo Nation when explicitly authorized by applicable federal law.

C. The Navajo Nation may be sued only in the courts of the Navajo Nation when explicitly authorized by Resolution of the Navajo Nation Council.

D. Any exception to the immunity of the Navajo Nation and assumption of liability pursuant to this Act does not apply in circumstances in which such liability has been or is hereafter assumed by third parties, including any other governmental body or agency, nor for which the Navajo Nation has been or is hereafter indemnified or held harmless by such parties, to the extent of such assumption or indemnification of liability. Nor does any liability assumed by the Navajo Nation pursuant to this Act extend to any party or parties as third party beneficiary or otherwise, other than the party or parties to whom such liability is expressly assumed, and then only to the extent, circumstances and conditions specified thereby.

E. Any liability of a public entity or public officer, employee or agent assumed pursuant to this Act is subject to any other immunity of that public entity or person and is subject to any defense which would be available to the public entity or person if they were private entities and/or persons.

1. A public entity is not liable for any injury or damage resulting from an act or omission of any public officer, employee or agent if that party is not liable; nor for the actions or omissions of public officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority.

2. This Section does not immunize a public officer, employee or agent from individual liability, not within Navajo Nation insurance coverage, for the full measure of the recovery applicable to a person in the private sector, if it is established that such conduct was outside the scope of his or her employment and/or authority.

3. Volunteers duly authorized by the Navajo Nation or any political subdivision thereof, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the Navajo Nation and its governmental entities performing similar work.

F. The Navajo Nation may be sued only in the courts of the Navajo Nation with respect to any claim which is within the express coverage and not excluded by either commercial liability insurance carried by the Navajo Nation or an established Navajo Nation self-insured and/or other claims program of the Navajo Nation government, approved and adopted pursuant to the laws of the Navajo Nation and further, subject to the following provisions and limitation:

1. No judgment, order or award pertaining to any claims permitted hereunder shall be for more than the limits of valid and collectable liability insurance policies carried by the Navajo Nation covering each such claim and in force at the time of such judgment, including deductible amounts to the extent appropriated by the Navajo Nation Council; nor for more than the amount of coverage provided for each such claim under established claim reserves as appropriated by the Navajo Nation Council, or otherwise established pursuant to any self-insured liability and/or other Navajo Nation government claims program, approved and adopted pursuant to the laws of the Navajo Nation;

2. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insured or government claims program of the Navajo Nation which are in effect at the time of each such judgment, order or award. Regardless of the existence of applicable and collectible commercial insurance coverage at the time any cause of action arises or suit is filed against the Navajo Nation, in no event shall any funds or other property of the Navajo Nation be liable for satisfaction of any judgment against the Navajo Nation and/or other insureds thereunder, beyond the limits of any amounts specifically appropriated and/or reserved therefor at the time of judgment, which shall be modified by law in accordance with such limitation of funds. This limitation shall apply to any deductible or retained liability or otherwise resulting from any inability or insolvency occurring any time prior to entry of such judgment;

3. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against the Navajo Nation; nor against any officer, employee or agent of the Navajo Nation acting within the course and scope of the authority of such office, employment or agency;

4. Notwithstanding any provisions of this Subsection (F), there shall be no exception to the sovereign immunity of public entities, officials, employees or agents of the Navajo Nation from claims for injury or damage alleged to have been sustained by:

a. Policy decisions or the exercise of discretion made by a public official, employee or agent in the exercise or judgment or discretion vested in the entity or individual;

b. A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a public entity, officer, employee or agent from liability for false arrest, false imprisonment or malicious prosecution;

c. Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt a law or by failing to enforce a law;

d. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, nor by the termination or reduction of benefits under a public assistance program; if the public entity, officer, employee or agent of the Navajo Nation is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended or revoked;

e. Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof, except upon a showing of gross negligence;

f. Any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest or by a prisoner to himself or herself, or to any other prisoner, except upon showing of gross negligence;

g. The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this Act.

5. Subject to all other provisions of this Act, the express coverage of any commercial liability policy insuring the Navajo Nation or of any self-insurance program established by the Navajo Nation, for sums which the Navajo Nation as insured shall become legally obligated to pay as damage because of personal injury and/or property damages shall include liability for such actual monetary loss and damage which is established by clear and convincing evidence, to be the direct and proximate result of the wrongful deprivation or impairment of civil rights as set forth in Chapter 1 of Title 1 of the Navajo Nation Code, the Bill of Rights of the Navajo Nation. In the sound exercise of judicial discretion, the courts of the Navajo Nation may, to the extent deemed proper and appropriate in any action for damages for wrongful deprivation or impairment of civil rights as provided herein, award necessary costs of suit and/or reasonable fees; based upon time and value, incurred for legal representation; or require each or any party thereto, to bear their own respective costs and/or legal fees incurred therein.

G. Any officer, employee or agent of the Navajo Nation may be sued in the courts of the Navajo Nation to compel him/her to perform his/her responsibility under the expressly applicable laws of the United States and of the Navajo Nation, which shall include the Bill of Rights of the Navajo Nation, as set forth in Chapter 1, Title 1, Navajo Nation Code.

1. Relief awarded by the courts of the Navajo Nation under this Subsection (G) shall be limited to declaratory or prospective mandamus or injunctive relief and in accordance with the express provisions of the

laws of the United States and the Navajo Nation establishing the responsibility for such performance. The courts may further, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation, in the same manner and to the same extent provided in Paragraph (5) Subsection (F) hereof.

2. No relief as provided under this Subsection (G) may be awarded by the courts of the Navajo Nation without actual notice to the defendant(s), nor before the time provided in this Act for answering complaints, motions or orders to show cause, nor without opportunity for full hearing of all defenses and objection thereto, in accordance with all provisions of this Act all other applicable law(s).

3. This Subsection (G) shall not apply to the President of the Navajo Nation, the Vice-President of the Navajo Nation, or the delegates to the Navajo Nation Council.

H. Contracted or otherwise retained counsel and other attorneys employed by the Navajo Nation may be sued for malpractice when authorized by the Government Services Committee of the Navajo Nation Council.

I. The Navajo Nation may be sued by Navajo contractors and/or their sureties on construction development or reclamation contracts, provided:

1. The contractor's contract is properly approved by the appropriate Committee of the Navajo Nation Council.

2. The contract is to be performed by a Navajo contractor as defined herein and is performed within the territorial jurisdiction of the Navajo Nation.

3. Damages against the Navajo Nation under the consent to suit granted by the Navajo Nation to Navajo contractors and/or their sureties shall be limited to damages claimed under applicable principles of contract damage law, including damages necessary to compensate for fulfilling the obligations under the bond, which shall include properly authorized change orders and properly authorized performance under owner directives to proceed done under protest, but shall not include:

a. Punitive damages;

b. Damages from claims arising in tort;

c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract or project; or

d. Damages caused by delay, contract modification, or contract termination, due to delay in or failure to receive matching funds for the contract or project.

4. Damages against the Navajo Nation claimed above shall be limited to the dollar amount of the contract including properly approved change

orders.

5. The Navajo Nation shall be subject to suit under this Subsection (I) only in the courts of the Navajo Nation. In determining the Navajo Nation's obligations under this Subsection (I), the courts of the Navajo Nation shall not give any preclusive effect against the Navajo Nation of any determination by any judicial or quasi-judicial body except the Courts of the Navajo Nation.

6. Navajo Contractor shall mean any contractor entitled to a priority number one, number two or number three pursuant to the Navajo Nation Business Opportunity Act.

J. The Navajo Nation may be ordered to proceed with arbitration, provided:

1. The agreement is properly approved and executed on behalf of the Navajo Nation according to all applicable laws of the Navajo Nation;

2. All agreements entered into under the Navajo Nation Arbitration Act shall be approved by the Navajo Nation Department of Justice; and

3. The arbitration process shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.*

K. The Courts of the Navajo Nation shall have original and exclusive jurisdiction to enforce an arbitral award against the Navajo Nation when such suit is specifically provided for in an agreement containing an arbitration clause that is entered into in accordance with the Navajo Nation Arbitration Act. The Navajo Nation shall be subject to suit under this Subsection (K) provided that:

1. The agreement is properly approved and executed on behalf of the Navajo Nation according to all applicable laws of the Navajo Nation;

2. All agreements entered into under the Navajo Nation Arbitration Act shall be approved by the Navajo Nation Department of Justice;

3. The award of damages shall be compensatory damages only, and shall not exceed the dollar amount of the contract including properly approved amendments, but shall not include:

a. Punitive or exemplary damages;

b. Damages from claims arising in tort;

c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract; or

d. Damages incurred by those not a party to the contract, including third party beneficiaries or others who receive direct or indirect benefits from the agreement.

4. The courts may, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation, in the same manner and to the same extent provided in Section 554(F) (5) hereof;

5. In determining the Navajo Nation's obligations under this Subsection (K), the courts of the Navajo Nation shall not give any preclusive effect against the Navajo Nation of any determination by any judicial or quasi-judicial body except the courts of the Navajo Nation; and

6. The arbitration process shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.*

History

CJA-05-07, January 24, 2007. Added Subsections (J) and (K).

Note. Previous reference to the Navajo Nation Business Preference Law at § 554(I) (6) was changed to the Navajo Nation Business Opportunity Act, pursuant to CAP-37-02, April 19, 2002. See, 5 N.N.C. § 201 *et seq.*

CJY-40-92, July 24, 1992.

CMY-28-88, May 6, 1988.

CD-60-86, December 11, 1986.

CJY-55-85, July 25, 1985.

CMY-42-80, May 6, 1980.

Annotations

1. Construction and application

"Section 554(G) of the Act permits suit against any officer, employee or agent of the Navajo Nation to compel him or her to perform responsibilities under the expressly applicable laws of the United States and the Navajo Nation." *Judy v. White*, No. SC-CV-35-02, slip op. at 15 (Nav. Sup. Ct. August 2, 2004).

"The Act explicitly denies any liability on the part of the Nation for 'the actions or omissions of public officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority.'" *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

"A personal capacity suit seeks compensation from the individuals themselves, not from the Navajo Nation." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

"Official capacity suits are suits naming individual officials or employees,

but in reality seeking compensation from the Navajo Nation." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

"One purpose of the Act is for the Navajo Nation to assume, under certain circumstances, responsibility for the actions of its officials and employees." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 6 (Nav. Sup. Ct. March 11, 2004).

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

"The Navajo Nation may be sued when explicitly authorized by applicable federal law." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

Formerly § 354. "Neither can the Navajo Tribal Council nor its delegates be sued based upon their actions in performing legislative functions." *Plummer v. Brown II*, 6 Nav. R. 88, 93 (Nav. Sup. Ct. 1989).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

Re: *previous Sov. Imm. Act at 7 N.T.C. § 854*. "The relief under this Section of the Navajo Tribal Code is limited to declaratory or injunctive relief. TBI prays for money damages in its complaint, therefore, this Section is inapplicable to the case at bar. We hold that, as this is a breach of contract action for money damages, the suit may not proceed under 7 N.T.C. § 854(d)." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

"... [T]he ICRA does not explicitly authorize suit against the Navajo Nation in Navajo courts ... " *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 199 (Nav. Sup. Ct. 1987).

2. Construction with federal law

"It is the finding of this Court that the ICRA is not an applicable federal law under the meaning of Section 354(b) of the Act. In addition, the ICRA does not explicitly waive the Nation's immunity from suit as required by the Act." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

3. Exceptions to immunity

"The Court agrees with Appellants that they generally may file claims for injunctive and declaratory relief, and the 'policy decision' exception does not apply. By its plain language, Subsection (F)(4)'s exceptions apply only to the insurance coverage waiver in Subsection F. The key language is '[n]otwithstanding any provision of this Subsection (F) there shall be no exception to ... sovereign immunity ... from claims for injury or damage.' The exceptions, including the 'policy decision' exception, are clearly intended

only to restrict suits under Subsection (F), that is, under an insurance policy for money damages. Suits seeking injunctive and declaratory relief are covered by a separate Subsection of the Act. Subsection G states that [...] 1 N.N.C. § 554(G) (2005). That subsection limits the remedy to 'declaratory or prospective injunctive relief.' 1 N.N.C. § 554(G)(1) (2005). However, there is no exception similar to Subsection (F)(a). Taken together, these provisions allow suits for injunctive and declaratory relief, and there is not 'policy decision' exception for these kinds of suits." *Bennett, et al. v. Shirley, et al.*, No. SC-CV-21-07, slip op. at 5-6 (Nav. Sup. Ct. November 29, 2007).

"In a legal malpractice action, whether there is insurance coverage is not a justifiable issue until after the plaintiff has satisfied the legal malpractice subsection at Section 354(h)." *Navajo Nation, et al. v. Cleveland, et al.*, 7 Nav. R. 185, 187 (Nav. Sup. Ct. 1995).

"The Council reenacted the legal malpractice language in 1988 and it is still Navajo Nation law." *Navajo Nation, et al. v. Cleveland, et al.*, 7 Nav. R. 185, 186 (Nav. Sup. Ct. 1995).

"The final exception to the Nation's immunity from suit under the Act states that '[a]ny officer, employee or agent of the Navajo Nation may be sued in the [c]ourts of the Navajo Nation to compel him/her to perform his/her responsibility under the expressly applicable laws of the United States and of the Navajo Nation, which shall include the Bill of Rights of the Navajo Nation. 1 N.N.C. § 354(g)(1).' " *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

"The third exception is for claims within the express coverage and not excluded by the commercial liability insurance carried by the Nation. 1 N.N.C. § 354(f)." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 144 (Nav. Sup. Ct. 1995).

"The second exception to the Nation's immunity from suit under the Sovereign Immunity Act is when the Navajo Nation Council explicitly authorizes suit by resolution. 1 N.N.C. § 354(c)." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 144 (Nav. Sup. Ct. 1995).

Formerly 1 N.T.C. §§ 353 & 354. "We will not adopt Chairman MacDonald's argument that, because this is a unique case where the Navajo Nation has sued itself, we must ignore the express tribal code law on suits against the Navajo Nation. If we ignore the provisions in the Act, in effect the Navajo courts would be creating their own jurisdiction—a power Navajo courts do not have. Navajo code law expressly provides that the Navajo courts can exercise jurisdiction over suits against the Navajo Nation only when authorized by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

"Once the court has obtained jurisdiction under the insurance exception, that jurisdiction cannot be defeated by a later insolvency of the insurance company." *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 197 (Nav. Sup. Ct. 1987).

Referring to previous Sov. Imm. Act at 7 N.T.C. § 854(c) re: insurance exception. "The law requires that the plaintiff's claim be covered under the

insurance policy before the court can assert jurisdiction over the Navajo Nation." *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 197 (Nav. Sup. Ct. 1987).

4. Civil rights

"A person seeking redress of civil rights violations must establish that Navajo Nation courts have jurisdiction to hear her claims. If the claimant is suing the Nation, the claimant must, as a jurisdictional predicate, establish that the Nation's immunity from suit has been waived." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

"The Nation does not attempt to hide behind sovereign immunity for civil rights claims. The Act itself mandates that commercial liability policies must contain a provision regarding civil rights violations. Under Section 354(f)(5) of the Act, the Nation's commercial liability policies must contain a provision covering damages resulting from 'wrongful deprivation of civil rights.'" *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

5. Waivers of immunity

"It is without question that our government cannot be sued except by its expressed consent. The Navajo Sovereign Immunity Act is the expression of that consent. It provides the means and manner by which suit will be brought against the sovereign." *Judy v. White*, No. SC-CV-35-02, slip op. at 11 (Nav. Sup. Ct. August 2, 2004).

"Whether the official or employee acted in their official or personal capacity also controls whether the defenses under the Act are available. The Act waives the Navajo Nation's immunity from certain types of suits, including civil rights claims." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8-9 (Nav. Sup. Ct. March 11, 2004).

"Raymond is not seeking prospective mandamus or injunctive relief, but is specifically seeking an amount equal to 'a sum calculated to reimburse her or her damage,' i.e., retrospective monetary relief. Accordingly, this Court holds that Raymond's claims do not constitute a waiver of the Nation's immunity from suit under Section 354(g) of the Act." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

Re: *previous 7 N.T.C. § 854(c)*: "The ICRA is federal law, which is applicable to the Navajo Nation, but it does not expressly waive the Navajo Nation's immunity from suit as required by our statute. Our statute requires the federal law or regulation relied upon to explicitly state that the Navajo Nation may be sued." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 60 (Nav. Sup. Ct. 1988).

Re: *previous sov. Imm. Act at 7 N.T.C. §§ 851-855*. "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [...] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its

immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

6. Special prosecutor

"The [Special Prosecutor] Act blends well with the Sovereign Immunity Act because it provides a remedy for the Navajo Nation against officers or employees who exceeded their authority." *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 296 (Nav. Sup. Ct. 1990).

§ 555. Procedure with respect to actions authorized by this subchapter

A. Any person or party desiring to institute suit against the Navajo Nation or any officer, employee or agent of the Navajo Nation as authorized by this Subchapter shall, as a jurisdictional condition precedent provide notice to the President of the Navajo Nation and the Attorney General of the Navajo Nation, as provided herein.

1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the President of the Navajo Nation and of the Attorney General of the Navajo Nation, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of both notices as evidenced upon such receipts, and filed together with such notices with the court in which such action is subsequently to be commenced. The President of the Navajo Nation and the Attorney General of the Navajo Nation shall, ensure the availability, during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.

2. Such notices shall state the name of each prospective plaintiff, the identity of each prospective defendant; the nature of all claims and relief which will be sought, and the correct address, name and telephone number of each prospective plaintiff's attorney or counselor (if any).

3. No action shall be accepted for filing against the Navajo Nation or any officer, employee or agent of the Navajo Nation unless the plaintiff has filed proof of compliance with this Subsection by service of the notices as required by this Subsection at least 30 days prior to the date on which the complaint or any other action is proposed to be filed with such Court.

B. In any action against the Navajo Nation or any officer, employee or agent of the Navajo Nation, the time for responding to valid service of any summons and complaint shall be 60 days; to valid service of any order to show cause not less than 30 days; and to valid service of any motion, not less than 20 days. Any claim against the Navajo Nation or any public entity, officer, employee or agent thereof, which is filed pursuant to this Act, is deemed generally denied 60 days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of 60 days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general

denial thereof. These time periods may not be shortened by rule of court or judicial order, but shall be extended by any longer period provided by other applicable law, rule or order of court.

C. Any person or party filing a complaint against the Navajo Nation or any officer, employee or agent of the Navajo Nation shall serve by registered mail, return receipt requested, a copy of this complaint together with summons duly issued, upon the President of the Navajo Nation and the Attorney General of the Navajo Nation. Service of summons and complaint against any officer, employee or agent of the Navajo Nation shall be made by any means authorized under the rules of the courts of the Navajo Nation, provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the President of the Navajo Nation and the Attorney General of the Navajo Nation.

D. In any action in which any claim is asserted against the Navajo Nation or any public entity thereof, upon written demand of the Navajo Nation Department of Justice, made at or before the time of answering, served upon the opposing party and filed with the court where the action is pending, the place of trial of such action shall be changed to Window Rock, Navajo Nation (Arizona).

History

CJY-55-85, July 25, 1985.

CMY-42-80, May 6, 1980.

Annotations

1. Notice

"Before a district court may take jurisdiction over a suit against the Navajo Nation, a plaintiff must give notice to the Nation of his or her intended suit." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 5 (Nav. Sup. Ct. March 11, 2004).

"... Appellants send a Notice of Desire to Institute Suit to the President and Attorney General prior to filing their complaint." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 3 (Nav. Sup. Ct. March 11, 2004).

"We therefore hold that in cases where the Nation is sued as vicariously liable for the conduct of its officials or employees, the Nation itself does not need to be named." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 7 (Nav. Sup. Ct. March 11, 2004).

"The notice requirements of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, are jurisdictional, 1 N.N.C. § 555(A), and whether a plaintiff complied with them is a question of law." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 4-5 (Nav. Sup. Ct. March 11, 2004).

"For the reasons stated, CIT was not covered by the Sovereign Immunity Act's umbrella of 'enterprises of the Navajo Nation' in April 1995." *Blaze Construction, Inc. v. Crownpoint Institute of Technology*, 7 Nav. R. 296, 299

(Nav. Sup. Ct. 1997).

2. Enforcement of orders

"Under the plain language of the NPEA, the only restriction on enforcement of a post-judgment order applies to enforcement against the Navajo Nation, which must proceed under the procedural guidelines of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*" *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 7 (Nav. Sup. Ct. August 26, 2004).

3. Jurisdiction

"We believe that if the Council had intended to make Section 555(D) a jurisdictional condition that all trials against the sovereign be heard in Window Rock, it would have said so. It could have used the same 'jurisdictional condition precedent' language but it did not, and we therefore decline to extend the jurisdictional language of § 555(A) to § 555(D)." *Judy v. White*, No. SC-CV-35-02, slip op. at 11-12 (Nav. Sup. Ct. August 2, 2004).

"Therefore, as a 'jurisdictional condition precedent,' 1 N.N.C. § 555(A), the plaintiff is required to name each defendant and the claim against that defendant." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 5 (Nav. Sup. Ct. March 11, 2004).

"The Ramah District Court transferred the case to the Window Rock District Court at the request of the Navajo Nation Department of Justice, pursuant to 1 N.N.C. § 555(D)." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 3 (Nav. Sup. Ct. March 11, 2004).

Formerly § 355. "As a jurisdictional condition precedent to suit against the Navajo Nation, the plaintiff must comply with the provisions of 1 N.T.C. § 355." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

4. Procedures, generally

"The transfer to Window Rock pursuant to 1 N.N.C. § 555(D) may be demanded at any time at or before the time of answering. In this case, White's identity as a protected entity was not settled until disposition of the motions for failure to state a claim, at which time White could have made a second demand to transfer pursuant to § 555(D)." *Judy v. White*, No. SC-CV-35-02, slip op. at 14 (Nav. Sup. Ct. August 2, 2004).

"In a suit against the Navajo Nation, where a timely demand to transfer is made by the Department of Justice pursuant to Section 555(D), the trial court is obligated to transfer the case and the failure to do so may lead to a mandamus action compelling transfer." *Judy v. White*, No. SC-CV-35-02, slip op. at 12 (Nav. Sup. Ct. August 2, 2004).

"When the Department of Justice makes proper and timely demand for transfer, the Court is without discretion to deny it. The authority to request a transfer pursuant to 1 N.N.C. § 555(D) is limited to the Department of Justice, however, and no other party or entity, including the Court, may raise it. If suit is brought in a district other than Window Rock, and the Department of Justice fails to make a proper and timely request for transfer, then the trial

will remain in the initial district." *Judy v. White*, No. SC-CV-35-02, slip op. at 12 (Nav. Sup. Ct. August 2, 2004).

" ... [W]hile Loley has submitted his sum certain damages, a damages hearing is always necessary for the Navajo Nation to defend its treasury." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 412 (Nav. Sup. Ct. 1999).

"While a Navajo Nation government agency need not file an answer to a complaint under 1 N.N.C. § 555(B), it is not free to extend that privilege to ignore the valid orders of the [Labor] Commission (or a court for that matter). Once the Navajo Nation has been afforded its sovereign protection, it will be held to the same standards and responsibilities of any litigant." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 409 (Nav. Sup. Ct. 1999).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

5. Immunity

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

Chapter 7. Membership in the Navajo Nation

History

Revision note. Sections 501-505 were redesignated §§ 701-705 for numerical consistency.

Subchapter 1. General Provisions

§ 701. Composition

The membership of the Navajo Nation shall consist of the following persons:

A. All persons of Navajo blood whose names appear on the official roll of the Navajo Nation maintained by the Bureau of Indian Affairs.

B. Any person who is at least one-fourth degree Navajo blood, but who has not previously been enrolled as a member of the Navajo Nation, is eligible for membership and enrollment.

C. Children born to any enrolled member of the Navajo Nation shall automatically become members of the Navajo Nation and shall be enrolled, provided they are at least one-fourth degree Navajo blood.

History

CF-12-54, February 26, 1954.

CJ-50-53, July 20, 1953.

CM-36-53, May 21, 1953.

CM-12-51, May 7, 1951.

Tribal Council Resolution, January 18, 1938, 1922-1951 Res. p. 648.

Annotations

1. Construction and application

"While there is a formal process to obtain membership as a Navajo, [....], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 702. Adoption as not possible

A. No Navajo law or custom has ever existed or exists now, by which anyone can ever become a Navajo, either by adoption, or otherwise, except by birth.

B. All those individuals who claim to be a member of the Navajo Nation by adoption are declared to be in no possible way an adopted or honorary member of the Navajo People.

History

Tribal Council Resolution 1922-1951 Res. p. 647, March 13, 1934.

Cross References

Adoption generally, see 9 N.N.C. § 601 *et seq.*

§ 703. Member of another tribe

No person, otherwise eligible for membership in the Navajo Nation, may enroll as a member of the Navajo Nation, who, at the same time, is on the roll of any other tribe of Indians.

History

CJ-50-53, July 20, 1953.

§ 704. Authority of Government Services Committee

The Government Services Committee of the Navajo Nation Council is authorized and directed:

A. To make and promulgate all necessary rules and regulations for establishing eligibility for membership and enrollment in the Navajo Nation;

B. To establish basic standards and requirements of proof required to determine eligibility for membership and enrollment; and

C. To prescribe forms of application for enrollment, and establish dates or designated periods for enrollment.

History

CJY-70-69, July 24, 1969.

CF-12-54, February 26, 1954.

Cross References

Eligibility for membership generally, see § 701 of this title.

Oversight authority of the Government Services Committee, see 2 N.N.C. § 343(B) (4).

§ 705. Renunciation of membership

Any enrolled member of the Navajo Nation may renounce his membership by written petition to the President of the Navajo Nation requesting that his name be stricken from the Navajo Nation roll. Such person may be reinstated in the Navajo Nation only by the vote of a majority of the Navajo Nation Council.

History

CJ-50-53, July 20, 1953.

Subchapter 3. Enrollment Procedure

History

Revision note. Sections 551-560 were redesignated §§ 751-760 for numerical consistency.

Code of Federal Regulations

Enrollment appeals, see 25 CFR § 62.1 *et seq.*

Preparation of rolls of Indians, see 25 CFR § 61.1 *et seq.*

§ 751. Application for enrollment

Anyone wishing to apply for enrollment in the Navajo Nation may submit an application pursuant to 1 N.N.C. § 760. Such application must be verified before a notary public.

History

ACS-39-55, September 7, 1955.

Annotations

1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [....], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 752. Enrollment Screening Committee; action by Government Services Committee

A. An Enrollment Screening Committee consisting of the Navajo Nation President, the Vice-President, the Executive Director of the Division of Natural Resources, the Agency Census Clerk, and the Attorney General is established. The Enrollment Screening Committee shall consider all applications for enrollment in the first instance.

B. In all cases where the records of the Navajo Agency do not show that the applicant is of at least one-fourth degree Navajo blood or the applicant does not establish such fact by documentary evidence independent of his own statement, consisting of the affidavits of disinterested persons, certified copies of public or church records, or the like, the Screening Committee shall reject the application. In all cases where the applicant appears to be enrolled in another Indian tribe, the Screening Committee shall reject the application. In all cases the Screening Committee or any successor committee lawfully established shall inform the applicant of his or her rights of appeal under this Section. The Committee or its successor shall establish a record of any hearing or proceeding on any application, and this record shall contain the evidence used by the Committee in making its decision, a statement of its decision, and its reasons therefore, and the date.

C. The Committee or its successor shall transmit this record established under Subsection (B) to an appropriate District Court of the Navajo Nation and a copy to the Office of the Prosecutor.

History

CJY-70-69, July 24, 1969.

ACS-39-55, September 7, 1955.

Revision note. The "Attorney General" was substituted for "Legal Advisor". See 2 N.N.C. § 1961 (B).

"Executive Director of the Division of Natural Resources" was substituted for "Director of Land Investigations" in light of 2 N.N.C. § 1901 *et seq.*

Subsection (B) slightly reworded for statutory clarity.

Annotations

1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [....], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 753. Standards for Screening Committee recommendations

The Screening Committee shall be guided by the following standards in making its recommendations:

A. If the applicant appears to be a Navajo Indian of full blood it shall recommend approval.

B. If the applicant appears to have Navajo blood of one-fourth degree or higher, but not full blood, it shall base its recommendations on his degree of Navajo blood, how long he has lived among the Navajo People, whether he is presently living among them, whether he can be identified as a member of a Navajo clan, whether he can speak the Navajo language, and whether he is married to an enrolled Navajo. The Screening Committee is authorized to make investigations to determine such facts, but the burden of proof in all cases shall rest on the applicants.

History

ACS-39-55, September 7, 1955.

Annotations

1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [....],

that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 754. Appeals from Screening Committee-District Courts

The District Courts of the Navajo Nation shall have original jurisdiction to hear and decide appeals from decisions of the Enrollment Screening Committee or any successor committee lawfully established by the Government Services Committee of the Navajo Nation Council pursuant to 1 N.N.C. § 704.

History

CJY-70-69, July 24, 1969.

ACS-39-55, September 7, 1955.

CF-12-54, February 12, 1954.

CJ-50-53, July 20, 1953.

Revision note. "Trial Courts" changed to "District Courts".

Transfer of pending cases. CJY-70-69, § 2F, provided that all cases presently pending before the Advisory Committee of the Navajo Nation shall be transferred to the Navajo Nation Courts.

Annotations

1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [....], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 755. Navajo Nation Supreme Court

The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from any judgment of the District Court of the Navajo Nation in any case involving an application for enrollment and membership in the Navajo Nation, and the decision of the Supreme Court in any such appeal shall be final and binding upon the parties.

History

CJY-70-69, July 24, 1969.

Revision note. "Appeals Court" changed to "Navajo Nation Supreme Court".
"Trial Court" changed to "District Court".

§ 756. Application of rules and regulations

The District Courts, and the Supreme Court of the Navajo Nation shall consider, apply, and be bound by any rules or regulations governing eligibility for membership, and other aspects of applications for enrollment in the Navajo Nation, established by the Navajo Nation Council or by the Government Services Committee of the Navajo Nation Council, pursuant to authorization by the Navajo Nation Council.

History

CJY-70-69, § 2C, July 24, 1969.

Revision note. "Appeals Court" changed to "Navajo Nation Supreme Court".
"Trial Courts" changed to "District Courts".

Annotations

1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [....], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 757. Appeals

The Navajo Nation, through the Navajo Nation Prosecutor, or the applicant may appeal any decision of the Screening Committee or its lawful successor, or District Court of the Navajo Nation authorized to hear and determine cases of applications for enrollment, within the time provided by law for appeals from judgments of the District Courts of the Navajo Nation. The decision of the Screening Committee or its lawful successor, or the decision of any District Court of the Navajo Nation in any case of an application for enrollment shall be final and binding upon the parties, if no appeal is taken within the time prescribed.

History

CJY-70-69, July 24, 1969.

Revision note. "Trial Court" changed to "District Court".

Annotations

1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [....], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

§ 758. Order directing enrollment of applicant

The District Courts of the Navajo Nation shall enter an order directing the appropriate official of the Navajo Nation to enroll as a member of the Navajo Nation any applicant, if any judgment of the Screening Committee or its lawful successor, or of a District Court of the Navajo Nation, upholding the application for enrollment becomes final and binding pursuant to 1 N.N.C. § 757. The Supreme Court of the Navajo Nation shall enter an order directing the appropriate official or employee of the Navajo Nation to enroll as a member of the Navajo Nation any applicant whose application is upheld by the Supreme Court of the Navajo Nation.

History

CJY-70-69, July 24, 1969.

Revision note. "Trial Courts" changed to "District Courts". "Appeals Court" changed to "Supreme Court".

§ 759. Effectiveness of provisions

Applications for enrolling in the Navajo Nation may be acted upon from September 7, 1955, until further notice.

History

ACS-39-55, September 7, 1955.

§ 760. Form of application [Deleted]

History

See ACS-39-55, Exhibit A, September 7, 1955, regarding application form; current form may be obtained from Navajo Census Office.