

RESOLUTION

OF THE LAW AND ORDER COMMITTEE
OF THE 23RD NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - SECOND YEAR, 2016

AN ACTION

RELATING TO LAW AND ORDER; RECOMMENDING TO THE NAVAJO NATION PRESIDENT
THE APPOINTMENT OF CHRIS P. BENALLY AS NAVAJO NATION DISTRICT COURT
JUDGE

BE IT ENACTED:

Section One. Findings.

- A. The Navajo Nation established the Law and Order Committee as a Navajo Nation standing committee and as such gave LOC authority to recommend to the Navajo Nation President the permanent appointment of probationary judges. 2 N.N.C. §§ 164 (A) (9), 600 (A), 601 (BC) (10) (2012).
- B. The Law and Order Committee's purpose is "to protect the rights and interest of the Navajo People by improving the quality and effectiveness of the justice system within the Navajo Nation." 2 N.N.C. § 600 (C) (2) (2012).
- C. To improve the quality and effectiveness of the justice system, the Navajo Nation Judicial Branch needs to be fully staffed; however, the Navajo Nation Judicial Branch has seven vacancies for Navajo Nation District Court Judge position.
- D. Diné Traditional Law declares and teaches that the Legislative Branch leaders shall enact laws to address the immediate and future needs. 1 N.N.C. § 203 (D) (2009).
- E. While the Navajo Nation Code, Title 2, states that Navajo Nation President shall appoint District Court Judges "only from among those named in the panel submitted" by the Law and Order Committee, in order to address the Navajo Nation Judicial Branch's immediate and future needs, the Law and Order Committee contends that submitting one applicant to the Navajo Nation President is sufficient because the Navajo Nation Council requires the Law and Order Committee to use Iiná, here the effective and efficient outcome is a fully staffed Judicial Branch. 2 N.N.C. § 601 (B) (7) (b) (2012).
- F. Therefore, upon the Law and Order Committee's recommendation, the Navajo Nation President shall appoint a District Court Judge

subject to Navajo Nation Council's confirmation. 2 N.N.C. § 601 (B) (7) (2012).

G. The Law and Order Committee reviewed the applicant's qualifications for judicial appointment. 2 N.N.C. § 601 (B) (7) (a) (2012). See Exhibit A.

H. The Law and Order Committee determine that Chris P. Benally meets the qualifications for appointment as a probationary Navajo Nation District Court Judge and is the most qualified candidate. 2 N.N.C. § 601 (B) (7) (2012).

Section Two. Recommendation for Probationary Appointment

A. The Law and Order Committee recommends to the Navajo Nation President that Chris P. Benally be considered for probationary appointment as District Court Judge, subject to the Navajo Nation Council's confirmation. 2 N.N.C. § 601 (B) (7) (2012).

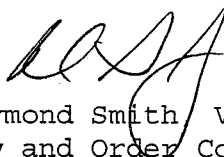
B. At any time during Mr. Benally's probationary term, the Law and Order Committee may recommend to the Navajo Nation President that he be removed from office. 2 N.N.C. § 601 (B) (9) (2012) and 7 N.N.C. § 355 (D) (2009).

Section Three. Directive

The Office of Legislative Services shall immediately submit to the Navajo Nation President all documents provided by the applicant recommended for appointment. Confidential information within application documents shall remain protected except upon authorized disclosure by the applicant. 2 N.N.C. § 81 et seq. (2009).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Law and Order Committee of the Navajo Nation Council at a duly called meeting at North Conference Room, Navajo Nation Council, Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor and 0 opposed, this 16th day of February, 2016.



Raymond Smith Vice-Chairperson
Law and Order Committee

Motion: Honorable Otto Tso
Second: Honorable Jonathan Perry

EXHIBIT A

District Court Qualifications: 7 N.N.C. §354 (A)	
Navajo Nation Code Title 7	Applicant: Chris P. Benally
Navajo Nation member: 7 N.N.C. §354 (A)(1)	Yes: EXHIBIT A-2
Over 30 years of age: 7 N.N.C. §354 (A)(1)	Yes: EXHIBIT A-3
Criminal Convictions: 7 N.N.C. §354 (A)(2) No Felonies No misdemeanors within five years prior to application	None: EXHIBIT A-4 Misdemeanor in 1998: EXHIBIT A-1 *Applicant disclosed a misdemeanor on his application; however, the Navajo Nation Office of Background Investigations did not indicate the 1998 misdemeanor.
Education: Juris Doctor particular preference given: 7 N.N.C. §354 (A)(3)	Juris Doctor: EXHIBIT A-5
Experience: 4 years in law related area 7 N.N.C. §354 (A)(4)	Three month externship with the Navajo Nation Judicial Branch and summer externship with the Utah County Public Defenders. EXHIBIT A-1
Navajo Language, Culture, and Tradition Knowledge: 7 N.N.C. §354 (A)(5) Must speak both English and Navajo Understanding of K'é Understanding of traditional religious ceremonies Understanding of traditional lifestyle	Speaks Navajo and possess an understanding of Navajo culture and tradition. EXHIBIT A-6
Health: 7 N.N.C. §354 (A)(6)	EXHIBIT A-7
Driver's License: 7 N.N.C. §354 (A)(7)	Arizona: EXHIBIT A-8
No Substance Abuse or Addition: 7 N.N.C. §354 (A)(8)	EXHIBIT A-9
Writing Test: 7 N.N.C. §354 (A)(9)	EXHIBIT A-10
Ethics: 7 N.N.C. §354 (A)(10)	EXHIBIT A-11
References: 7 N.N.C. §354 (A)(11)	EXHIBIT A-12
Management Ability: 7 N.N.C. §354 (A)(12)	Professional Development Ribbon and completed the Primary Leadership Development Course. EXHIBIT A-13
Navajo Nation Bar Association: 7 N.N.C. §354 (A)(13)	EXHIBIT A-14

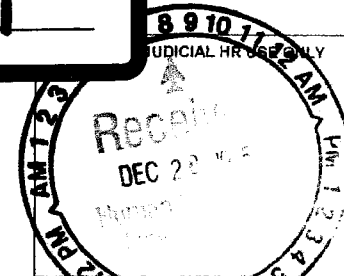


JUDICIAL BRANCH OF THE NAVAJO NATION

APPLICATION FOR EMPLOYMENT

PLEASE PRINT ALL INFORMATION (NO RED PENS)

EXHIBIT
A-1



SECTION I: Applicant Information (Please Fill Out Completely)

SOCIAL SECURITY NUMBER		FIRST NAME		MIDDLE INITIAL	LAST NAME	
		Chris		P	Benally	
OTHER NAMES USED IF APPLICABLE		MAILING ADDRESS		CITY	STATE	ZIP CODE
DRIVER'S LICENSE NUMBER		TYPE	CLASS	STATE	EXPIRATION DATE (MM/DD/YYYY)	
		<input type="checkbox"/> CDL <input checked="" type="checkbox"/> OPERATOR	D	Arizona	02/22/2040	
TELEPHONE NUMBER		MESSAGE NUMBER		E-MAIL ADDRESS		
ARE YOU AN ENROLLED MEMBER OF THE NAVAJO TRIBE?			IF YES, INDICATE CENSUS NUMBER		IF NO, STATE NATIONALITY	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO						
ARE YOU A VETERAN?			DO YOU WISH TO CLAIM VETERANS' PREFERENCE?			
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
If not previously submitted, please provide a copy of DD Form 214/215/225			If Yes, please attach an Application for Veterans' Employment Preference			
ARE YOU CURRENTLY EMPLOYED WITH THE NAVAJO NATION, SUCH AS THE EXECUTIVE OR LEGISLATIVE BRANCH OR ITS ENTERPRISES?			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

SECTION II: Position Information (Please Fill Out Completely)

POSITION NUMBER	CLASS CODE	POSITION TITLE
0	9013	District Court Judge

SECTION III: Applicant Education History (Please Fill Out Accurately and Completely)

SCHOOL NAME	DATE		DEGREE / CERTIFICATE	FIELD OF STUDY
	FROM	TO		
Page High School Page, Arizona 86040	08/89	05/01/1993	Diploma	
Utah Valley University Orem, Utah 84658	08/05	Aug-08	Associate Degree Bachelor's Degree	Criminal Justice
J. Reuben Clark Law School Provo, Utah 84601	08/12	April, 2015	Juris Doctorate	Law
Arizona Welding Institute	07/01	Oct-01	Welding Certificate	Welding

PLEASE LIST ALL ADDITIONAL TRAINING, SPECIALTIES, AND CERTIFICATIONS TO THE POSITION YOU ARE APPLYING FOR. PLEASE INCLUDE DATES OF TRAINING.

Non-Commissioned Officer In the United States Army, Counseled and Mentored American Soldiers from across the United States.

Navajo Nation Attorney, sworn in on November 10, 2015

PLEASE LIST ALL ADDITIONAL EMPLOYMENT EXPERIENCE, IF APPLICABLE.

Externed with the Utah County Public Defenders Association, Provo Utah.

Externed with the U.S. Department of Interior in Salt Lake City Utah.

Externed with the Navajo Nation Supreme Court

The Judicial Branch of the Navajo Nation gives preference to eligible and qualified applicants in accordance with the Navajo Preference in Employment Act (NPEA) and the Veterans' Preference of the Navajo Nation.

NAME OF REFERENCE	OFFICIAL TITLE	TELEPHONE NUMBER
1.	Professor, JD	801-367-5022
2.	Professor, JD	801-239-3428
3.	Department of Interior, BIA, Solicitor	801-524-5677 ext 223

SECTION IV: Applicant Disclosure (Please Fill Out Completely)

HAVE YOU EVER BEEN CONVICTED OF A FELONY? * ☐ YES ☒ NO YES, GIVE DATE AND REASON. ATTACH ADDITIONAL SHEET IF NECESSARY

HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR? * ☒ YES ☐ NO IF YES, GIVE DATE AND REASON

DO YOU CURRENTLY HOLD ANY POLITICAL OR PUBLIC OFFICE(S), I.E. CHAPTER OFFICIAL, GRAZING COMMITTEE, FAIR BOARD, COUNCIL DELEGATE? IF YES, PLEASE LIST BELOW: ☐ YES ☒ NO

* PLEASE NOTE: A conviction does not automatically disqualify you, however a NON-DISCLOSURE will result in your application for employment to be incomplete and will not be considered for the position you are applying for.

ARE YOU RELATED TO ANYONE CURRENTLY EMPLOYED WITH THE JUDICIAL BRANCH OF THE NAVAJO NATION? ☐ YES ☒ NO

NAME: RELATIONSHIP:

NAME: RELATIONSHIP:

SECTION V: Applicant Employment History - Provide Complete Information As Possible. (Please Do Not Indicate "SEE RESUME") Start With Most Recent First.

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)	OFFICIAL JOB TITLE
International Brotherhood of Boilermakers Local Lodge #627	FROM 10/15/2015 TO 10/31/2015	Union Boilermaker
2345 W. Thomas Rd, Phoenix, Az. 85015	TELEPHONE NUMBER (602)495-1282	REASON FOR LEAVING Lack of Work
	IMMEDIATE SUPERVISOR:	Jacob Evenson

DESCRIBE DUTIES AND RESPONSIBILITIES: Was employed as a stainless steel high pressure tube welder, conducted rigging in the annual overhaul of San Jaun Powerplant in Farmington, New Mexico. Also ensured contractor abided by International Brotherhood o Boilermakers contractor rules, although I was not the Union Steward.

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)	OFFICIAL JOB TITLE
Judicial Branch of the Navajo Nation	FROM 01/05/2015 TO 04/06/2015	Semester Extern
	TELEPHONE NUMBER 928-871-7023	REASON FOR LEAVING Extern complete
	IMMEDIATE SUPERVISOR:	Ms. Laverne Garamez

DESCRIBE DUTIES AND RESPONSIBILITIES: Assisted in organizing files, daily activities. Gained experience in writing orders and became familiar with Navajo Nation Court Cases. Observed meeting with the Supreme Court Justices and enrolled in a 1 week Navajo Judicial class. Drove 70 miles, one way, for over two months using own finances and took out student loans to finance this extern. Repaired own vehicle several times.

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)		OFFICIAL JOB TITLE
Lauren Engineers and Constructors	FROM 07/01/2014	TO 08/01/2014	Combo Welder
901 South First Street	TELEPHONE NUMBER 801-397-6007		REASON FOR LEAVING Semester Began for last year of law school
Abilene, Texas 79602	IMMEDIATE SUPERVISOR:		Robert Alba
DESCRIBE DUTIES AND RESPONSIBILITIES			
Employed as a combo welder, welding high pressure piping for a new refinery addition. Raised money for school and my family. Woke up at 3 am and returned home by 7:30 pm.			
EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)		OFFICIAL JOB TITLE
U.S. Department of Interior	FROM 05/01/2014	TO 06/10/2014	Extern
125 South State Street, Rm 6107	TELEPHONE NUMBER 801-524-5677		REASON FOR LEAVING Extern Complete
Salt Lake City, Utah 84158	IMMEDIATE SUPERVISOR:		Mr. Grant Vaughn
DESCRIBE DUTIES AND RESPONSIBILITIES			
Gained experience in legal research and wrote an advisory memorandum recommending the course of action the Bureau of Interiors actions dealing with a local tribe's interest.			
Applied Federal and State cases and regulations on this project. Attended briefings from Bureau of Land Management, National Park Services, and Bureau of Reclamation.			
EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)		OFFICIAL JOB TITLE
CH2MHILL	FROM 07/01/2013	TO Aug/20/2013	Combo Welder
9191 S. Jamaica St.	TELEPHONE NUMBER 720-286-2000		REASON FOR LEAVING Semester began for Law School
IMMEDIATE SUPERVISOR:			
DESCRIBE DUTIES AND RESPONSIBILITIES			
Employed in Lindon, Utah in new construction as a welder, rigger in a team. Raised funds for law school and my family.			
EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)		OFFICIAL JOB TITLE
Utah County Public Defenders	FROM 05/01/2013	TO 06/15/2013	Summer Extern
51 S. University Ave. #206	TELEPHONE NUMBER 801-852-1070		REASON FOR LEAVING Extern Complete
Provo, Utah 84601	IMMEDIATE SUPERVISOR:		Ms. Deborah Hill
DESCRIBE DUTIES AND RESPONSIBILITIES			
Gained experience in criminal court proceedings ranging from attending morning arraignments for indigent criminal defendants, attended client interviews, court depositions, jury voir diras, trials, hearings, and sentencing of clients. Gained experience in legal research and wrote memoes on behalf of indigent defendants.			

SECTION VI: Judicial Branch Applicant Statement - Please Read Carefully and Sign

THE INFORMATION THAT I HAVE PROVIDED ON THIS APPLICATION IS TRUE AND COMPLETE. ANY MISREPRESENTATION OR OMISSION OF ANY FACT IN MY APPLICATION FOR EMPLOYMENT WITH THE JUDICIAL BRANCH OF THE NAVAJO NATION, OR ANY OTHER MATERIAL(S) USED IN THE APPLICATION PROCESS, OR INFORMATION OFFERED DURING ANY INTERVIEWS, CAN BE JUSTIFICATION FOR REFUSAL OF EMPLOYMENT, OR IF EMPLOYED, TERMINATION FROM EMPLOYMENT WITH THE JUDICIAL BRANCH OF THE NAVAJO NATION. MY SIGNATURE BELOW AUTHORIZES THE JUDICIAL BRANCH OF THE NAVAJO NATION TO CONTACT ANY OF MY PRIOR EMPLOYERS FOR REFERENCE PURPOSES AND THAT I UNDERSTAND THAT A CRIMINAL BACKGROUND CHECK AND INVESTIGATION OF MY BACKGROUND TO DETERMINE ANY AND ALL INFORMATION CONTAINED IN THIS APPLICATION FOR EMPLOYMENT, AND I RELEASE EMPLOYERS AND PERSONS NAMED IN MY APPLICATION FROM ALL LIABILITY FOR ANY DAMAGES ON ACCOUNT OF HIS/HER FURNISHING OF SAID INFORMATION.

SPECIFICALLY, YOU ARE HEREBY AUTHORIZED TO MAKE ANY INVESTIGATION OF MY PERSONAL HISTORY, EDUCATIONAL BACKGROUND, MILITARY RECORD, MOTOR VEHICLE RECORDS UTILIZING FEDERAL, STATE, OR LOCAL NAVAJO NATION LAW ENFORCEMENT AGENCY OR BUREAU OF YOUR CHOICE. I AUTHORIZE THE RELEASE OF THIS INFORMATION BY THE APPROPRIATE AGENCIES TO THE INVESTIGATING SERVICE.

SIGNATURE Chari' Bandy

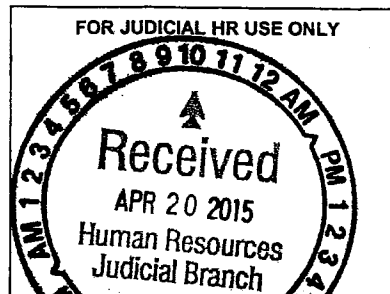
DATE 12/23/2015



JUDICIAL BRANCH OF THE NAVAJO NATION

APPLICATION FOR EMPLOYMENT

PLEASE PRINT ALL INFORMATION (NO RED PENS)



SECTION I: Applicant Information (Please Fill Out Completely)

SOCIAL SECURITY NUMBER	FIRST NAME	MIDDLE INITIAL	LAST NAME
	CHRES	P	Basally
OTHER NAMES USED IF APPLICABLE	MAILING ADDRESS	CITY	STATE
DRIVER'S LICENSE NUMBER	TYPE	CLASS	STATE
	<input type="checkbox"/> CDL <input checked="" type="checkbox"/> OPERATOR	D	AZ
TELEPHONE NUMBER	MESSAGE NUMBER	E-MAIL ADDRESS	
ARE YOU AN ENROLLED MEMBER OF THE NAVAJO TRIBE?		IF YES, INDICATE CENSUS NUMBER	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		If not previously submitted, please attach copy of CIB	
ARE YOU A VETERAN?		DO YOU WISH TO CLAIM VETERANS' PREFERENCE?	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
If not previously submitted, please provide a copy of DD Form 214/215/225		If Yes, please attach an Application for Veterans' Employment Preference	
ARE YOU CURRENTLY EMPLOYED WITH THE NAVAJO NATION, SUCH AS THE EXECUTIVE OR LEGISLATIVE BRANCH OR ITS ENTERPRISES?			
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

SECTION II: Position Information (Please Fill Out Completely)

POSITION NUMBER	CLASS CODE	POSITION TITLE
000000	9013	District Court Judge

SECTION III: Applicant Education History (Please Fill Out Accurately and Completely)

NAME AND LOCATION OF SCHOOL	DATES ATTENDED (MM/YY)		GED/DIPLOMA/DEGREE RECEIVED	MAJOR/MINOR
	FROM	TO		
HIGH SCHOOL				
PAGE HIGH SCHOOL PAGE, ARIZONA 86040	AUG 1989	MAY 1993	Diploma	
COLLEGE/UNIVERSITY				
UTAH VALLEY UNIVERSITY OREM, UTAH 84058	AUGUST 2005	AUGUST 2008	Associate Degree Bachelor's Degree	Criminal Justice
COLLEGE/UNIVERSITY				
J. ROBERT CLARK LAW SCHOOL PROVO, UTAH 84601	AUG 2012	APRIL 2015	LAW DEGREE	LAW
TECHNICAL/VOCATIONAL/BUSINESS SCHOOL				
ARIZONA WELDING INSTITUTE PAGE, ARIZONA 86040	JULY 2001	OCT 2001	Welding Certificate	Welding

PLEASE LIST ALL ADDITIONAL JOB RELATED TRAINING AND CERTIFICATES RELEVANT TO THE POSITION YOU ARE APPLYING FOR. PLEASE INCLUDE DATES OF TRAINING.

Noncommissioned officer in U.S. ARMY, counseled and mentored soldiers from across the United States.

PLEASE LIST ALL SUPPLEMENTAL JOB RELATED SKILLS LIST AS THOROUGHLY AS POSSIBLE.

Externed with the Department of Interior, Salt Lake City.
Externed with Utah County Public Defenders, Provo, UTAH.

The Judicial Branch of the Navajo Nation gives preference to eligible and qualified applicants in accordance with the Navajo Preference in Employment Act (NPEA) and the Veterans' Preference of the Navajo Nation.

REFERENCES: PLEASE LIST THOSE NOT RELATED TO YOU WHO HAVE ABSOLUTE KNOWLEDGE IN YOUR WORK QUALIFICATIONS AND CHARACTER.
DO NOT REPEAT NAMES OF SUPERVISORS LISTED IN WORK HISTORY BELOW

NAME OF REFERENCE

OFFICIAL TITLE

TELEPHONE NUMBER

Professor JD

801-367-5022

Professor JD

571-239-3428

Dir of Interior, BIA, SLC

801-524-5677 ext 223

SECTION IV: Applicant Disclosure (Please Fill Out Completely)

AVE YOU EVER BEEN CONVICTED OF A FELONY? *
CLUDES, FEDERAL AND STATE CONVICTIONS

☐ YES ☒ NO

IF YES, GIVE DATE AND REASON.
ATTACH ADDITIONAL SHEET IF NECESSARY

AVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR? *
YES, GIVE DATE AND REASON

☒ YES ☐ NO

DO YOU CURRENTLY HOLD ANY POLITICAL OR PUBLIC OFFICE(S), I.E. CHAPTER OFFICIAL,
RAZING COMMITTEE, FAIR BOARD, COUNCIL DELEGATE? IF YES, PLEASE LIST BELOW:

☐ YES ☒ NO

* PLEASE NOTE: A conviction does not automatically disqualify you, however a NON-DISCLOSURE will result in your application for employment to be incomplete and will not be considered for the position you are applying for.

ARE YOU RELATED TO ANYONE CURRENTLY EMPLOYED WITH THE JUDICIAL BRANCH OF THE NAVAJO NATION?

☐ YES ☒ NO

NAME:

RELATIONSHIP:

NAME:

RELATIONSHIP:

SECTION V: Applicant Employment History - Provide Complete Information As Possible. (Please Do Not Indicate "SEE RESUME") Start With Most Recent First.

EMPLOYER'S NAME AND MAILING ADDRESS

DATES EMPLOYED
(MM/DD/YYYY)

OFFICIAL JOB TITLE

LAWAN Engineers & Constructors

FROM July 2014 TO Aug 2014

Combo welder

901 South First Street

TELEPHONE NUMBER
801-394-6007

REASON FOR LEAVING
School in,

Abilene, Texas 79602

IMMEDIATE SUPERVISOR: Robert ALBA

DESCRIBE DUTIES AND RESPONSIBILITIES: Was a comb welder, welding high pressure piping for new construction at Holly Refinery in Woods Cross, Utah. Welded 2 inch - 16 inch pipes approximately sixty feet in elevation.

EMPLOYER'S NAME AND MAILING ADDRESS

DATES EMPLOYED
(MM/DD/YYYY)

OFFICIAL JOB TITLE

US Department of Interior

FROM 05/2014 TO 06/2014

Extern

125 South State Street RM 6107

TELEPHONE NUMBER
801-524-5677

REASON FOR LEAVING
Extern completed

Salt Lake City, Utah 84138

IMMEDIATE SUPERVISOR: GRANT VANHORN

DESCRIBE DUTIES AND RESPONSIBILITIES: Conducted legal research, and wrote memo of recommendation on an assigned task, using Federal Indian law, Utah state law, and Federal Statutes.

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)	OFFICIAL JOB TITLE
CH2 M HILL	FROM July 2013 TO Aug 2013	Combo Welder
9191 S. Jamaica Street.	TELEPHONE NUMBER 720-286-2000	School in
Englewood, Colorado 80112	IMMEDIATE SUPERVISOR: Jay	
DESCRIBE DUTIES AND RESPONSIBILITIES		
Worked in Lindon Utah as a combo welder, rigging and as a mechanic. Worked shielded metal arc welding and plasma torches on carbon and stainless pipes.		

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)	OFFICIAL JOB TITLE
Utah County Public Defender	FROM MAY 2013 TO JUN 2013	Extern
515. University Ave #206	TELEPHONE NUMBER 801-852-1070	Extern complete
Provo, Utah 84601	IMMEDIATE SUPERVISOR: Deborah Hill	
DESCRIBE DUTIES AND RESPONSIBILITIES		
Shadowed Public defender in court houses, client interviews, depositions, jury voir dire, trials, and hearings, including bail hearings. Conducted legal criminal research and wrote defense memos.		

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)	OFFICIAL JOB TITLE
Balsack & Nilcox Construction	FROM JAN 2012 TO MAY 2012	Boilermaker Tube Welder
20 South Van Buren Avenue	TELEPHONE NUMBER 330-753-4511	Lay off
Barberham, OHIO 44203-0351	IMMEDIATE SUPERVISOR: Gerald Hatablie	
DESCRIBE DUTIES AND RESPONSIBILITIES		
Employed as a boilermaker, replaced chrome moly, heavy wall pipes for San Juan Powerplant in Farmington New Mexico. Conducted rigging and prepped ready to correctly install high pressure pipes.		

EMPLOYER'S NAME AND MAILING ADDRESS	DATES EMPLOYED (MM/DD/YYYY)	OFFICIAL JOB TITLE
Electrical Energy Maintenance & Construction	FROM Apr 2011 TO MAY 2011	Boilermaker tube welder
3030 LaPlata Hwy	TELEPHONE NUMBER 505-325-5003	LAY OFF
Farmington, New Mexico 87401	IMMEDIATE SUPERVISOR: Bedford Colorado.	
DESCRIBE DUTIES AND RESPONSIBILITIES		
Employed as Boilermaker at Albuquerque, New Mexico. Repaired cracked outer casing shell to a heat recovery system generator. Reinstall high pressure steam pipes.		

SECTION VI: Judicial Branch Applicant Statement - Please Read Carefully and Sign

THE INFORMATION THAT I HAVE PROVIDED ON THIS APPLICATION IS TRUE AND COMPLETE. ANY MISREPRESENTATION OR OMISSION OF ANY FACT IN MY APPLICATION FOR EMPLOYMENT WITH THE JUDICIAL BRANCH OF THE NAVAJO NATION, OR ANY OTHER MATERIAL(S) USED IN THE APPLICATION PROCESS, OR INFORMATION OFFERED DURING ANY INTERVIEWS, CAN BE JUSTIFICATION FOR REFUSAL OF EMPLOYMENT, OR IF EMPLOYED, TERMINATION FROM EMPLOYMENT WITH THE JUDICIAL BRANCH OF THE NAVAJO NATION. MY SIGNATURE BELOW AUTHORIZES THE JUDICIAL BRANCH OF THE NAVAJO NATION TO CONTACT ANY OF MY PRIOR EMPLOYERS FOR REFERENCE PURPOSES AND THAT I UNDERSTAND THAT A CRIMINAL BACKGROUND CHECK AND INVESTIGATION OF MY BACKGROUND TO DETERMINE ANY AND ALL INFORMATION CONTAINED IN THIS APPLICATION FOR EMPLOYMENT, AND I RELEASE EMPLOYERS AND PERSONS NAMED IN MY APPLICATION FROM ALL LIABILITY FOR ANY DAMAGES ON ACCOUNT OF HIS/HER FURNISHING OF SAID INFORMATION.

SPECIFICALLY, YOU ARE HEREBY AUTHORIZED TO MAKE ANY INVESTIGATION OF MY PERSONAL HISTORY, EDUCATIONAL BACKGROUND, MILITARY RECORD, MOTOR VEHICLE RECORDS UTILIZING FEDERAL, STATE, OR LOCAL NAVAJO NATION LAW ENFORCEMENT AGENCY OR BUREAU OF YOUR CHOICE. I AUTHORIZE THE RELEASE OF THIS INFORMATION BY THE APPROPRIATE AGENCIES TO THE INVESTIGATING SERVICE.

SIGNATURE Chris B. Kneiff

DATE April 15, 2015

The Navajo Nation Judicial Branch Peacemaking Program

presents this

Certificate of Completion

to

Chris Benally

for completing 30 hours of a Diné Bizaad class, emphasizing legal terminology, writing, Dine communication, comprehension, and reading. A six week program designed to preserve the Diné Bizaad Na'nitin, and to promote Diné Philosophy, language, and oral traditions. Awarded this 20th day February 2015.

Gloria Benally

Gloria Benally, Peacemaking Program Coordinator

Roger Begay

Roger Begay, Peacemaking Program Bi-Culture Manager



Herb Yazzie

Herb Yazzie, Chief Justice of the Navajo Nation

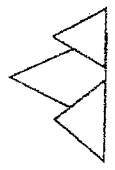
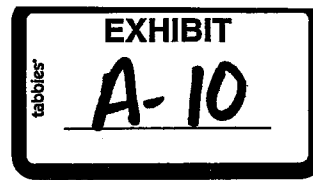


EXHIBIT
A-6

tabbies



Chris Benally
Ute Memo
TO: Grant Vaughn, BIA

ISSUE

1. Whether the US owes a trust responsibility to the Ute Tribe for the delivery of its water rights after completion of Central Utah Project?

FACTS:

The Uintah and Ouray Reservation were officially two separate reservations, the Uintah Reservation was formed in 1861 and in 1882 the Ouray Reservation was formed. The reservation holds three bands: the Uintah Ute Indians which Uintah Reservation was designated for, Ouray Ute Reservation which was portioned for the Whiteriver and Uncompaghre whom were relocated from Colorado. The current population of Uintah and Ouray Tribe is 3,157, from Utetribes.com. While the population of the Wasatch Front, as of 2008, where this water is now being used, is 2,125,322. According to the 2008 census.

In 1887, by President Cleveland officially designated 4 million acres for the Uintah and Ouray Reservation. In 1897, up to 1,004,285 acres of reservation land was opened under the Homestead Act for homesteading. Any individual that desired to take 80 acres of reservation land into private ownership, mostly fertile lands, were allotted those particular lands. The current land base is 1.3 million acres.

In 1905, applications were submitted to the Utah State Engineer to irrigate allotted lands. In 1906 congress authorized the Uintah Indian Irrigation Project, P.L. 59-258-34 Stat 325-76, these lands were categorized in to groups six groups. Group 1 lands are the most fertile lands and going down to Group 6, the most unproductive lands. Over a fifteen-year period, 78,950 acres of allotted group 1 and 2 lands were improved by the Uintah Indian Irrigation Project. This intermingled non-Indian and Indian water projects.

In 1938, "A study of economic condition on the Uintah Irrigation Project, Utah" was submitted to the US Department of Interior then to the 77th Congress for approval of the recommendations. This legislation failed, but some of the recommendations were implemented. The recommendations were Group 5-6 water rights to be transferred to group 1-3 lands. Attached to this was a "Plan for Rehabilitation", where the Bureau of Indian Affairs would eventually stop providing service to non-Indians that had gained lands during the allotment act.

In 1956, The U.S. Bureau of Reclamation planned the Central Utah Project, which was divided into four units, with the last unit being the Uintah and Ute Indian Unit.

In 1965, a Deferral Agreement was made with the encouragement of the BIA in exchange for the tribe postponing 15,242 acres of group 5 lands so their rights to 21,208 units of water would be recognized without the Utes resorting to litigation (4). Water storage facilities were to be built also by January 2005 according to this agreement, which was agreed to by the State of Utah and BIA.

The Utes' crux of the argument comes from section (5) of the Deferral Agreement, where it states "immediate equitable adjustments had to made to perfect the rights of the Utes to their immediate use of the water at that time."

The first three phases of the Central Utah Project was authorized by Congress in 1956, but the Uintah and Ute Indian Project was approved until 1968 and additional authorizations occurred in 1972 and 1988.

The Bureau of Indian Affairs could not continue to operate the irrigation project due to the costs it entailed. In February 1988, this led to the Uintah and Ouray Tribe's Business Committee to pass Resolution NO. 88-19, February 1988, where the Tribe expressed concern that the 1965 Deferral Agreement was not satisfied. Subsequently the tribe passed a similar

resolution NO. 88-124 making 14 requests to BIA.

In 1992, Congress enacted Public Law 102-575, this act only addressed 4 of those recommendations indirectly from the Ute Tribe's resolution No. 88.124. This Public Law was implemented into an ongoing water project. Recommendation from No. 88-124 from e/5 was, "the Secretary of Interior retained trust responsibility to the Ute Tribes", and m/13 "authorized the project Engineer to change the water delivery and sublateral water headings". Public Law 102-575 was not part of the Ute Water Settlement.

Under Public Law 102-575 Title V, Congress authorized the Ute Settlement by paying the Northern Tribe: \$49.0 million for agricultural development, \$29.5 million for recreation, fish and wildlife enhancement, and \$125 million for economic development. But this was not the intent of the Ute and Ouray Reservation tribes. Here, BIA states this is a remedy and satisfies the 1965 Deferral Agreement, by the wording "immediate equitable adjustment to perfect the rights of the Utes."

PLA 102-575 has seven sections, 501-507. 501(a) covers Congress' Findings, which has been the result of several lawsuits pertaining to unquantified Ute water rights.

In 1997 the Uintah Indian Irrigation Project Operation and Maintenance Company, (UIIPOMC), under resolution No. 97-005, was formed to maintain the Uintah Irrigation Project on the Uintah Reservation.

In 2000 UIIPOMC made agreement No. GTH000013 with the BIA to assume the operation and maintenance of the Uintah Irrigation Project on the Uintah Reservation.

In 1999, Uintah and Ouray Tribe refused to make any more agreements concerning their water rights. Currently they are threatening to sue BIA for breach of fiduciary trust responsibility, because the water storage facilities to provide water to Indians and non-Indians

alike have not been completed yet. According to the 1965 Deferral Agreement.

Record #1 1938 A Study of Economic Conditions on Uintah Irrigation Project, Utah. Reported to Secretary of Interior in 1940.

Positives - Proof of financial struggles for UIP project. Recommendations to transferring water to more productive lands were later implemented.

Negatives- Not passed by 76th House of Representatives although the Senate passed it.

Record #2 1965 Deferral Agreement

14 Agreements between Ute, Utah Water District and U.S.. Utes conceded water from 15,242 acres to CUPCA in exchange for recognition of Group 1,2,3,4,5 water rights with priority date 1861, without resorting to litigation.

Record #3 1988 February Resolution No. 88-19

Ute's concerned on 1965 Deferral Agreement. This resolution is basis for Ute Water Settlement , Title 5, of PL102-575(1992).

Record #4 1988 JULY Resolution No. 88-124 from Utes.

Basis for Ute disagreement with CUPCA, Title 2 of PL 102-575 (1992). Secretary of Interior to keep its Trust Responsibility, which Ute state he is neglecting, to build water storage facilities as mentioned in Deferral Agreement in 1965.

Record #5 1992 Public Law 102-575 (Congressional Action)

Took few suggestions from Resolution No. 88-124, divided and addressed two Ute issues.

1. Title 2 section 203 f., CUPCA, although it was not part of Title 5 it addresses Trust Responsibility directly in respect to CUPCA.

2. Title 5 Ute Indian Rights Settlement.

Title V (a)(1) ...Tribe and State negotiated but did not quantify Tribe's water.

Sec 501(a)(2) acknowledged unresolved issues from 1965 Deferral Agreement on "immediate equitable adjustments had to made to perfect the rights of the Utes to their immediate use of the water at that time."

Sec 501 Purpose (b)(3) Put the Ute in same economic condition as if 1965 Deferral Agreement was constructed.

Sec 503 (a) Congress would ratify Revised Ute Indian Compact if Utah and Ute Tribe ratify the Compact, which this has not occurred yet. Technically this compact has not been ratified yet.

Sec 503(e)(1) Federal water rights off reservation not approved.

(e)(2)- Does not constitute marketing of Ute water outside of Utah.

(e) (3) Shall not be considered that Congress authorized water marketing outside of Utah.

ANALYSIS:

The history of this case is complex in respects to this Nation's treatment of Native Americans. With the changing political parties from the various eras, has reflected on the Nations treatment of its Native Americans. Here we are dealing with the Uintah, Ouray, Uncompadre.

Where there has been a Treaty with Native Americans, Congress has to clearly state it is abrogating the treaty or agreement. In our case, the Ute treaty is still in force. When Congress does not clearly state it abrogates a treaty, the treaty is still in force. *Menominee Tribe v. United States*, 391 U.S. 404 (1968). In *Menominee*, the Court ruled Congress may only abrogate treaty rights when it explicitly says it is doing so, here Congress has not explicitly abrogated the agreement, therefore the agreement is still in force.

The Court also ruled ambiguities are to be resolved in favor of Indians, known as Canons of Construction. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). Because the government

wrote the treaties and not the Indians, the government is responsible for the different nuances of the agreements.

The Canons of Construction Doctrine could be ignored here as in *Montana v. United States*, 450 U.S. 544 (1981), there the navigable waters doctrine was applied. In our case, no other doctrine is available and the issue the Utes are asserting is the violation of trust responsibility, not navigable waters. As mentioned in Public Law 102-575 (2002), the Deferral Act has not been totally satisfied yet. Although under Title V, section 507 it reads "The Utes shall waive all claims under the 1965 Deferral Agreement", but then Title V Section 501 (b) (3) reads "The Utes should be placed in the same position as if the 1965 Deferral Agreement was satisfied", this makes PL 102-575 ambiguous. Which in turn triggers the Canons of Construction. That is to interpret this agreement, as the Tribe would have understood it.

Since Public Law 102-575 (2002 amendment) is the most recent Congressional action, although it states "The Revised... Compact... is hereby ratified and approved, subject to re-ratification by the State and the Tribe". If this paragraph is read in its full text, Title V Section 503 p1, has to be ratified by Congress once the Utes and State ratify it. Currently this Law has not been ratified yet by the Utes and State of Utah and therefore Congress has not ratified it yet. Here, Congress also bound itself by adding this wording.

Nevertheless, in Section 503 (e) in Public Law 102-575 (2002), in Rules of Construction, it states that Federal water off reservation (1) Tribal "marketing" outside of Utah (2) an Any holders outside of Utah (3) sale or lease of water shall not be deemed, in other words allowed. It did not state other rules of Construction.

FEDERAL TRUST RESPONSIBILITY –

The guardian/ward relationship was established in *Cherokee Nation v. Georgia*, 30 U.S.

1, (1831). The Court ruled the US is a settlor and trustee; tribes are beneficiary. Although the Utes stated in all contracts and agreements that the Secretary retain all its trust responsibilities, it is only when a statute or regulation imposes trust responsibility upon the Secretary, a trust responsibility is created. *U.S. v. Mitchell*, 463 U.S. 206 (1983). (*Mitchell II*).

In *Mitchell II* the Court ruled Indian timber management statutes created during the Allotment Act was an enforceable trust responsibility. This was created on behalf of Indians to have sustainable timber harvests; Indians could sue for federal mismanagement. But when there are no liability imposing statutes then there is no trust liability. *United States v. Mitchell*, 445 U.S. 535 (1980). *Mitchell I*.

The Supreme Court held the US had a trust responsibility in the upkeep of Fort Apache, because evidence pointed to (1) executive management of the property and (2) breach of trust duty. *U.S. v White Mountain Apache Tribe* 537 U.S. 465 (2003).

In the current situation the statute was enacted during the allotment era under the 1906 Congressional Public Law 59-258, the Uintah Indian Irrigation Project, so *Mitchell II* standard is satisfied. Over the course of hundred years, the government maintained the irrigation project but then put it to the wayside, as new political parties with goals contrary to the laws were placed into office. Congress has not yet passed a law abrogating statute PL 59-258. Until it does so, the United States still owes a trust responsibility to the Utes.

In *U.S. v. Navajo Nation* 537 U.S. 488 (2003), there was a conflict in coal contract pricing which the Navajo Nation disputed. The Court ruled the Secretary had no trust obligation to get the best pricing on coal to private parties, also this statute was not written during the allotment era, even though the statute has not been abrogated yet. Unless this agreement pertained to the sale of water, the issue here is the building water storage units, then this would

apply, but it does not.

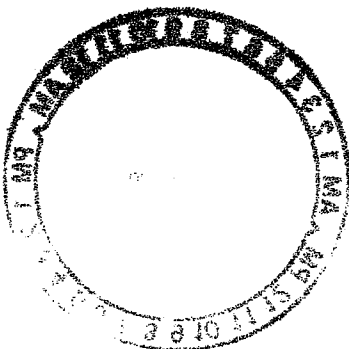
We could turn to other agreements that were written since 1906, but none of that point to canceling Ute water to the state. The Utes always wrote into the agreements the "Secretary retains its trust responsibility to the Ute". Whenever it disagreed with the contract it stopped negotiating and turned back to the Secretary to express their concerns.

RECOMMENDATION

The remedy I suggest is to build the storage units the Utes requested. The legislations passed by Congress since 1906, has not explicitly abrogated the agreement made to the Utes.

This is not an official memorandum of the Office of the Solicitor, U.S. Department of the Interior but an exercise to raise legal issues for consideration.

Grant L. Vaughn
Office of the Regional Solicitor
U.S. Department of Interior



2014 Navajo Election Directed Research
Chris Benally
Winter Semester 2015

(This paper was written while the 2014 election turmoil was still ensuing, before Navajo Nation Candidate Russell Begaye was elected into office and will be sworn in on May 12, 2015 as the new Navajo Nation President).

The 2014 Navajo Nation Election caused a controversy that gained national media attention. The Navajo Nation's statute, 11 N.N.C. § 8 (A) (4), reads that a Navajo Nation President "must *fluently* speak and understand Navajo." This caused one of the primary election winners, Chris Deschene (Day-sh)-(chee-knee), to be disqualified after being deemed he was not fluent in the Navajo language. As of April 13, 2015, the Court's ruling in SC-CV-68-14's is still being challenged by the President and the Navajo Nation Council, even though the Navajo Nation Supreme Court states it settled this issue.

A summary of this case. Deschene and 16 other candidates applied for the Navajo Nation Presidency. After the candidates' debate and primary election occurred, where Deschene and Shirley ended up winning the primary elections. Five months later before the General Election occurred, Deschene was challenged. Navajo Nation Office of Hearing and Appeals, OHA, initially rejected the complaint against Deschene but the Supreme Court reversed, stating Deschene violated a sworn statement that he made.

The Court relied on Rule 27 of the Navajo Rules of Civil Appellate Procedure to quickly try this case, although other cases have been on the books longer than the Deschene case. Under Rule 27, the Court has discretion to give cases pertaining to child custody and elections priority. To add to the confusion, the Navajo Nation Supreme Court does not have a building and had to hold across Navajo land at different court houses.

As the case proceeded, Deschene defended his stance successfully but in the end, refused to take the Navajo language test. On several occasions stated he did not speak the language proficiently. The Council attempted to pass legislation changing the language requirement statute, which the President initially vetoed but then eventually signed. The Council considers half of the enrolled members to not speak the Navajo language now, mostly young Navajos.

Currently, the Court still disqualifies Deschene and the elections are scheduled for April 21, 2015, without Deschene. The Council and the President have openly disagreed with the Court and the three branches have not come to an agreement yet but people are still voting. The credibility of the Navajo Nation government and the Courts are being questioned. There have been many protests, mainly from the disqualified candidate's camp, under the name "Disenfranchised Voters". The opposing parties are reasoning that this issue revolves on the language requirement, but the briefs filed are citing many other factors, that led up to this.

The Supreme Court states that it is applying the Dine fundamental law, which is to protect the Navajo Nation and keep it's culture and customs perpetual. Another argument the Court cited was that election requirements cannot be waived amidst an ongoing litigation.

The other two opposing branches reason demographics and values have and are still changing, and the Court needs to make an exception. Most of the educated Navajos are now gaining employment in Window Rock, Arizona, where the majority of the Nation's workforce is located. Once, a majority of Navajo people spoke the Navajo language now close to 50% of the population speak the Navajo language at home.

FACTS

The Navajo Department of Justice wrote this timeline on the 2014 Navajo Presidential Election Dispute and places a perspective on this complex election case, written by Assistant

Attorney General Paul Spruhan on January 26, 2015.

"Chris Deschene filed his candidate application with a statement that he fulfilled the qualifications for President, in April 2014." One requirement was being "fluent speak and understanding Navajo", with an additional statement "the candidate may be removed if it includes a false statement, pursuant section 21 of the Navajo Election Code."

On "April 25, 2014, the Navajo Election Administration certified Deschene's candidacy along with 16 other candidates", deeming him qualified.

There was a ten day deadline for any of the candidates to be challenged, and on May 5, 2014, "the ten day deadline to challenge the certification under Section 24 of the Election Code lapsed", with no charges or complaints being filed.

On August 26, 2014: "Chris Deschene received 9,831 votes in primary election, totaling 19% of the vote, placing second behind Joe Shirley, Jr., who received 11,052, or 21.36% of the vote, to become eligible for the run-off general election."

On "September 5, 2014, Candidate Dale Tsosie...filed an election challenge under Section 341 of the Election Code before Navajo Office of Hearings and Appeals, (OHA), questioning Deschene's fluency." Dale Tsosie received 1,292 votes, totaling 2.5% of the vote,

On "September, 2014, Candidate Hank Whitethorne filed a separate election challenge on same grounds. He received 398 votes, totaling .77% of the vote"

On "September 9, 2014, Office of Hearing Appeals dismisses the challenges based on timeliness, ruling Tsosie and Whitethorne did not file within 10 days", by May 5, 2014. Tsosie and Whitethorne appealed in September 2014."

On September 22, 2014 the Court consolidated Whitehorne's and Tsosie's complaints.

On "September 26, 2014, the Navajo Nation Supreme Court, (Court), held oral arguments

in Tuba City and reversed OHA. The Court remanded for OHA to hold a hearing on Deschene's fluency based on a standard adopted from Whitethorne's brief, within 5 days."

On September 29, 2014, OHA met to discuss how to implement the fluency standard. Deschene's counsel agreed for Department of Dine Education administer a modified test given to Navajo language teachers for purposes of testing Deschene's fluency. The Test is scheduled to be administered on October 2, 2014 with a hearing then to be held on October 3, 2014."

On "October 2, 2014, Deschene arrived at the testing site, but declined to take the test. Tsosie and Whitethorne filed for default judgment."

On "October 3, 2014, OHA held the hearing. Deschene had a new counsel, whom stated that prior counsel did not have authority to stipulate to the DODE test. Deschene moved to dismiss based on lack of joinder of Navajo Election Administration and Navajo Board of Election Supervisors. OHA denied the motion, concluding it was bound by the Court remand to hold a hearing. Tsosie and Whitethorne argued a motion for default for failure to take test. Instead of granting the motion, OHA and the parties agree Deschene will be deposed by Tsosie and Whitethorne's attorneys on October 6, 2014."

On "October 6, 2014, Whitethorne's attorney deposed Deschene. It was done under confidentiality and a gag order by OHA. OHA later stated Deschene refused to answer any questions posed in Navajo.

On "October 8, 2014, the Court issued its full opinion based off of the oral arguments from September 26th. It held Section 341 of the Election Code, not section 24, applied to the timing of the challenges, and both Tsosie and Whitethorne filed within 10 days of the primary election. The Court also held the fluency requirement was valid and a reasonable regulation of the candidate's right to run for public office. It reiterated the importance of Navajo language

under Fundamental Law, and “clarified” the meaning of “fluently” in Section 8 based on Whitethorne’s standard. The Court also stated Deschene was to “cooperate” with the OHA proceeding.

On “October 9, 2014, OHA held a merits hearing on Deschene’s fluency. OHA and the parties reviewed a video of the deposition in closed session. In open session, Whitethorne’s attorney placed Deschene on the stand to answer questions in Navajo. Deschene answered questions by challenging the standard and to the Navajo voters should decide his fluency. Tsosie’s attorney moved for default for failure to comply with OHA and the Supreme Court’s orders. Hearing Officer Richie Nez asked Deschene in English, whether he could explain how a resolution became law in Navajo. Deschene declined to answer. OHA stated it has no choice but to enter default, and granted a default judgment against Deschene.

The written default judgment stated Deschene was disqualified and OHA “expect[ed]” the Navajo Election Administration to comply with Section 44 of the Election Code, which read “upon disqualification of a candidate after the primary, the next-highest candidate will “automatically” be placed on the general election ballot.” Hence, the 3rd highest votes, was Russell Begay.

Deschene was supposed to appeal the decision in 10 days.

On “October 12, 2014, the Navajo Board of Election Supervisors met and declined to postpone the general election based on OHA’s order. Instead, the Board stated they intended not to follow the order, alleging it violated the rights of the voters and that the Board is an “independent body” empowered under Section 321 of Election Code to interpret election law.

On “October 14, 2014, Tsosie and Whitethorne’s attorneys filed a writ of mandamus seeking the Court order requiring the Board and the Navajo Election Administration to remove

Deschene from the ballot. They included a recording of the Board of Election Supervisors' meeting of October 12, 2014."

On "October 17, 2014, the Court issued an order for briefing on the writ petition and set oral arguments for October 20, 2014. The order stated the proceeding was an enforcement action and that the qualification issue had been "fully adjudicated."

On "October 20, 2014, the Court held the hearing on the writ petition in Tse Bonito, New Mexico. In Tsosie's and Whitethorne's brief, they asked for an injunction against Deschene to stop holding himself out as a candidate in addition to the writ against the Board and Election Administration. Two amicus briefs were filed, one by Navajo Department of Justice (DOJ) and by several Navajo voters. The Court denied DOJ's amicus brief, stating the brief simply disagreed with the policy behind the law. The Court ruled verbally, in a split decision, that it had jurisdiction over the writ and that sovereign immunity did not prevent it from hearing it. The Court took the merits issue of Section 44 enforcement under advisement."

Deschene appealed the OHA default judgment at 4:30 in the afternoon, the last day for filing an appeal. He did not include a certified copy of OHA's default judgment, a requirement by the Navajo Rules of Civil Appellate Procedure.

On October 21, 2014, Tsosie and Whitethorne filed a motion to dismiss Deschene's appeal for lack of a certified copy of the judgment. The Supreme Court dismissed Deschene's appeal for lack of a certified copy of OHA's judgment.

October 23, 2014, the Board of Election Supervisors met but did not postpone or otherwise stop the election.

The Supreme Court issued its written opinion on the writ petition, ruling it had jurisdiction over the writ and that sovereign immunity did not apply, and ordered the Board and

Election Administration remove Deschene's name from the ballot. It also stated it was "unavoidable", the election must be postponed under Section 3 of the Election Code, which allows the Board of Election Supervisors to postpone an election for up to 60 days for printing new ballots. It did not order Deschene to stop holding himself out as a candidate.

The Council voted 11-10 Legislation No. CO-47-14, to amend the fluency requirements in the Election Code by stating that fluency is to be determined by the votes of the Navajo People.

On October 27, 2014, Tsosie and Whitethorne filed a motion for contempt and order to show cause against Edison Wauneka, Director of the Navajo Election Administration, and the members of the Board of Election Supervisors. They alleged Wauneka and the Board refused to take Deschene's name off the ballot and refused to reschedule the election.

On October 28, 2014, the Court issued an order to show cause against Edison Wauneka, Director of the Navajo Election Administration and members of the Board of Election Supervisors. It scheduled a hearing in Chinle on October 31, 2014.

President Ben Shelly vetoed Legislation No. CO-47-14, which the Council passed to amend the fluency requirements. He justified his veto by stating "this fluency issue should be decided by the Navajo People through a referendum."

On October 30, 2014, the Navajo Department of Justice filed an amicus brief in the contempt proceeding, arguing that the Court should hold an informal "talking things out" session instead of a formal contempt hearing to resolve the dispute with the Board of Election Supervisors.

On October 31, 2014, The Court held a show cause hearing in Chinle. The Court accepted DOJ's amicus brief, but declined to hold an informal "talking things out" session. At

the hearing, Edison Wauneka stated he will change the ballots to take Deschene's name off the ballot. The Court issued a verbal ruling, it held the Board of Election Supervisors were in contempt, stripped them of their positions, and barred them from running for office.

At the same time, Presidential candidate Myron McLaughlin filed a grievance against candidate Russell Begay with the Office of Hearings and Appeals, alleging Begay did not have "unswerving loyalty" to the because as shareholder representative of the Navajo Oil and Gas Company, he approved a federal lawsuit challenging a decision of the Navajo Supreme Court."

On "November 3, 2014, the Office of Hearings and Appeals issued a Notice of Sufficiency, indicating McLaughlin's grievance against Begay can go forward to a hearing, scheduling it for November 13, 2014."

On "November 4, 2014, The Court issued an order finding the Board of Election Supervisors in contempt based on the October 31 hearing. It assigned the Navajo Election Administration the duty to hold a special presidential election within 60 days of November 4, 2014, with Deschene's name taken off the ballot and the third-highest candidate, Russell Begay, on the ballot. It also ordered the presidential votes cast at the November 4th election not to be counted or disclosed.

On "November 5, 2014, The Court modified its November 4, 2014 order to a formal opinion."

On "November 13-14, 2014, OHA held a hearing on McLaughlin's grievance against Russell Begay. OHA did not make a decision, but requested proposed findings of fact and conclusions of law."

"On "November 24, 2014, OHA issued its findings of fact and conclusions of law, upholding Russell Begaye's candidacy, he was not disloyal to the Nation by approving the

federal action challenging the Court's decision concerning Navajo Nation Oil and Gas Company."

On "December 3, 2014, McLaughlin appealed OHA's decision. He raised a new issue in his notice of appeal: that OHA hearing officer Richie Nez was not qualified as a hearing officer in accordance with the Navajo Nation Code, he was not barred in Arizona, New Mexico, or Utah. He was the hearing officer that disqualified Deschene by default."

On "December 4, 2014, without briefing, the Court held Hearing Officer Richie Nez's decision was protected by the de facto officer doctrine, he was appointed by the President and had the authority of that appointment, whether he was licensed by a state or not. The Court set a briefing schedule on the merits of McLaughlin's appeal, requiring OHA to file a response, and invited the President to file a response. "

On "December 12, 2014, DOJ filed a response on behalf of the Navajo Nation, and argued, OHA was not an appropriate party to the appeal. It also argued the question of loyalty, should be decided by the Navajo People through their vote."

Hearing Officer Richie Nez filed a separate response for OHA, arguing that the Court should rule on the validity of the state bar requirement for hearing officers for future cases.

Based on the appeal, concerning McLaughlin's challenge of Begay, the Navajo Election Administration filed a motion with the Court to extend the special election up to 60 days from when all election challenges are resolved."

On "December 15, 2014, The Navajo Department of Justice issued a memorandum to Speaker Pro Tem Lorenzo Bates and President Ben Shelly, concerning whether the President continued as President. If no presidential election was held before January 13, 2015, the date the Election Code mandates the new president should be sworn in. DOJ concluded the Election Code

did not clearly state what should happen, but under a reasonable interpretation of the Code the President is held over until a new president is installed, after the election."

On, "December 16, 2014, the Court issued a memorandum decision (informal opinion that only applies to the case), ruling McLaughlin's grievance was not timely filed under Section 341 of the Election Code, and OHA had no jurisdiction and Begay can run in the presidential elections."

"The Court also criticized DOJ for filing a response instead of filing a response for OHA. It stated that it will not defer the meaning of qualifications in the Election Code to the "ever-changing political will" of Navajo People due its responsibility to apply Navajo Fundamental Law."

On December 17, 2014, The Court granted the Election Administration's motion to extend the special presidential election, up to January 31, 2015. Then on December 22, 2014, the Office of Legislative Counsel, OLC, issued a memorandum to the Council on the issue of whether the President continued as President, if there is no election before January 13, 2015. OLC concluded if a vacancy is created in the Office of the President, under the Election Code and Title II of the Navajo Code, the Speaker is appointed the interim president until the election is held."

On "December 23, 2014 the Council again attempted to amend the fluency requirements by passing Legislation No. CD-79-14 by a vote of 13-0, which left the fluency requirement in the Election Code, but stated that the voters shall decide whether a presidential candidate is fluent", by their vote.

On "December 30, 2014, In a special session, the Council passed Legislation No. CD-80-14 by vote of 11-1. This legislation set a new run-off election for President, and allows all

candidates who ran in the previous primary election, including Deschene, to run again. The primary run-off election was scheduled for June 2, 2015, and the run-off general election for August 4, 2015. The legislation included funding for the run-off elections.

The Council also pardoned the Board of Election Supervisors, by passing Legislation No. CD-81-14 by vote of 11-1. The Court earlier held the members in contempt on October 31, 2014.

The Council did not approve a supplemental funding request by the Navajo Election Administration to fund the special general election."

On, "December 31, 2014, the Council's authority to pass legislation lapsed pursuant to 2 N.N.C. § 164(A). The Council did not pass that legislation to deal with the term of the president."

"President Shelly vetoed Legislation No. CD-79-14, the second attempt by the Council to amend the presidential fluency requirement in the Election Code."

On "January 7, 2015, the Navajo Department of Justice filed a petition for clarifying opinion with The Court. It requested the Court to decide who will be President on January 13, 2015, as the conflicting opinions of DOJ and the Office of Legislative Counsel may result in two individuals claiming to be President, exacerbating the chaos on January 13."

On "January 8, 2015, the Court scheduled a hearing on the Petition for Saturday, January 10, 2015."

On January 9, 2015, President Shelly and Speaker Pro Tem Lorenzo Bates, along with three members of the incoming 23rd Council, agreed that Shelly remain President until the Winter Session of the Council, scheduled for January 26-30, 2015. The agreement also stated, the Council will not introduce legislation on the issue until the Winter Session.

On "January 10, 2015, based on the January 9 agreement, DOJ and the Office of

Legislative Counsel file a joint withdrawal of the petition for clarifying opinion. After deliberation, the Court vacated the hearing based on the agreement.

President Shelly signed the two pieces of legislation passed by the Council on December 30, 2014 that created the special run-off election and pardoned the members of the Board of Election Supervisors."

On "January 12, 2015, Dale Tsosie and Hank Whitethorne filed a motion to hold eleven Council Delegates in contempt for the passing of the legislation on the run-off election and the pardons of the members of the Board of Election Supervisors. It also asked for Edison Wauneka, Director of the Navajo Election Administration, be held in contempt for not holding the election by January 31, 2015, as ordered by the Court. The motion asked for an order to show cause and for the Court to declare both pieces of legislation invalid."

Tsosie and Whitethorne requested the Court strip Edison Wauneka and the re-elected Delegates of their positions, and for the Court require Controller Mark Grant and a representative of the Navajo Office of Management and Budget to attend the show cause hearing to discuss the availability of funds for the election. Also, for the Court to enforce the January 31, 2015 election date."

On "January 13, 2015, Chief Justice Herb Yazzie swore in President Ben Shelly to continue as President. Separately, Delegates of the 23rd Council were sworn in. The new Council held a special session, and selected Kee Allen Begay as Speaker Pro Tem by coin toss to break a tie in votes between Begay and Lorenzo Bates. They took no action on the presidential term issue." Councilman Lorenzo Bates, was facing ethics charges, but Bates qualified himself.

On "January 15, 2015, the Court issued an order requesting briefing on the motion for contempt filed by Tsosie and Whitethorne. The Court set a schedule for briefing through

February 6, 2015, and invited the Department of Justice and presidential candidates Joe Shirley, Jr. and Russell Begay to file amicus briefs." In the same order, the Court stayed the January 31, 2015 election date, pending resolution of the validity of the run-off election legislation."

On "January 16, 2015, Delegate Dwight Witherspoon introduced two legislations, to deal with the presidential term. One to authorize the Council to select a member of the Council to sit as President until a new president is installed. The other was to authorize Ben Shelly to continue as an interim president."

On "January 22, 2015, the President and Council met to discuss continuation of the President's tenure. At a meeting of the Nabik'iyati Committee, Delegate Dwight Witherspoon withdrew the two legislations."

On" January 24, 2015, President Shelly and Council met again to discuss the presidential term situation. The President and twelve delegates signed a new agreement to extend Shelly's Presidential term. The agreement was for the parties to facilitate and expedite the presidential election."

On February 20, 2015 the Court nullified the December 30, 2014 legislation passed by the Council, to reset the whole presidential election. It ordered the Council to fund the election between Joe Shirley Jr. and Russell Begay on March 31, 2015. It also held those Council members that pardoned the removed Board of Election Supervisors, in contempt of Court. The Court reinstated the charges and removal of the Election Supervisor Officers and set the election for April 21, 2015.

On March 12, 2015 the Court sent a representative to the Council to encourage the Council to approve funding for the Court's courthouse. While the President has armed guards, the Chief Justice walks with no guards. The Court has to come in front of the Council to receive

funding from them. One of the Council members, Leonard Tsosie, attacked the representative because she only spoke in English.

On March 13, 2015 the Council approved a referendum to amend the language requirement for the Presidency. Thereafter on March 14, 2015 the Council passed an amendment from the previous day to hold a referendum first and then the election thereafter, with strong support of implementing immersion schools.

On March 18, 2015 the Court was asked to invalidate the amendment passed on March 13. On March 20, 2015 the Court ordered the election to occur on April 21, 2015 and to also hold a referendum.

April 2, 2015 both the Council's Speaker and the President made statements that they do not recognize the April 21, 2015 election, until the "disenfranchised" voters voices to allow a referendum on the language fluency be addressed first. Which this, some believe, is an attempt to reinstate the disqualified candidate back into office.

ANALYSIS

According to the Navajo Nation Code, Fluency is defined as being able to speak, read, and write the Navajo language. This statute made Native born, traditionally raised Navajos as not fluent in their Native language. Although they might be Navajo, traditional shamans that know all the ceremonies and folklore, they are legally not fluent in their language and unqualified to run for Office of the Navajo Nation President.

This disqualifies English only speakers, or Navajo only speakers, it also disqualifies bilingual speakers that can not write their language.

Whitethorne and Tsosie, relied on the second option that Deschene was an English only speaker. The Court applied Whitehorne's description and ordered a remand on September 26,

2014. There the Court stated:

"Tah dilkóq̄hgo, t'áák'idahineezláago, t'ááchánahgo, ditts'ságo, haala Dine' Binanit'a'í idliigo éi lahdo baa yájliti (talk about), nabik'í yájliti (analysis of speech), bich'í yájliti (to talk about), hachí yátti (to be talked to), biich'aah yajilti' (protection speech), and Diné k'ehgo bik'izhdii tiik (comprehending the substance in the Diné language)."

Translation for this would come out meaning, "With plainness, with straight paths, with hope, our language is heard. Whomever is a Navajo Leader, they have to talk about solving issues, talk through issues, to communicate with others, to be communicated with, to verbally defend a subject and understand it in end through the Navajo language."

Deschene, on the other hand, articulated he was an engineer, graduated from U.S. Naval Academy (an elite institution), was a Marine Corp. Officer who served honorably, attained a master's in engineering and a juris doctorate degree, licensed to practice on the Navajo Reservation and State of Arizona. He was supposed to be challenged by April 4, 2015 but no one ever challenged him, pursuant to the 10 day deadline, even though his adversaries knew of this requirement. He was challenged until five months later, long past the deadline.

A Talking Things Out session was requested, similar to mediation, but Deschene whom eventually stipulated to get a language fluency test, refused to take the test. Deschene since then refused to talk this out. In addition the Court has been called for a talking things session out by the Council, but the Court has refuse because they are outnumbered by 1 to 12. As of now the election is ongoing up until the 21st of April, and only time will tell what will occur.

In consequence the Navajo Department Of Justice and the Navajo Nation Council wrote briefs in support of Deschene, but the Court continually cited Navajo Fundamental law in defense of disqualifying Deschene, and any other candidate that is not fluent in the Navajo language.

NAVAJO FUNDAMENTAL LAW

The Navajo language was originally unwritten, and until World War II, when the United States Marine Corps. used the Navajo language against the Japanese to drop the atomic bomb, it gained recognition and was put into writing.

The oral customs of the Navajos, or Dine' (Den-neh) in the Navajo language, only shared oral history in the winter months when insects were not out. Those oral "stories", ceremonial education, were only shared during certain ceremonies. This practice is still the same today. Many of the books published on Navajo ceremonies are written, intentionally, incomplete, or medicine men have refused to have it written down. Only the Native speakers have some knowledge of those stories. But, not one person has complete knowledge of the ceremonies now. Since many medicine men have passed away, refusing to publish or share their ceremonial knowledge, for fear of being practiced or applied with the wrong intentions.

Since the Spanish conquest of the Navajo land, the Navajos resisted Spanish rule for over 250 years. The Treaty of 1868 was signed after the U.S. Army defeated the Navajos on their homeland and thereafter the U.S. annexed Navajo land. The Navajos have since been under American rule for 147 years.

Many of the customs have been changed such as the removal of the ceremonial hair tying, "Navajo hair bun", and the once independent, nomadic lifestyles have been changed to those to depending on the U.S. government for the basic survival. Although, many Navajos are now educated and have moved off of the reservation, there are still many Dine' that speak the language and keep the oral traditions intact, which is not shared with whomever asks for it.

I, as an extern from J. Reuben Clark Law School, was given a book with writing on the

basis of Navajo legal customs and was informed not to pass out or distribute my copy of that knowledge to just anybody. With that in mind, I will cover what I believe is the main oral foundation in Dine' fundamental law.

ORAL CUSTOMS

There were two twins that were born onto this earth. They grew to be men in four days. Eventually as our Savior Jesus Christ has done, they overcame death, hunger, poverty, lice, old age, etc.... (In that legend the ailments of this world were spirit people). Some were eventually allowed to exist in this world after they gave legitimate reasons to live. Such as, man can not just lay around if material things did not wear out. (6).

The Warrior Twins mother was the mother to all Dine' ceremonies. Where one day she decided to move onto an island somewhere on a western ocean. This island was paradise, where the island was made of white sea shells. As the Twins missed their mother, they decided to look for her in the ocean. When they found her, they observed that she was walking clockwise in her hoga'n and kept jumping over the doorway, every time she came to it. (7).

In their curiosity, they discovered she was making laws of this land. The seasons, day and night, plant growth and even human growth. Every time she stood at the western side of the house, she would become a baby again. She would crawl clockwise as she reached $\frac{1}{4}$ of the way she attained her puberty, $\frac{1}{2}$ way by the entrance she reached adult hood, $\frac{3}{4}$ of the way she reached old age. When she returned to the western side of the hoga'n, she instantly changed from an old lady back to a young crawling baby again. Hence the name Changing Woman, Asdzaán Náglééti (Ah-s-jzz-uh) (Nah [nada]- glay- cl-e).

The Court's ruling made on December 8, 2014 cited fundamental law. The Holy People that is referred to in the Court's ruling are about the characters that are oral legends passed from

generation to generation in the winter time, the concepts and lessons that were recited in the Hoga'ns used as a teaching mechanism. Unwritten fundamental law is applied, into a customary daily living and ceremonies. But, it is written by statute that Navajo fluency is only attained by one's writing and speaking in Navajo. This is a contradiction and appears to be the heart of the political turmoil. Currently, the ruling below is what the Court is standing by and attempting to uphold:

"In this society, this Court has an obligation to interpret Navajo law and enforce Navajo law. When we carry out that responsibility, that responsibility is not limited to an interpretation of statutory laws -those laws made by human beings to regulate other human beings in society. We consider ancient laws also. The ancient laws of the Holy People take precedence because these are sacred laws that we were placed here with. As an illustration, we recount the time in our history when the Navajo people, after being placed on this Earth, lived with the Holy People so they would be educated about our ancient laws -the right and wrongs. But there came a time when the Holy People were about to leave. If you can picture that occasion, the people were in a hoga'n and the Holy People were one-by-one filing out. One of them, *Haashch 'eelti'i'* (Talking God), poked his head back through the doorway and said, "My children, there is one thing that I must tell you: do not forget the value system that we have given you." In the Navajo language that system is expressed as *Naakits'aadahgo ili*. Core to that system is the language. The value system -the law of the Navajo people -is embedded in the language. When *Haashch 'eelti'i'* said that to the people, that in itself became the establishment of a law -*bee haz 'aanii*. Now you take that law and apply it. It is how our people survived as a society since time immemorial.

Over 140 years ago, upon the return of the Navajo people back to Navajo country from *Hweeldi*, the people were gathered somewhere around Fort Wingate, and the leader at the time, Manuelito (*Hastiin Ch'ilhaajim*), spoke to them. He said, "My people, my relatives, my children, you are about to go back to the homeland. As you do, I must tell you that you must not forget our ways. You must not forget the language (*nihizaad nihil ch 'aawille' liigo*), the prayers, and the songs. This is what got us through this experience that we are coming from." When you think about that and the law that was established by the Holy People, our human leaders of the past obeyed that. And they carried out the responsibility of instructing the young ones that they must also carry this on. So that is ancient law that we consider in the interpretation of Navajo statutory laws." (*Tsosie and Whitethorne v. Deschene*, SC-CV- 57-13 & SC-CV-58-14 at p. 11. N.N. S.Ct. Dec. 8, 2014.)

CONCLUSION

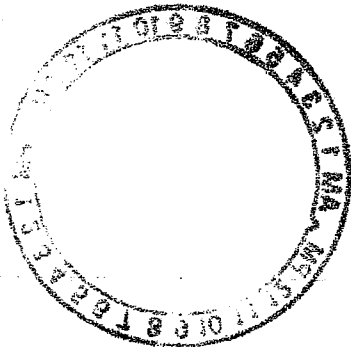
This case would come down to a similar outcome, as the Martinez Pueblo case. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). In that case, Pueblo women that married non-

enrolled tribal members were disenrolled with their children from the tribal rolls and the men, even those who intermarried remained enrolled, with their families. Most of the women, that were removed, were happy and satisfied with the rulings because tribal sovereignty remained credible, even though they were removed from the rolls for intermarrying outside the tribe. There is also a similar satisfaction for keeping the bar up high for the Navajo President to speak and understand the language.

In conclusion, the Navajo language gives the Navajo language their identity. Examples are: an American President's requirement in speaking English, and Spanish President requirement for speaking in Spanish, a Chinese Leader requirement for speaking in Chinese, a Persian Leader requirement for speaking in Persian, a Russian Leader requirement for speaking in Russian.

As of now the election is scheduled for April 21, 2015 and the Navajo Election Office is abiding by the Court's order. Although the Navajo Nation President and the Council's Speaker both criticized the Court, for going on with the election before a referendum is passed to change the language requirement, the polls are open for early voting right now. (Consequently candidate Russell Begaye became the victor.)

1. Paul Spruhan, Navajo Department of Justice, January 26, 2015 Version,
Annotated Timeline of the Navajo Presidential Election Dispute
2. Navajo Nation Coded, Title 11 Election Code
3. Dale E. Tsosie v. Christopher C. Deschene, No. SC-CV-57-14
4. Hank Whitethorne v. Christopher C. Deschene, No. SC-CV-58-15
5. Amá Sani dóó Achei baahane' / The Office of Diné Culture, Language, and
Community Services. Window Rock, Arizona : The Office of Diné Culture,
Language, and Community Services, c2004. P-79-Warrior Twins
6. Amá Sani dóó Achei baahane' / The Office of Diné Culture, Language, and
Community Services. Window Rock, Arizona : The Office of Diné Culture,
Language, and Community Services, c2004. P47- Changing Woman
7. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).





NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

RODGERICK T. BEGAY
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Carolyn West, Attorney
Office of Legislative Counsel

FROM: 
Rodgerick T. Begay, Acting Deputy Attorney General
Navajo Nation Department of Justice

DATE: January 13, 2016

SUBJECT: Exhibits for Legislation No. 16-154-1

This memorandum will replace the memorandum dated January 12, 2016. The above mentioned legislation contains several exhibits pertaining to a candidate for a Judge position. Generally, exhibits to legislations are posted online for public view. However, pursuant to 2 N.N.C. §164(A)(6), "[a]ny matters or exhibits determined by the Navajo Nation Department of Justice to be confidential shall be properly marked 'confidential' and shall not be placed on the website or otherwise released." In one sense, the public should have the opportunity to review documents submitted by candidates for a public position such as a Judge position. However, in another sense, there is an expectation of privacy to certain information.

One of the tools used to determine confidentiality is the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et. seq.* While section 164(A)(6) does not require an analysis and application of the Privacy Act, the Privacy Act will be used for guidance on certain information contained in the exhibits.

Section 85 of the Privacy Act describes protected records which should not be disclosed to the public except in very limited circumstances. For exhibits to legislations such as this, the relevant portions of Section 85 indicate that the following are protected records:

- 1) records concerning an individual's eligibility for social services and welfare benefits;
- 2) medical records
- 3) records of a current/former employee or applicant for a governmental entity that would disclose the person's "home

- address, home telephone number; social security number, insurance coverage, marital status, or payroll deductions.”
- 4) records of a current/former employee or applicant for a governmental entity such as “performance evaluations and personal status information such as race, religion, or disabilities...”
 - 5) certain records describing a person’s finances; and
 - 6) “Other records containing data on individuals [wherein] the disclosure [will] constitute a clearly unwarranted invasion of privacy.”

The Privacy Act makes certain implications such that certain records are entirely protected or that only certain information are protected. In the latter, the implication is that certain documents can be released so long as the protected information is redacted. The job application falls within this category. Upon review of the exhibits, there are two job applications, one of which is partially redacted. If the job applications will be disclosed to the public, the following information on both job applications must be redacted prior to release:

- 1) Social Security Number;
- 2) Address;
- 3) Driver License number
- 4) Telephone Numbers;
- 5) Email Addresses;¹
- 6) Census Number;
- 7) All person’s identified as the applicant’s references;
- 8) All information in Section IV.

The memorandum dated May 26, 2015 from the Judicial Branch to the Navajo Nation Division of Public Safety is also not entirely confidential but contains confidential information that must be redacted. If this document will be disclosed, DOJ advises to redact the following information:

- 1) address;
- 2) date of birth;
- 3) social security number;
- 4) census number;
- 5) driver’s license number.

¹ It is fair to assume that any information that is determined to be confidential by this memorandum, but is not specifically listed in the Privacy Act, has been deemed by DOJ as a “clearly unwarranted invasion of privacy” under section 85(A)(20).

DOJ determines the following documents, in their entirety, to be **confidential** because the applicant has a reasonable expectation of privacy to them. Thus, the following documents should not be posted online:

- 1) Certificate of Indian Blood;
- 2) Birth Certificate;
- 3) Background Check Determination Notice dated June 25, 2015;
- 4) School Transcripts;
- 5) Bar Exam Results;
- 6) Psychiatric Evaluation;
- 7) Driver's License;
- 8) Affidavit of not having any physical addictions;
- 9) Ethics Clearance;
- 9) Military Discharge documents;
- 10) Letters of Recommendations.

The following documents are not confidential and do not contain any protected information that requires redacting:

- 1) Judicial Branch Peacemaking Program certificate;
- 2) Writing Sample.

xc: Ethel Branch, Attorney General
Office of the Attorney General