

ACMY-191-71, May 12, 1971.

Revision note. Rephrased for purpose of clarity.

§ 1328. Operating records

The daily operating record for a public swimming pool shall include the following: date; the total number of bathers accommodated; the maximum number of bathers at any time; starting and stopping time of filters; time of backwashing; whether or not the pool bottom at its greatest depth is plainly visible at all times; results of disinfecting residuals; pH of pool water; kinds and quantities of chemicals added; and the name of the pool operator. Accidents shall be recorded.

History

ACMY-191-71, May 12, 1971.

Title 7

Courts and Procedure

Chapter 1. Definitions

§ 101. Signature defined

The term "signature" as used in this Title shall be defined as the written signature, official seal, or the witnessed thumb print or mark of any individual.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

§ 102. Navajo Nation Council defined

The term "Navajo Nation Council," as used in this Title shall be construed to refer to the Navajo Nation Council, as defined in 2 N.N.C. § 101.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

§ 103. District Courts defined

The term "District Courts" as used in this Title shall include the District Courts, the Family Courts of the Navajo Nation, and any divisions thereof established by the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

CAU-46-89, August 16, 1989.

CD-94-85, December 4, 1985.

Annotations

1. Purpose

"The Peacemaker Division (the name was changed from 'Peacemaker Court') was created as part of the district court, but because the family court is part of the district court by definition, 7 N.N.C. § 103 (1995 ed.), local peacemaking programs in the seven judicial districts are also attached to the family court. Over the years, a practice has evolved where people use the local peacemaking program to resolve various kinds of cases, including probate actions." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4, 5 (Nav. Sup. Ct. August 2, 2001).

Chapter 3. Judicial Branch

Subchapter 1. Generally

§ 201. Establishment; composition

A. There is a Judicial Branch of the Navajo Nation.

B. The Judicial Branch of the Navajo Nation government shall consist of the District Courts, the Supreme Court of the Navajo Nation, and such other Courts as may be created by the Navajo Nation Council.

C. The Judicial Branch of the Navajo Nation shall also consist of such additional Judicial Branch divisions, departments, offices or programs that further the purposes of the Courts as may be created, subject to amendment or abolishment, by the Judiciary Committee through adoption of their plans of operation.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 202. Seals of Courts

The Courts of the Navajo Nation shall each adopt a seal which shall be used to authenticate their respective judgments and other papers. The form of the seals and regulations for their use shall be specified by rules of court adopted and placed in effect as provided in 7 N.N.C. § 601.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 203. [Reserved]

§ 204. Law applicable

A. In all cases the courts of the Navajo Nation shall first apply applicable Navajo Nation statutory laws and regulations to resolve matters in dispute before the courts. The Courts shall utilize Diné bi beenahaz'áanii (Navajo Traditional, Customary, Natural or Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations. The courts shall also utilize Diné bi beenahaz'áanii whenever Navajo Nation statutes or regulations are silent on matters in dispute before the courts.

B. To determine the appropriate utilization and interpretation of Diné bi beenahaz'áanii, the court shall request, as it deems necessary, advice from Navajo individuals widely recognized as being knowledgeable about Diné bi beenahaz'áanii.

C. The courts of the Navajo Nation shall apply federal laws or regulations as may be applicable.

D. Any matters not addressed by Navajo Nation statutory laws and regulations, Diné bi beenahaz'áanii or by applicable federal laws and regulations, may be decided according to comity with reference to the laws of the state in which the matter in dispute may have arisen.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Cross References

The Foundation of the Diné, Diné Law and Diné Government, see 1 N.N.C. § 201 *et seq.*

Construction and application of federal tribal exhaustion doctrine, 186 A.L.R. Fed. 71 (2003).

Federal question, 41 Am. Jur. 2d Indians, § 167.

Annotations

1. Navajo law and custom

"The Navajo Nation courts have the authority to apply "customs of the Navajo Nation" as law, 7 N.N.C. § 204(A) (1995 ed.)." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

"... [T]he customs and traditions of the Navajo people have the force of law. They provide a unique body of law known as Navajo common law." *Navajo Nation v. Platero*, 6 Nav. R. 422, 424 (Nav. Sup. Ct. 1991).

"Navajo custom and tradition may be shown in several ways: it may be shown through recorded opinions and decisions of the Navajo courts or through learned treatises on the Navajo way; it may be judicially noticed; or it may be established by testimony of expert witnesses who have substantial knowledge of Navajo common law in an area relevant to the issue before the court." *In the Matter of the Estate of Belone*, 5 Nav. R. 161, 165 (Nav. Sup. Ct. 1987).

This Section clearly expresses the intent that Navajo law apply wherever possible. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

The application of custom depends on a good many circumstances and all the facts of the case. *Lente v. Notah*, 3 Nav. R. 72 (Nav. Ct. App. 1982).

When applying custom, the courts should see whether a particular custom or tradition is generally accepted and applicable to the parties before the court. *Lente v. Notah*, 3 Nav. R. 72 (Nav. Ct. App. 1982).

2. Common law

"As the NPEA does not discuss when employment contracts are validly made, we look to other non-statutory law to decide this case. In the absence of statutory law, we first and foremost consider *Diné bi beenahaz'áanii* (Navajo Fundamental Law)." *Goldtooth v. Naa Tsis' Aan Community School, Inc.*, No. SC-CV-14-04, slip op. at 6 (Nav. Sup. Ct. July 18, 2005).

"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).

" ... [I]f a district court takes judicial notice of a particular custom as Navajo common law, it must clearly set forth in its order the custom on which it is relying, so that the basis for its decision is clear and can be reviewed by this Court." *In the Matter of the Estate of Belone*, 5 Nav. R. 161, 165-166 (Nav. Sup. Ct. 1987).

Navajo Common Law is a body of law which is fully binding on the Navajo Court of Appeals and consists of the customs, traditions and usages of the Navajo people. *Tome v. Navajo Nation*, 4 Nav. R. 159 (Nav. Ct. App. 1983).

3. State law

Courts should carefully make certain that the matter is "not covered" by Navajo law, under Subsection (C) of this Section, before considering or proceeding to the use of state law. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

Under this Section, the traditions and customs of the Navajo people are to be applied where the Navajo Tribal Code is silent and federal law does not prohibit the application of tradition and custom; it is only in a situation where there is no tradition or custom that the Tribal Courts are authorized to apply state law. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

4. Divorce—Division of property

Since nothing is specifically stated in the Navajo Tribal Code as to how either separate or community property is to be divided upon divorce, this Section is controlling in the matter. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

Since, under Navajo tradition, a land use permit given from a father to a son cannot be characterized as his separate property, nor as community property, the land use permit belongs to the entire family to be used for the benefit of the entire family. The District Court properly applied Navajo tradition and custom in awarding land use permits, grazing permit and all other property connected with a farm to wife in divorce proceedings and the award and distribution of the property rights between the parties was a fair and just settlement pursuant to 9 N.N.C. § 404. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

5. Alimony

The courts of the Navajo Nation are empowered to award alimony in dissolution of marriage cases. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

Nothing in Navajo tradition or custom would prohibit the court from applying New Mexico law pursuant to this Section and therefore, an award of alimony in a marriage dissolution action in the tribal courts is both proper and authorized. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

6. Child Custody

Since Navajo custom and tradition is but one of many factors to be considered in child custody cases, a trial judge may be justified in disregarding old ways, and the Court of Appeal will not overturn such a decision unless it was clearly an abuse of discretion. *Lente v. Notah*, 3 Nav. R. 72 (Nav. Ct. App. 1982).

7. Federal law questions

"Absent Navajo law interpreting the Navajo Rules of Civil Procedure (NRCP), we look to the federal law on similar questions for guidance. See 7 N.N.C. § 204 (authorizing use of federal law)." *Dale Nicholson Trust v. Chavez, et al.*, No. SC-CV-69-00, slip op. at 4 (Nav. Sup. Ct. January 6, 2004).

Navajo tribal court could determine validity of allottee's patent and allotment application under federal law in ejectment and trespass action brought by United States on behalf of Navajo allottee against Navajo occupant of parcel. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996). Indians <KEY> 221

"The courts of the Navajo Nation must conform their decisions to applicable federal law." *Biakeddy v. Biakeddy*, 6 Nav. R. 391, 392 (Nav. Sup. Ct. 1991).

"Section 204 does authorize the Navajo courts to use any applicable law of the United States in any controversy, so the district court's use of Rule 23 of the Federal Rules of Civil Procedure was proper. Class actions are often a desirable method of dispute resolution, because they eliminate separate suits thereby providing for judicial efficiency." *Billie v. Abbott*, 6 Nav. R. 66, 75 (Nav. Sup. Ct. 1988).

8. Suits against Navajo Nation

"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).

9. Expert witnesses, generally

"The court must first determine the witness's status as an 'expert,' assess the relevance of his testimony, and find it will aid the court's or the jury's understanding of a given custom before relying upon the testimony". *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 4 (Nav. Sup. Ct. January 22, 2002), citing *In re Estate of Belone v. Yazzie*, 5 Nav. R. 161 (Nav. Sup. Ct. 1987).

§ 205. Record of proceedings

A. Each Court of the Navajo Nation shall keep a record of all proceedings of the Court, which shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all

witnesses, the date of the hearing or trial, the name of the presiding Judge, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

B. A record of all proceedings shall be kept at the appropriate court and shall be available for public inspection unless prohibited by order of the Court for good cause or by applicable laws.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

§ 206. Cooperation of Navajo Nation, federal and state employees

A. No employee or official of the Navajo Nation, federal or state government shall obstruct, interfere with or control the functions of any Court of the Navajo Nation or attempt to influence such functions in any manner except as permitted by Navajo Nation laws or regulations or in response to a request for advice or information from the Court.

B. Navajo Nation employees, particularly those who are engaged in social service, law enforcement, health and educational work, shall assist the Court, upon its request, in the preparation and presentation of the facts in the case and in the proper disposition of the case.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Note. Previous Section 207 revised and relocated to Section 631 by CO-72-03, October 24, 2003.

Subchapter 3. District Courts

§ 251. Composition

A. The District Courts of the Navajo Nation shall consist of judges recommended by the Judiciary Committee of the Navajo Nation Council, appointed by the President of the Navajo Nation, and confirmed by the Navajo Nation Council.

B. The District Courts of the Navajo Nation shall be located in such Judicial Districts of the Navajo Nation as are developed by the Judicial Branch, approved by the Judiciary Committee, and provided for in the Navajo Nation operating budget.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CD-88-78, §§ 2, 3, December 20, 1978.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 252. [Reserved]

History

Note. Previous Section 252 revised and relocated to Section 253(B) by CO-72-03, October 24, 2003.

§ 253. Jurisdiction—Generally

A. The District Courts of the Navajo Nation shall have original jurisdiction over:

1. Crimes. All offenses in the Navajo Nation Criminal Code (17 N.N.C. § 101 *et seq.*) whereby any person commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. The Navajo Nation Courts shall also have jurisdiction over any member of the Navajo Nation who commits an offense against any other member of the Navajo Nation wherever the conduct which constitutes the offense occurs.

2. Civil Causes of Action. All civil actions in which the defendant: (1) is a resident of Navajo Indian Country ; or (2) has caused an action or injury to occur within the territorial jurisdiction of the Navajo Nation.

3. Miscellaneous. All other matters provided by Navajo Nation statutory law, Diné bi beenahaz'áanii, and Navajo Nation Treaties with the United States of America or other governments. All causes of action recognized in law, including general principles of American law applicable to courts of general jurisdiction.

B. The Family Courts of the Navajo Nation shall have original exclusive jurisdiction over all cases involving domestic relations, probate, adoption, paternity, custody, child support, guardianship, mental health commitments, mental and/or physical incompetence, name changes, and all matters arising under the Navajo Nation Children's Code.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-19-80, February 13, 1980.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Construction and application

"The Navajo Nation courts were established by the Navajo Nation Council, and the district courts find their legislative grant of general jurisdiction in 7 N.N.C. § 253 (as amended by CO-72-03, 10/27/03). That Section confers original jurisdiction to the district courts over crimes, civil actions where the defendant is a resident of the Navajo Nation or causes an action or injury to occur within the territorial jurisdiction of the Navajo Nation, and 'all other matters provided by Navajo Nation statutory law, *Diné bi beehaz'áanii*, and Navajo Nation treaties with the United States of America or other governments.'

" *Judy v. White*, No. SC-CV-35-02, slip op. at 6 (Nav. Sup. Ct. August 2, 2004).

" ... [T]here is a presumption against multiple litigation, where it can be avoided." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 4 (Nav. Sup. Ct. July 25, 2001).

" ... [B]y applying a Navajo common law interpretation, ... the family court is better suited to hear quiet title actions." *In re: Harvey*, 6 Nav. R. 413, 415 (Nav. Sup. Ct. 1991).

"The Navajo courts have civil jurisdiction over all persons who cause an action to occur in Navajo Indian Country." *Taylor v. Bradley*, 6 Nav. R. 147, 149 (Nav. Sup. Ct. 1989).

"Tribal civil jurisdiction is derived from a tribe's retained inherent sovereignty." *Taylor v. Bradley*, 6 Nav. R. 147, 149 (Nav. Sup. Ct. 1989).

"The courts of the Navajo Nation have the authority to probate the unrestricted property of a decedent. [...] Unrestricted property includes property owned by individuals, and for which the Navajo Nation does not hold title for all tribal members." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 81 (Nav. Sup. Ct. 1986).

"History shows that the Navajo Tribal Council gave the Navajo courts their jurisdiction. Consequently, the Navajo courts can exercise only that jurisdiction granted by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 90 (Nav. Sup. Ct. 1989), citing *Nez v. Barney*, 3 Nav. R. 126, 129 (1982).

" ... [T]he Navajo Nation has not expressed its consent to be sued under 7 N.T.C. § 253." *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 196 (Nav. Sup. Ct. 1987).

This Section does not exclude review of Navajo Tribal Council actions from its broad grant of power to the courts. *Halona v. MacDonald*, 1 Nav. R. 189 (Nav. Ct. App. 1978).

2. Alimony

The Courts of the Navajo Nation are empowered to award alimony in dissolution of marriage cases. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

Nothing in Navajo tradition or custom would prohibit the court from applying New Mexico law pursuant to 7 N.N.C. § 204 and therefore, an award of alimony in a marriage dissolution action in the tribal courts is both proper and authorized. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

3. Criminal prosecutions

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

Paragraph (A) of this Section enables the Courts of the Navajo Nation to issue summons or warrants applicable to a criminal prosecution. *Navajo Nation v. Atcitty*, 4 Nav. R. 130 (Nav. Ct. App. 1983).

4. Foreign corporations

Navajo Nation has the power to grant its courts personal jurisdiction over foreign corporations as a consequence of such corporations' acts in Navajo territory, such as wrongful repossession alleged in instant case, according to modern expansions of the "minimum contacts" due process standard. *Thompson v. Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

This Section's provision for jurisdiction over all other matters over which jurisdiction has been or may be vested implicitly asserts Navajo Nation jurisdiction over non-Indian, non-resident businesses and individuals, and court has jurisdiction over a non-Indian, non-resident business which allegedly wrongfully repossesses personal property upon Navajo land. *Thompson v. Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

5. Injunctions

District Court has civil jurisdiction, under this Section's provision for

jurisdiction over "all other matters which may hereafter be placed within the jurisdiction of the Trial Court," to enjoin a threatened criminal trespass prohibited by the code. *Salt River Project Agricultural Improvement and Power District v. International Brotherhood of Electrical Workers Local Union No. 266*, 1 Nav. R. 277 (Nav. Ct. App. 1978).

6. Non-Indians

"The Court holds that the Navajo Nation courts have authority to hear a claim against a motor vehicle manufacturer alleging that a vehicle defect resulted in the death of a Navajo police officer on a road located on trust land within the Navajo Reservation." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 1 (Nav. Sup. Ct. December 18, 2008).

"As we stated in *Dale Nicholson Trust*, Article II specifically recognizes the Navajo Nation's authority to regulate all non-members other than certain federal employees on its lands. [...] The Nation's Article II authority is no different whether on the original Reservation or later extensions." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 6 (Nav. Sup. Ct. December 18, 2008).

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

"In juvenile cases, the 'criminal' nature of the proceeding arises out of the possibility of detention, the functional equivalent of adult incarceration, as the child's liberty is taken away. As we prohibited detention for A.P. as beyond the authority of the Tuba City Family Court in our previous Order of Release, the current proceeding is 'civil' in nature. Under general principles of federal Indian law, as interpreted by this Court, we hold that the Navajo Nation has civil jurisdiction to adjudicate non-Indian children in a delinquency proceeding for activity on tribal lands, as long as detention is not a possible disposition." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

"Though principles of federal Indian law do not prohibit the Nation's delinquency jurisdiction over non-Indian children, the Navajo Nation Council may still bar such jurisdiction. The Children's Code establishes family court exclusive jurisdiction over 'all proceedings ... in which a child is alleged to be ... a delinquent child'." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

"The term 'child' is defined as 'an enrolled member of the Navajo Nation or one who is eligible for enrollment with the Navajo Nation, or any other person who is subject to the jurisdiction of the Navajo Nation and is under the age of eighteen (18) years.' 9 N.N.C. § 1001(F) (1995) (emphasis added). Under these provisions, the Children's Code does not prohibit jurisdiction over non-Indian children, but such jurisdiction is co-extensive with the Nation's general authority, presumably as established by the Treaty and general principles of federal Indian law discussed above. Therefore, we hold that under Navajo

statutory law, family courts general have delinquency jurisdiction over non-Indian children." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 10 (Nav. Sup. Ct. May 26, 2005).

" ... [T]his statute authorizes personal jurisdiction over non-resident defendants to the extent allowed by Navajo due process." *Sells v. Espil*, 6 Nav. R. 195, 197 (Nav. Sup. Ct. 1990).

A non-Indian may be sued in the Navajo courts if he is found within the tribe's territorial jurisdiction; so that defendant corporations could be sued for forcible entry and detainer. *Navajo Tribe v. Orlando Helicopter Airways, Inc.*, (Nav. Ct. App. January 12, 1972).

7. Controversies arising on Navajo Nation lands

"Whenever any right that an enrolled Navajo has while residing on the Navajo Reservation is abrogated by a state official, that Navajo has suffered a personal injury. [...] If a state official interferes in the domestic disputes of Navajos living on the reservation then the official has caused an action to occur within the Navajo Nation. This is true although the state official may not have entered the reservation." *Billie v. Abbott*, 6 Nav. R. 66, 73 (Nav. Sup. Ct. 1988).

"At the outset we establish that a defendant may cause personal injury actionable in Navajo court without ever having set foot on Navajo soil. In a prior decision this Court said that the Navajo courts have jurisdiction 'over any person doing injury within the Navajo Nation ... ' " *Billie v. Abbott*, 6 Nav. R. 66, 73 (Nav. Sup. Ct. 1988), citing *Deal v. Blatchford*, 3 Nav. R. 159, 160 (1982).

Navajo Courts of Indian Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants, and no Federal Act has given state courts jurisdiction over such controversies. *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed. 2d 251 (1959).

Arizona courts are not free to exercise jurisdiction over a civil suit by a non-Indian against a Navajo Indian where cause of action was derived from transaction which took place on the Navajo Reservation. *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed. 2d 251 (1959).

8. Consent to jurisdiction

"Personal jurisdiction means that a court has authority over a party, even if he or she resides outside the Navajo Nation, if he or she consents to have the case heard in the Navajo courts, or if his or her actions have effects within the Navajo Nation." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 & 4 (Nav. Sup. Ct. April 30, 2007).

Vehicle manufacturer did not consent, in financing and lease agreement between Indian tribe and financing subsidiary of manufacturer, to submit to tribal jurisdiction over any foreseeable tort claims arising out of use of its vehicles on reservation; agreement's exclusive forum selection clause related only to disputes connected to the lease and financing contract and was unrelated to product liability action arising out of one-vehicle accident involving vehicle financed under agreement. *Ford Motor Co. v. Todecheene*, 221 F.Supp.2d 1070 (D.Ariz. 2002). Indians <KEY> 223; Indians <KEY> 142(1); Contracts <KEY> 206

9. Need for unique remedy

Vehicle manufacturer was not subject to Indian tribal court's jurisdiction, on basis of need to preserve political integrity of tribe, in product liability claims arising out of one-vehicle accident involving vehicle built by manufacturer; single vehicle roll-over underlying products liability lawsuit did not require a unique tribal court remedy and did not threaten or have a sufficiently adverse effect on the political integrity, economic security, or health or welfare of the tribe as a whole. *Ford Motor Co. v. Todecheene*, 221 F.Supp.2d 1070 (D.Ariz. 2002), stay granted 488 F.3d 1215. Indians <KEY> 223

10. Business with tribe members

Non-Indian off-reservation automobile dealer could not avoid Indian tribe's exercise of civil jurisdiction over it on ground that it had not conducted business with the tribe, but only with individual Indians. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 36 UCC Rep.Serv. 1809 (9th Cir.(Ariz.) 1983), cert. denied 466 U.S. 926. Indians <KEY> 223

11. Subject matter jurisdiction

"Subject matter jurisdiction means that a court has authority over a case or issue, as defined by Navajo Nation statutory law and the Treaty of 1868." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 (Nav. Sup. Ct. April 30, 2007).

"Our district courts are courts of general jurisdiction under the Navajo Nation Code, 7 N.N.C. § 253, but their jurisdiction is limited by federal statutes and by United States Court case law. Under these authorities a tribal court has subject matter jurisdiction over non-Indians from several sources. A tribe may exercise its broad inherent sovereignty over non-Indian conduct anywhere within its territory." *Nelson, et al. v. Pfizer, Inc. et al.*, No SC-CV-01-02, slip op. at 3 (Nav. Sup. Ct. November 17, 2003).

Navajo Nation district court lacked subject-matter jurisdiction over insurance company which provided liability insurance to medical clinic being sued in Navajo court; insurance company was not a member of the tribe and did not engage in any consensual relationship with tribe, inasmuch as its contractual relationship was with clinic which was a nonmember of the tribe. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir.(Utah) 2002), cert. denied 128 S.Ct. 1229. Indians <KEY> 223

Navajo Nation district court lacked subject-matter jurisdiction over attorney who was hired by liability insurance provider for medical clinic being sued in

Navajo court, even though attorney was a member of Navajo Nation Bar Association; attorney's membership in Bar Association, although a consensual relationship, did not provide requisite nexus to exertion of tribal authority to join attorney as a defendant with clients he was representing, and such jurisdiction was not necessary to protect Navajo self-government. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir.(Utah) 2002), cert. denied 128 S.Ct. 1229. Indians <KEY> 223

" ... [S]ince the apportionment plan was invalid, the District Court had to do something when it was made aware that the Navajo Nation was attempting to conduct elections under a plan that we had declared invalid. In addition, a new event (passage of Navajo Nation Council Resolution No. CF-29-98) affecting the case arose. In light of these events, the District Court correctly ruled that it had the inherent authority to conduct a status review of the case and to grant relief based on the status of the case. That is part of the District Court's inherent power to implement adjudication." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 4 (Nav. Sup. Ct. July 25, 2001).

12. Concurrent jurisdiction

In determining whether Navajo Tribal Court had concurrent jurisdiction over ejectment and trespass action brought in district court, Court of Appeals would consider statutes of Navajo Nation. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996). Courts <KEY> 510

13. Divorce proceedings

"Under the foregoing the Court holds that dissolution of marriage is an action affecting the status of marriage and that the Navajo Tribal Courts have jurisdiction to grant a dissolution of marriage when one of the spouses is domiciled within the territorial jurisdiction of the Navajo Nation if the complaining party has met the residency requirements even though the other spouse is domiciled outside the Navajo Nation." *Yazzie v. Yazzie*, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985).

14. Judgment debts

"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).

15. Personal jurisdiction

"Personal jurisdiction means that a court has authority over a party, even if he or she resides outside the Navajo Nation, if he or she consents to have the case heard in the Navajo courts, or if his or her actions have effects within

the Navajo Nation." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 & 4 (Nav. Sup. Ct. April 30, 2007).

"Under these principles, the District Court may consider the federal 'minimum contacts' standard, and incorporate it into its analysis. [...] However, such analysis cannot be used exclusively to decide the issue, as, regardless of federal concepts of due process, the District Court must decide whether, taking into account all the circumstances of the case, the assertion of personal jurisdiction over these Appellees is fair under Navajo values." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 8 (Nav. Sup. Ct. April 30, 2007).

16. Treaty

"The Court holds that the Navajo Nation courts have authority to hear a claim against a motor vehicle manufacturer alleging that a vehicle defect resulted in the death of a Navajo police officer on a road located on trust land within the Navajo Reservation." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 1 (Nav. Sup. Ct. December 18, 2008).

"The Navajo Nation retains civil jurisdiction over claims arising within the Nation by inherent sovereignty under Article II of the Treaty." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 4 (Nav. Sup. Ct. December 18, 2008).

"As we stated in *Dale Nicholson Trust*, Article II specifically recognizes the Navajo Nation's authority to regulate all non-members other than certain federal employees on its lands. [...] The Nation's Article II authority is no different whether on the original Reservation or later extensions." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 6 (Nav. Sup. Ct. December 18, 2008).

§ 253a. Long-Arm Civil Jurisdiction and Service of Process Act

A. Definitions. As used in this Act, the term "person" includes an individual, executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of the Navajo Nation and whether or not organized under the laws of the Navajo Nation. The term includes all persons, natural or fictitious, of any kind.

B. Personal jurisdiction based on enduring relationship or status. A Court of the Navajo Nation may exercise personal and subject matter jurisdiction over a person domiciled in, organized under the laws of, or maintaining his, her, or its place of business in the Navajo Nation as to any cause of action or claim for relief. A Court of the Navajo Nation may exercise personal jurisdiction over any member of the Navajo Nation regarding that person's status as a member of the Navajo Nation for activities outside this jurisdiction which affect any other member of the Navajo Nation. A Court of the Navajo Nation may exercise civil jurisdiction over any person who assumes tribal relations with Navajos and the Navajo Nation by marriage, adoption, guardianship or other enduring relationship with Navajos.

C. Personal jurisdiction based on conduct. A Court of the Navajo Nation may exercise personal and subject matter jurisdiction over any non-member who consents to jurisdiction by commercial dealings, residence, employment, written or implied consent, or any action or inaction which causes injury which affects the health, welfare, or safety of the Navajo Nation or any of its members located within the territorial jurisdiction of the Navajo Nation, or any other act which constitutes the assumption of tribal relations and the resulting express or implied consent to jurisdiction. A Court of the Navajo Nation may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action for relief arising from the person's:

1. Transacting any business in the Navajo Nation;
2. Contracting at any place to supply services or things within the Navajo Nation;
3. Causing tortious injury by any act or omission within the Navajo Nation;
4. Causing tortious injury in the Navajo Nation by an act or omission outside the Navajo Nation if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in the Navajo Nation;
5. Having an interest in, using, or possessing real property in the Navajo Nation, including the actual occupancy or lease of trust land, allotted land, fee land, or any other land within Navajo Indian country;
6. Contracting to insure any person, property or risk located within the Navajo Nation;
7. Causing an act which creates an environmental hazard or degradation of the air, waters, flora, fauna, cultural artifact, or other resource of the Navajo Nation;
8. Selling alcohol to any person who enters the Navajo Nation and who causes an injury in the Navajo Nation under the influence of alcohol; or
9. Any action or inaction outside this jurisdiction which causes actual injury or damage within the Navajo Nation, where such injury or damage was reasonably foreseeable.

D. Service of process outside the Navajo Nation. When the exercise of personal jurisdiction is authorized by this Act, service of process may be made outside the Navajo Nation, and where such service is not reasonably feasible, service may be made by any means which is likely to give the defendant actual notice of the pendency of an action.

E. Inconvenient forum. When a Navajo Nation Court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any condition that may be just.

F. Other basis of jurisdiction unaffected. A Court of the Navajo Nation may exercise jurisdiction on any other basis authorized by law, including the inherent and treaty jurisdiction of the Navajo Nation.

G. Manner and proof of service.

1. When the law of the Navajo Nation authorizes service outside the Navajo Nation, the service, when calculated to give actual notice, may be made:

a. By personal delivery in the manner prescribed for service within the Navajo Nation;

b. In the manner prescribed by the law of the place in which service is made in an action in any of its courts of general jurisdiction;

c. By any form of mail addressed to the person to be served and requiring a signed receipt;

d. As directed by a foreign authority in response to a letter rogatory; or

e. As directed by the Court.

2. Proof of service outside the Navajo Nation may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the Navajo Nation, the order pursuant to which service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee satisfactory to the court and showing that the service was reasonably calculated to give actual notice.

H. Individuals to be served; special cases. When the law of the Navajo Nation requires that in order to effect service one or more designated individuals be served, service outside the Navajo Nation under this Act must be made upon the designated individual or individuals.

I. Assistance to tribunals and litigants outside the Navajo Nation.

1. A Court of the Navajo Nation may order service upon any person who is domiciled or can be found within the Navajo Nation of any document issued in connection with a proceeding in a tribunal outside the Navajo Nation. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the Navajo Nation and shall direct the manner of service. Otherwise, no process which is not process issued by a Navajo Nation Court or administrative tribunal with jurisdiction over the cause may be served within the Navajo Nation, and the Navajo Nation denies consent to admission to the Navajo Indian country to any state official or process server for the service of process unless the same is done under this Section.

2. Service in connection with a proceeding in a tribunal outside the Navajo Nation may be made within the Navajo Nation only with an order of a Navajo Nation Court.

3. Service under this Section does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the Navajo Nation.

4. A Navajo Nation Court may decline to order service of process where a tribunal outside the Navajo Nation lacks jurisdiction over the action, where the application is fraudulent, or where the action violates the public policy of the Navajo Nation.

J. Other provisions of law unaffected. This Act does not repeal or modify any other law of the Navajo Nation permitting any other procedure for service of process.

History

CO-72-03, October 24, 2003.

CJA-02-01, January 24, 2001.

Annotations

1. Construction and application

"The Court holds that the Navajo Nation courts have authority to hear a claim against a motor vehicle manufacturer alleging that a vehicle defect resulted in the death of a Navajo police officer on a road located on trust land within the Navajo Reservation." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 1 (Nav. Sup. Ct. December 18, 2008).

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [now § 631], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

"Given the clear mandate of the long arm statute, 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 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).

2. Personal jurisdiction

"Personal jurisdiction means that a court has authority over a party, even if he or she resides outside the Navajo Nation, if he or she consents to have the case heard in the Navajo courts, or if his or her actions have effects within the Navajo Nation." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 (Nav. Sup. Ct. April 30, 2007).

"Indeed, the Appellants' allegations in this case bring Appellees squarely within the long arm statute, and, therefore, in the absence of some reason why the provision is invalid, the Nation's courts have personal jurisdiction over Appellees." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 6 (Nav. Sup. Ct. April 30, 2007).

3. Minimum contacts

"Under the circumstances, the Court holds that Ford is present through its vehicles that entered the Nation's territory. Ford actively participated in the sale and financing of the vehicles to the Navajo Nation government through a Ford dealer and Ford financing subsidiary. Ford had full knowledge that the vehicles were intended for the specific use of tribal officials performing official tribal activities. This Court has previously recognized inherent jurisdiction over a products liability claim when a diabetes drug entered the Nation through prescription, provision and/or ingestion within Nation. *Cf. Nelson v. Pfizer*, 8 Nav. R. 369, 373 (Nav. Sup. Ct. 2003). That one of those police vehicles crashed while performing official duties on a dirt road on trust land within the Nation is enough to invoke the Nation's absolute civil jurisdiction under the Treaty. It is for these types of cases that the Navajo Nation Council enacted the Navajo Long-Arm Civil Jurisdiction and Service of Process Act, 7 N.N.C. § 253a." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 9 (Nav. Sup. Ct. December 18, 2008).

"The Court takes judicial notice that the Long Arm Civil Jurisdiction and Service of Process Act enacted in 2001 does not establish Navajo civil jurisdiction over non-members. The Act codified the inherent authority of the Navajo Nation as affirmed in Article II of the Treaty of 1868. As such, the Act clarified the modern application of this authority." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 9-10, footnote 5 (Nav. Sup. Ct. December 18, 2008).

4. Treaty

"The Court holds that the Navajo Nation courts have authority to hear a claim against a motor vehicle manufacturer alleging that a vehicle defect resulted in the death of a Navajo police officer on a road located on trust land within the Navajo Reservation." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 1 (Nav. Sup. Ct. December 18, 2008).

"The Navajo Nation retains civil jurisdiction over claims arising within the Nation by inherent sovereignty under Article II of the Treaty." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 4 (Nav. Sup. Ct. December 18, 2008).

"As we stated in *Dale Nicholson Trust*, Article II specifically recognizes the Navajo Nation's authority to regulate all non-members other than certain federal employees on its lands. [...] The Nation's Article II authority is no different whether on the original Reservation or later extensions." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 6 (Nav. Sup. Ct. December 18, 2008).

"Under the circumstances, the Court holds that Ford is present through its vehicles that entered the Nation's territory. Ford actively participated in the sale and financing of the vehicles to the Navajo Nation government through a Ford dealer and Ford financing subsidiary. Ford had full knowledge that the vehicles were intended for the specific use of tribal officials performing official tribal activities. This Court has previously recognized inherent jurisdiction over a products liability claim when a diabetes drug entered the Nation through prescription, provision and/or ingestion within Nation. *Cf. Nelson v. Pfizer*, 8 Nav. R. 369, 373 (Nav. Sup. Ct. 2003). That one of those police vehicles crashed while performing official duties on a dirt road on trust land within the Nation is enough to invoke the Nation's absolute civil jurisdiction under the Treaty. It is for these types of cases that the Navajo Nation Council enacted the Navajo Long-Arm Civil Jurisdiction and Service of Process Act, 7 N.N.C. § 253a." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 9 (Nav. Sup. Ct. December 18, 2008).

"The Court takes judicial notice that the Long Arm Civil Jurisdiction and Service of Process Act enacted in 2001 does not establish Navajo civil jurisdiction over non-members. The Act codified the inherent authority of the Navajo Nation as affirmed in Article II of the Treaty of 1868. As such, the Act clarified the modern application of this authority." *Ford Motor Company v. Kayenta District Court, and concerning Todecheene*, No. SC-CV-33-07, slip op. at 9-10, footnote 5 (Nav. Sup. Ct. December 18, 2008).

§ 254. Territorial jurisdiction

A. The territorial jurisdiction of the Navajo Nation shall extend to Navajo Indian Country, defined as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of dependent Navajo Indian communities, all Navajo Indian allotments, all land owned in fee by the Navajo Nation, and all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians.

B. The Courts of the Navajo Nation may also exercise jurisdiction over any action for probate, domestic relations, child custody, adoption and Navajo Nation benefits and services, in which a party is a Navajo resident of the Hopi-Partitioned Lands.

History

CO-72-03, October 24, 2003.

CJA-11-00, January 28, 2000.

CD-94-85, December 4, 1985.

CJY-57-85, July 25, 1985.

CMY-28-70, May 7, 1970.

Preamble. CJY-57-85 contained the following preamble:

"7. It is the intent of these amendments that the reference to 'all land' is comprehensive and includes rights-of-way, fee land, and other lands, notwithstanding the nature of title thereto, within the exterior boundaries of the Navajo Reservation, Eastern Navajo Agency, dependent Navajo communities, Navajo Indian allotments and all lands held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians. Nothing herein shall be construed as constituting authorization for the purchase or lease of lands by any Band of Navajo Indians; and"

"8. 'Dependent Navajo Indian Communities' is intended to encompass all lands currently within the Eastern Navajo Agency and such other lands as may be determined consistent with federal law to constitute dependent Navajo Indian communities."

Annotations

1. Concurrent jurisdiction

In determining whether Navajo Tribal Court had concurrent jurisdiction over ejectment and trespass action brought in district court, Court of Appeals would consider statutes of Navajo Nation. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996). Courts <KEY> 510

2. Outside reservation

Dispute between two Navajo Indians over land located in Navajo Indian country but outside reservation boundaries fell within jurisdiction of Navajo Tribal Court. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996). Indians <KEY> 221

" ... [R]eading 7 N.T.C. § 254 as including the Moencopi Administrative Unit within its definition of Navajo Indian Country is *not* inconsistent with federal law. The Moencopi Administrative Unit lies within the exterior boundaries of the Navajo Indian Reservation *and* it has yet to be decided that the Hopi Tribe holds an *exclusive* interest in the lands." *Taylor v. Bradley*, 6 Nav. R. 147, 149 (Nav. Sup. Ct. 1989).

3. Scope of jurisdiction

"After reviewing the documents submitted by both sides in this case, we believe we do not have to reach the question of whether the parcel is within the territorial jurisdiction of the Navajo Nation. This is because Cabinets is bound by an explicit consent to Navajo jurisdiction in the lease between NHA

and the Navajo Nation." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 3-4 (Nav. Sup. Ct. February 11, 2004).

"Petitioner claims that, regardless of any Navajo Nation definition of its territorial jurisdiction, e.g. 7 N.N.C. § 254 (1995), which definition includes land owned in fee by the Nation, the Labor Commission must show that the parcel is a 'dependent Indian community' under the federal Indian Country statute, 18 U.S.C. § 1151, and the United States Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998)."

"History shows that the Navajo Tribal Council gave the Navajo courts their jurisdiction. Consequently, the Navajo courts can exercise only that jurisdiction granted by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 90 (Nav. Sup. Ct. 1989), citing *Nez v. Barney*, 3 Nav. R. 126, 129 (1982).

4. Elections

"Furthermore, the use of the definition of the Navajo Nation's modern territorial jurisdiction, 7 N.N.C. § 254, to demarcate the land upon which one must reside if he or she desires to run in an election is itself unreasonable." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 7 (Nav. Sup. Ct. August 11, 2006).

5. Subject matter jurisdiction

"Subject matter jurisdiction means that a court has authority over a case or issue, as defined by Navajo Nation statutory law and the Treaty of 1868." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 (Nav. Sup. Ct. April 30, 2007).

§ 255. Writs or orders

The District Courts shall have the power to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Garnishment

Enabling language of this Section and former version of 9 N.N.C. § 1303 enable the District Courts of the Navajo Nation to order wage garnishment to any employer, trustee, financial agency or other person within the territorial jurisdiction of the Nation for child support. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).

Pursuant to 7 N.N.C. § 705 and this Section, coupled with Rule 23, Rules of Navajo Civil Procedure, garnishment is permitted. *Tracey v. Heredia*, 4 Nav. R. 149 (Nav. Ct. App. 1983).

2. Power of court

"... [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).

"This Court affirms the principle that the Navajo Tribal Courts have inherent power to enforce their orders and uphold the dignity of the court through contempt powers." *In the Matter of Contempt of Sells*, 5 Nav. R. 37 (Nav. Ct. App. 1985).

3. Due process

"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).

4. Review

"As a general principle, we will give considerable deference to a district court's exercise of discretion. *Higdon v. Nelson*, 7 Nav. R. 158, 159 (1995). The parameters of discretion are whether the district court acted within the rules, principles and customs applicable to the facts of the case. We will not overturn a discretionary decision unless the record shows that there was an actual abuse of discretion. *Little v. Begay*, 7 Nav. R. 353, 354 (1998)." *Singer v. Nez*, No. SC-CV-04-99, slip op. at 4 (Nav. Sup. Ct. July 16, 2001).

5. Oral orders

"Before considering the appropriateness of a gag order generally, the Court first notes that an oral order, whatever its subject, is ineffective. Court orders are not effective until put into writing." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 6 (Nav. Sup. Ct. November 7, 2007); citing, *Kascoli v. Kascoli*, No. SC-CV-08-05, slip op. at 3-4 (Nav. Sup. Ct. November 15, 2005).

§ 256. Temporary or preliminary injunctive relief

No District Court of the Navajo Nation shall enter an order for temporary or preliminary injunctive relief in any proceeding in which there is no appearance by the defendant, unless:

A. The District Court judge certifies in writing as to the specific irreparable harm which would occur were the temporary relief not to be ordered; and

B. The legal counsel for the plaintiff certifies by affidavit the

reasonable efforts which have been made to locate the defendant or defendant's legal counsel to notify him or her of the hearing on preliminary or temporary injunctive relief.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-19-80, February 13, 1980.

§ 257. Sovereign immunity of the Navajo Nation

Jurisdiction of the District Courts of the Navajo Nation shall not extend to any action against the Navajo Nation without the Navajo Nation's express consent. Any action against the Navajo Nation shall comply with the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and any other law providing the Navajo Nation with immunity from suit.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-19-80, February 13, 1980.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 *et seq.*

Annotations

1. Exceptions

Tribal sovereign immunity did not bar suit for injunctive relief against certain Navajo officials who were alleged to have violated federal law by acting beyond the scope of their authority in attempting to regulate affairs of non-Indian electric utility that operated power plant on tribal trust land. *Arizona Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir.(Ariz.) 1995). Indians <KEY> 236

Indian tribes may not be sued absent express and unequivocal waiver of immunity by tribe or abrogation of tribal immunity by Congress. *Arizona Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir.(Ariz.) 1995). Indians <KEY> 235

"The Navajo district courts have no jurisdiction in suits against the Navajo Nation without its express consent." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

Immunity of Navajo Tribe from suit is not absolute; it is subject to complete defeasance by act of Congress and Tribe itself can also waive immunity. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985), reversed on other

grounds 798 F.2d 1324. Indians <KEY> 235

Omnibus Indian Mineral Leasing Act did not diminish sovereign immunity of Navajo Tribe. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985), reversed on other grounds 798 F.2d 1324. Indians <KEY> 235

2. Common law immunity

Navajo Tribe's common-law immunity from suit extended not only to suit for monetary damages, but also to action for injunctive or declaratory relief. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985), reversed on other grounds 798 F.2d 1324. Indians <KEY> 235

3. Dismissal of claims

Complaint against Navajo Tribal Council and Navajo Office of Mineral Development would be dismissed on sovereign immunity grounds where relief against them, as merely parts of tribal government, would be, in effect, relief against Tribe. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985), reversed on other grounds 798 F.2d 1324. Indians <KEY> 235

4. Actions barred

If purpose of action against Navajo tribal officials were, in effect, to obtain relief against Tribe, suit would be barred by Tribe's sovereign immunity. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985), reversed on other grounds 798 F.2d 1324. Indians <KEY> 235

5. Tribal officers

Navajo Tribe's sovereign immunity would not protect tribal officers from suit against them in their individual capacities for acts beyond their authority. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985), reversed on other grounds 798 F.2d 1324. Indians <KEY> 236

Subchapter 4. Special Division of Window Rock District Court

§ 291. Establishment

There is established the Special Division of the Window Rock District Court.

History

CMA-11-89, March 10, 1989.

CMA-8-89, March 1, 1989.

§ 292. Composition

A. The Special Division of the Window Rock District Court shall consist of three judges or retired judges or retired justices, who shall be assigned in such manner and for such terms as is provided in this Section, for the purpose

of appointing special prosecutors pursuant to 2 N.N.C. §§ 2021–2024.

B. Judges of the Special Division shall be appointed for terms of two years each, which terms shall commence on the date of the enactment of this Section, and thereafter on the date of every other anniversary of the enactment of this Section.

C. The Chief Justice of the Navajo Nation shall designate and assign three judges or retired judges or retired justices to the Special Division for each successive two-year term. At least two of the judges shall be active permanent judges of District Courts of the Navajo Nation. The third judge may be either an active permanent judge of the Navajo Nation or a retired judge or retired justice of the Navajo Nation. Unless there are an insufficient number of active permanent judges from at least two District Courts, not more than one judge or retired judge may be assigned to the Special Division from a particular District (or preceding trial) Court. The Chief Justice shall designate one of the judges to be the presiding judge of the Special Division.

D. Judges of the Special Division may only be removed during their terms upon their resignation, or by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council. Any vacancy in such division shall be filled only for the remainder of the two-year period for which such vacancy occurs and in the same manner as initial appointments to such division were made.

E. Except as provided under Subsection (F) of this Section, assignment to the Special Division shall not bar any other judicial assignment during the term of assignment to such division.

F. No judge of the Special Division shall be eligible to participate in any judicial proceeding concerning a matter which involves a special prosecutor appointed by the Division while such special prosecutor is serving in that office, or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office.

G. Within five calendar days of the enactment of this Section, the Special Division shall be created pursuant to Subsection (C) of this Section.

History

CO-72-03, October 24, 2003.

CMA-11-89, March 10, 1989.

CMA-8-89, March 1, 1989.

Cross References

Special Prosecutor, see 2 N.N.C. § 2021 *et seq.*

Subchapter 5. Supreme Court

§ 301. Composition and location

A. The Supreme Court of the Navajo Nation shall consist of the Chief Justice of the Navajo Nation and two Associate Justices of the Supreme Court.

B. The Supreme Court of the Navajo Nation shall be located in Window Rock, Navajo Nation (Arizona).

C. The Supreme Court of the Navajo Nation may sit and conduct hearings outside of the Navajo Nation in accordance with policies established for the conduct of hearings outside the Navajo Nation.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CMY-39-78, May 4, 1978.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Construction and application

"We therefore conclude that in cases where three justices were assigned to a case and one becomes unavailable during consideration due to resignation, removal or other reason beyond the control of the Court, this Court may issue an opinion by the remaining two justices." *Benally v. Mobil Oil Corporation, nka ExxonMobil Oil Corporation*, No. SC-CV-05-01, slip op. at 4 (Nav. Sup. Ct. November 14, 2003)

"As the procedural requirement for three justices was a separate action, Section 301(A) merely defines the make-up of the Court. It does not independently restrict the Court to three justices where the Navajo Nation Council had included a separate provision to do so." *Benally v. Mobil Oil Corporation, nka ExxonMobil Oil Corporation*, No. SC-CV-05-01 slip op. at 3 (Nav. Sup. Ct. November 14, 2003)

"Though on its face 301(A) states three justices make up this Court, other Sections of the Judicial Reform Act and its predecessors demonstrate that the Navajo Nation Council authorized this Court to use a two-justice panel when necessary." *Benally v. Mobil Oil Corporation, nka ExxonMobil Oil Corporation*, No. SC-CV-05-01, slip op. at 2 (Nav. Sup. Ct. November 14, 2003)

§ 302. Jurisdiction—Generally

The Supreme Court shall have jurisdiction to hear appeals from final judgments and other final orders of the District Courts of the Navajo Nation and such other final administrative orders as provided by law. The Supreme Court shall also have jurisdiction over original extraordinary writs. The Supreme Court shall be the Court of last resort.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Jurisdiction, generally

"Subject matter jurisdiction means that a court has authority over a case or issue, as defined by Navajo Nation statutory law and the Treaty of 1868." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 (Nav. Sup. Ct. April 30, 2007).

"Appellants filed this appeal long after the thirty (30) days expired to appeal the final order. This Court only has jurisdiction to review decisions appealed within thirty (30) days of the decision." *Mitchell, et al. v. Davis, et al.*, No. SC-CV-52-03, slip op. at 3 (Nav. Sup. Ct. August 16, 2004).

"No sanctions were imposed, and the attorney did not take an appeal. The finding of contempt was personal to the attorney, collateral to the action, and neither party has any rights as a result of the contempt finding which are part of this appeal." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 9 (Nav. Sup. Ct. July 25, 2001).

"Section 302 by itself does not vest this Court with jurisdiction over appeals of final decisions made by the administrative agencies. Instead, Section 302 requires that a law from among the laws governing an administrative agency must provide for an appeal to this Court." *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 302 (Nav. Sup. Ct. 1990).

"Section 302 gave the Court jurisdiction to review final judgments and final orders of the district courts and certain administrative agencies." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 201, 202 (Nav. Sup. Ct. 1990).

"An appeal from a final administrative decision is permitted only if a statute exists which expressly provides for an appeal to the Supreme Court. [....] ... [N]ot all final administrative decisions are appealable to the Supreme Court." *Navajo Nation Division of Resources v. Spencer*, 5 Nav. R. 109, 111-112 (Nav. Sup. Ct. 1986).

"The Supreme Court's appellate jurisdiction is not derived from general principles governing administrative law. The Supreme Court can acquire and exercise jurisdiction only in the manner dictated by the laws enacted by the legislative body." *Navajo Nation Division of Resources v. Spencer*, 5 Nav. R. 109, 111 (Nav. Sup. Ct. 1986).

"This Court's authority to issue a writ of prohibition is established at 7

N.T.C. § 302, which grants to the Court original jurisdiction to hear cases where a special writ or order is necessary or proper to carry out its jurisdiction, and supervisory jurisdiction over a trial court acting beyond its jurisdiction." *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 47 (Nav. Ct. App. 1985).

"History shows that the Navajo Tribal Council gave the Navajo courts their jurisdiction. Consequently, the Navajo courts can exercise only that jurisdiction granted by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 90 (Nav. Sup. Ct. 1989), citing *Nez v. Barney*, 3 Nav. R. 126, 129 (1982).

2. Exhaustion of remedies

"The merits of the case have progressed only to the second level of the tax administrative review process with rights of appeal to the Hearing Officer and the Tax Commission intact. Conferee White's order of denial of Chuska's motion to quash cannot be interpreted as disposing of the merits of the assessment issue thereby the case is not ripe for appeal. Neither is the issuance of an administrative subpoena in the midst a valid administrative proceeding and appealable action." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 103 (Nav. Sup. Ct. 1986).

"The Supreme Court is unavailable for review until all the substantial rights of the parties have been determined in the lower tribunal, whether that tribunal be District Court or administrative agency. The case must be fully adjudicated on the merits, and the entry of the final decision must preclude further proceedings in the lower tribunal." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 102 (Nav. Sup. Ct. 1986).

"Generally, exhaustion [of administrative remedies] will not be required: 1. When the administrative remedy is inadequate. [...] 2. When the complainant will suffer irreparable injury if required to exhaust administrative remedies. 3. When the agency is clearly acting or attempting to act in excess of its authority. 4. When pursuing the administrative process would be futile ..."
Navajo Skill Center v. Benally, 5 Nav. R. 93, 96-97 (Nav. Sup. Ct. 1986).

"In determining when agency actions will be reviewed, the doctrines of primary jurisdiction and exhaustion of administrative remedies have been developed. Primary jurisdiction refers to the concept that the agency should act first. Exhaustion of administrative remedies is the concept that the agency should complete its procedures before the courts interfere." *Navajo Skill Center v. Benally*, 5 Nav. R. 93, 96 (Nav. Sup. Ct. 1986).

3. Final orders

"In the case of *Chuska Energy Co. v. Navajo Tax Comm'n*, we construed the word 'final' in our appellate jurisdiction statute ... to mean the procedural stage where 'all the substantial rights of the parties have been determined in the lower tribunal.' 5 Nav. R. 98, 102 (1986)." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 3 (Nav. Sup. Ct. July 25, 2001).

" ... [A]n order denying a motion to dismiss is interlocutory and not final for purposes of appealability." *Billie v. Abbott*, 5 Nav. R. 201, 203 (Nav.

Sup. Ct. 1987).

4. Certified questions

"Therefore, our appellate authority over OHA [referring to 11 N.N.C. § 404(B)(14)(b)(7)] gives this Court the jurisdiction to hear its certified questions, and *Election Supervisors* is overruled." *In the Matter of Two Initiative Petitions Filed by Navajo Nation President Joe Shirley, Jr.*, No. SC-CV-41-08, slip op. at 3 (Nav. Sup. Ct. July 18, 2008)–(Order of Correction entered July 22, 2008). [See, *In re Navajo Board of Election Supervisors*, 6 Nav. R. 302, 303–304 (Nav. Sup. Ct. 1990).]

"An administrative agency cannot certify a question to this Court because that would violate separation of powers principles as well as their own powers." *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 304 (Nav. Sup. Ct. 1990).

5. Advisory opinions

"We do not, and we cannot, give advisory opinions." *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 304 (Nav. Sup. Ct. 1990).

6. Original jurisdiction

"There is no magic in the phrase 'original jurisdiction'; it simply means that, where the Supreme Court has jurisdiction, matters need not be decided at the trial level prior to being considered by this court." *Budget and Finance Committee v. Office of Hearings and Appeals*, No. SC-CV-63-05, slip op. at 4 (Nav. Sup. Ct. January 4, 2006).

" 'Original jurisdiction' does not give this Court authority over matters which the Navajo Nation Council has explicitly deemed are outside its jurisdiction." *Budget and Finance Committee v. Office of Hearings and Appeals*, No. SC-CV-63-05, slip op. at 4 (Nav. Sup. Ct. January 4, 2006).

§ 303. Writs or orders

The Supreme Court shall have the power to issue any writs or orders:

- A. Necessary and proper to the complete exercise of its jurisdiction;
- B. To prevent or remedy any act of any Court which is beyond such Court's jurisdiction; or
- C. To cause a Court to act where such Court fails or refuses to act within its jurisdiction.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Construction and application

"The Court has discretion whether to issue a writ; it is not required to do so merely because the facts as alleged by the petitioner fit within the writ the petitioner requests." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 3 (Nav. Sup. Ct. November 7, 2007).

"The Navajo Board of Election Supervisors is not a court for purposes of Section 303." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 201, 203 (Nav. Sup. Ct. 1990).

"Under its original jurisdiction, the Supreme Court has supervisory authority over lower courts. Supervisory authority permits the Court to issue extraordinary writs, which include injunctions, to the lower courts." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 201, 202 (Nav. Sup. Ct. 1990).

"To hold that the Supreme Court can supervise Conferee White and the proceedings in Formal Conference would amount to a strained interpretation of 7 N.T.C. § 303." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 101 (Nav. Sup. Ct. 1986).

"A writ of prohibition is an extraordinary remedy which we will grant only in rare cases showing absolute necessity. At a minimum we prefer that the application show that (1) the lower court is about to exercise judicial power; (2) the exercise of such power by the lower court is not authorized by law; and (3) the exercise of such power will result in injury, loss or damage for which there is no plain, speedy and adequate remedy at law." *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 86 (Nav. Sup. Ct. 1986).

"... [A] writ of prohibition works to keep the inferior tribunals within their lawful jurisdictional bounds." *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 86 (Nav. Sup. Ct. 1986).

2. Burden of proof

"It will be the petitioner's burden to prove that he is entitled to the writ [of prohibition] as a matter of right." *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 87 (Nav. Sup. Ct. 1986).

3. Mandamus, generally

"A writ of mandamus is appropriate if the District Court has a non-discretionary duty to act in some way, and has failed to do so." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 3 (Nav. Sup. Ct. November 7, 2007); citing, *In re A.P. v. Tuba City Family Court*, No. SC-CV-02-05, slip op. at 3 (Nav. Sup. Ct. May 26, 2005).

"It is imperative that the petition [for a writ of mandamus] show that (1) the

petitioner has a legal right to have the particular act performed; (2) the respondent judge has a legal duty to perform that act; and (3) the respondent judge failed or neglected to perform the act. A writ of mandamus will not be used to create new duties for district court judges." *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 87 (Nav. Sup. Ct. 1986).

"A writ of mandamus will be issued to compel a district court judge to perform a judicial duty required by law, only if there is no plain, speedy and adequate remedy at law." *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 87 (Nav. Sup. Ct. 1986).

4. Jurisdiction

"The Court specifically concluded that the Court has authority under 7 N.N.C. § 303(A), the necessary and proper clause, to issue writs against administrative agencies when the Court has appellate jurisdiction over them. See, *Budget and Finance Committee of the Navajo Nation Council v. Navajo Nation Office of Hearings and Appeals*, No. SC-CV-63-05, slip op. at 4-5 (Nav. Sup. Ct. January 4, 2006). In other words, the Court's writ jurisdiction is coextensive with the Court's appellate jurisdiction, and the right to an appeal includes the right to intervene before a final judgment through an extraordinary writ when necessary and proper." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 3, footnote 3 (Nav. Sup. Ct. November 21, 2007).

"Subject matter jurisdiction means that a court has authority over a case or issue, as defined by Navajo Nation statutory law and the Treaty of 1868." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 3 (Nav. Sup. Ct. April 30, 2007).

"As the Council has explicitly prohibited appellate review of the sanctions assessed in this case, there is no appellate jurisdiction to preserve or protect. The Court therefore lacks jurisdiction to issue a writ of prohibition in this case." *Budget and Finance Committee v. Office of Hearings and Appeals*, No. SC-CV-63-05, slip op. at 5 (Nav. Sup. Ct. January 4, 2006).

"We have jurisdiction to issue 'any writs ... [n]ecessary and proper to the complete exercise of [our] jurisdiction'." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 3 (Nav. Sup. Ct. May 26, 2005).

"Court Clerks are under the immediate control of the Court. Administrative agency clerks or custodians of agency records are beyond the immediate reach of the court, but within the Court's 'all writs' jurisdiction under 7 N.N.C. § 303(1995)." *Legislative Branch/Community Services Program, the Navajo Nation v. Hatahlie*, 7 Nav. R. 259, 261 (Nav. Sup. Ct. 1997).

"Situations inciting action under the necessary and proper clause include cases where the Supreme Court has lawfully acquired jurisdiction but efforts are being pursued to defeat jurisdiction; where the status quo must be maintained pending review of an action on appeal; and where the Supreme Court has potential appellate jurisdiction but there is interference with that jurisdiction which prevents perfection of the appeal. The test is to show a

need to preserve and protect the Supreme Court's appellate jurisdiction." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 102 (Nav. Sup. Ct. 1986).

"24 N.T.C. § 234(b) does not empower the Supreme Court with original jurisdiction to issue injunctions. Neither can the Supreme Court properly use 24 N.T.C. § 234(b) to invoke its supervisory authority over lower courts. An appeal to the Supreme Court of a final Tax Commission decision is the only remedy available under 24 N.T.C. § 234(b)." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 101 (Nav. Sup. Ct. 1986).

"[A]n original petition seeking an injunction must allege the Supreme Court's original jurisdiction under Section 303 and identify the court to be enjoined." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 100 (Nav. Sup. Ct. 1986).

"The Supreme Court's jurisdiction to issue an injunction is derived from two sources within 7 N.T.C. § 303; the necessary and proper clause and through its powers to supervise the lower courts." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 100 (Nav. Sup. Ct. 1986).

5. Powers of court

"This Court, en banc, can also remove a district judge from a case using 7 N.N.C. § 303. [....] Section 303 does not authorize the Chief Justice to act alone in removing a trial judge from a pending case." *In re: Excusal of Judge Ferguson*, 7 Nav. R. 320, 322-323 (Nav. Sup. Ct. 1998).

6. Review

"Before the Court considers the validity of the District Court's orders, the Court must decide the threshold question whether there is an adequate remedy at law for each writ request." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 3 (Nav. Sup. Ct. November 7, 2007).

"In *Hurley*, the Court discussed the 'adequate remedy at law' requirement, and stated that there is no adequate remedy if there would be potential damage to a litigant that is irreversible on appeal." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 4 (Nav. Sup. Ct. November 7, 2007); citing, *Hurley v. T0hajiilee Family Court*, No. SC-CV-44-05, slip op. at 3 (Nav. Sup. Ct. August 16, 2005).

"In contrast, this Court holds that the alleged denial of a jury trial, the 'gag order' preventing discussion of the case, and the possibility that a biased judge may sit on the case to its completion all involve potential damage that cannot be adequately remedied on appeal." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 5 (Nav. Sup. Ct. November 7, 2007).

"It is clear from the Shiprock District Court's July 28, 1999 'temporary commitment' order, which was actually an indefinite civil contempt order, that Pelt was jailed solely for her failure to pay a civil judgment for a contract debt. 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).

7. Superintending control

"A writ of superintending control is appropriate when the District Court abuses its discretion in an egregious way, requiring this Court's intervention." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 3 (Nav. Sup. Ct. November 7, 2007); citing, *In re A.P. v. Tuba City Family Court*, No. SC-CV-02-05, slip op. at 3 (Nav. Sup. Ct. May 26, 2005).

8. Habeas corpus

"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).

Subchapter 7. Justices and Judges

Article 1. Generally

§ 351. Salaries

Salaries for Justices and Judges of the Courts of the Navajo Nation shall be established by the Judiciary Committee of the Navajo Nation Council, and in setting rates of compensation, the Committee shall take into consideration:

- A. The Navajo Nation Classification and Pay Plan;
- B. The need to attract outstanding Navajo candidates to the judiciary;
- C. The need to attract or compensate Justices or Judges who are graduates of a school of law or who have extensive experience in law or judging;
- D. Comparable salaries of Justices and Judges in the region; and
- E. Any other objective criteria relevant to judicial compensation.

History

CO-72-03, October 24, 2003.

CD-94-85, Exhibit D, December 4, 1985.

CO-53-81, October 22, 1981.

CF-6-76, February 19, 1976.

CJN-35-61, June 27, 1961.

CJN-40-59, June 10, 1959.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Note. Reformatted for purposes of statutory form.

§ 352. Removal from office

A. The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines reasonable cause exists to believe the Justice or Judge has engaged in malfeasance or misfeasance in office, serious neglect of duty, or has become mentally or physically unable to perform the duties of office. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.

B. The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines there is substantial evidence that the Justice or Judge willfully or negligently made significant misrepresentations or omissions about his or her qualifications on his or her application for the judicial position. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.

C. A recommendation for removal under Subsections (A) or (B) above shall be presented promptly to the Navajo Nation Council by proposed resolution, and the Justice or Judge sought to be removed from office shall be given an opportunity to appear before the Navajo Nation Council and present evidence in his or her own defense. The Navajo Nation Council is not bound by the formal Rules of Evidence in its considerations or deliberations. Thereafter such Justice or Judge may be removed from office by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

D. Documented and conclusive evidence that a Justice or Judge has been convicted of a felony in state or federal court since taking office, or that a Justice or Judge has been convicted of any tribal criminal offense which is also identified as a Major Crime in 18 U.S.C. § 1153 since taking office, shall result in the removal of such Justice or Judge by resolution of the Judiciary

Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1985.

CO-69-58, October 16, 1958.

Cross References

Judiciary Committee authority to recommend removal of Judges, see 2 N.N.C. § 574.

Annotations

1. Authority of committee

"The Chairman and Advisory Committee also have no authority to recall retired or removed judges back to service. [....] Judges who have been removed for misconduct have no status as retired judges. Thus, they cannot be recalled for temporary duty on the Navajo Nation bench." *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

§ 353. Retirement

A. Definitions. The following definitions shall apply for purposes of this Section:

1. Judiciary Committee means the Judiciary Committee of the Navajo Nation Council.

2. Navajo Nation Judge as used in this Section shall include the Chief Justice of the Navajo Nation, all Associate Justices of the Navajo Nation Supreme Court, and all Trial Judges of the Navajo Nation District Courts and Family Courts.

3. Judges' Retirement Plan means:

a. Either duly approved and established provisions directly applicable to Judges contained within the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its successor; or

b. A duly approved and established Navajo Nation Judges' Retirement Plan document.

B. Eligibility.

1. Judges beginning service after the effective date of this Section:

a. A Navajo Nation Judge beginning service after the effective date of this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may retire and receive retirement benefits only in accordance with the Judges' Retirement Plan and only after meeting the vesting, retirement age and other eligibility requirements of the Judges' Retirement Plan.

b. The provisions of this Section specifically applicable to Navajo Nation Judges beginning service before the effective date of this Section are not applicable to Judges beginning service after the effective date of this Section.

2. Judges beginning service before the effective date of this Section:

a. The vesting, retirement age, and other eligibility requirements specifically identified in this Section as applicable to Navajo Nation Judges beginning service before the effective date of this Section shall be incorporated into and applied through the Judges' Retirement Plan.

b. A Navajo Nation Judge beginning service before the effective date of this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may retire after having served a total of eight or more years in office. A Navajo Nation Judge beginning service before the effective date of this Section who retires before reaching the age of 55 years pursuant to Subsection (B), but not due to disability, shall not receive retirement benefits until the Judge has reached the age of 55 years.

c. A Navajo Nation Judge beginning service before the effective date of this Section who retires or resigns with less than a total of eight years in office shall not be eligible for retirement benefits under this Section.

3. A Navajo Nation Judge who intends to retire shall compile all the necessary paperwork and forward it to the Chief Justice. If the Chief Justice finds from the paperwork that the Judge meets the requirement for retirement, the Chief Justice shall give preliminary approval to the retirement request and forward the paperwork to the Navajo Nation Retirement Program for concurrence and processing of retirement benefits pursuant to the Judges' Retirement Plan.

4. A Navajo Nation Judge's total years of service for purposes of calculating eligibility for retirement benefits shall begin with the date of confirmation by the Navajo Nation Council and include all years served as a Navajo Nation probationary Judge and as a permanent Judge.

C. Removal; effect on retirement benefits.

1. The Navajo Nation Council may, upon recommendation of the Judiciary Committee, remove from office a permanent Navajo Nation Judge for inability to perform judicial duties due to permanent mental or physical disability. The Chief Justice shall recommend removal to the

Judiciary Committee. A Navajo Nation Judge removed under Subsection (C) shall receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan.

2. A Navajo Nation Judge who has been removed from office for malfeasance, misfeasance, serious neglect of duty, or criminal conviction as set forth in 7 N.N.C. § 352, shall be eligible for retirement benefits under this Section but shall not have the status of retired Judge.

D. Permanent disability; eligibility.

1. A Navajo Nation Judge may retire if the Judge has become permanently disabled from performing his or her duties of office. "Permanently disabled" means the permanent inability of the Judge, by reason of physical or mental incapacity, to perform any substantial part of his or her ordinary duties as a Navajo Nation Judge. A Navajo Nation Judge who retires under Subsection (D) shall receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan.

2. A Navajo Nation Judge who intends to retire under Subsection (D) shall compile all the necessary paperwork and forward it to the Chief Justice for review. The Chief Justice shall recommend to the Judiciary Committee whether the Judge is eligible to retire under Subsection (D). The Judiciary Committee shall recommend to the Retirement Plan Administration Committee or its successor whether the Judge is eligible to retire under Subsection (D). The Retirement Plan Administration Committee or its successor shall have final authority to determine whether a Navajo Nation Judge is eligible to retire under the disability provisions of the Retirement Plan.

3. The Retirement Plan Administration Committee or its successor, with the concurrence of the Judiciary Committee, may develop nondiscriminatory procedures for evaluating the continuing disability of a Navajo Nation Judge retired under Subsection (D). The retirement benefits of a Navajo Nation Judge retired under Subsection (D) shall be suspended for failure to comply with such procedures in a timely fashion or if the disability no longer meets the criteria of Subsection (D).

4. The retirement benefits of a Navajo Nation Judge who retires under Subsection (D) shall be suspended during any time such Judge engages in the practice of law in any way, including the teaching of law.

E. Benefit levels.

1. Retirement benefits for Navajo Nation Judges beginning service after the effective date of this Section shall be established through the Judges' Retirement Plan document and administered through the Navajo Nation Retirement Program. The Judges' Retirement Plan may take into consideration the American Bar Association Standards relating to judicial retirement.

2. Retirement benefits for Judges beginning service before the effective date of this Section shall be incorporated into the Judges'

Retirement Plan document and administered through the Navajo Nation Retirement Program. Such benefits shall be equivalent to the Section 353 in effect during the Judge's service.

3. A retired Navajo Nation Judge who is receiving retirement benefits pursuant to this Section shall not simultaneously receive salary, wages and/or stipends for work performed from those employers participating in the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its successor.

4. A Navajo Nation Judge's retirement benefits shall not be diminished except as specifically identified under Subsections (D) and (E).

F. Pro Tempore service. The Chief Justice may recall a retired Navajo Nation Judge to service as a Navajo Nation Judge pro tempore. The retired Judge recalled to service shall be reimbursed only for reasonable expenses related to such service. A Navajo Nation Judge who has retired due to disability or has been removed pursuant to Subsection (C) shall not be eligible for recall to service.

G. Plan document. The Judges' Retirement Plan shall:

1. Incorporate the applicable amended Subsections of Section 353;
2. Incorporate provisions for the continued payment of retirement benefits which have vested or will vest under the former Section 353; and
3. Include a Judges' retirement trust fund to pay judges their retirement benefits.

H. Authority. The Budget and Finance Committee, upon positive recommendation of the Judiciary Committee and the Retirement Plan Administration Committee, shall have the authority to approve the initial Judges' Retirement Plan document and any subsequent amendments. This authority shall not be deemed to alter or amend the Retirement Plan Administration Committee's or the Navajo Nation Retirement Program's authority to administer the Judges' Retirement Plan or the Budget and Finance Committee's authority to administer the underlying trust fund.

I. Effective dates. Except for amended Subsections (B), (C), (D) and (E), these amendments to 7 N.N.C. § 353 shall become effective upon enactment. Subsections (B), (C), (D) and (E) shall become effective after a final Navajo Nation Judges' Retirement Plan has been recommended by the Judiciary Committee and the Retirement Plan Administration Committee and approved by the Budget and Finance Committee and the Judges retirement trust fund fully funded by the Navajo Nation Council. For purposes of this Subsection, fully funded shall mean funded to a level sufficient to satisfy the funding requirements of the Employees Retirement Insurance Security Act ¹ if such Act was applicable to the Judges Retirement Plan.

History

CO-72-03, October 24, 2003.

CJA-04-03, January 29, 2003.

CJY-60-00, July 21, 2000.

CD-94-85, December 4, 1985.

CJN-33-62, June 18, 1962.

CJN-35-61, June 27, 1961.

CF-15-61, February 15, 1961.

CJN-40-59, June 10, 1959.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Exceptions to provision. CJA-11-84, January 25, 1984.

Annotations

1. Authority of committee

"The Chairman and Advisory Committee also have no authority to recall retired or removed judges back to service. The legally appointed Chief Justice has the authority to recall only retired judges to the bench temporarily to help relieve congestion in the courts. [....] Judges who have been removed for misconduct have no status as retired judges. Thus, they cannot be recalled for temporary duty on the Navajo Nation bench. A probationary judge who has been removed by the Chairman upon recommendation of the Judiciary Committee also has no status as a retired judge and cannot be recalled to service." *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

§ 354. Qualifications for judicial appointment

A. District Courts. The following standards and qualifications shall apply to all judicial appointments to the District Courts of the Navajo Nation:

1. Member of Navajo Nation and Age. An applicant shall be an enrolled member of the Navajo Nation and shall be over 30 years of age.

2. Criminal Convictions. An applicant shall not have any felony or other conviction of an offense identified as a Major Crime in 18 U.S.C. § 1153 in any jurisdiction. An applicant shall not have any misdemeanor convictions in any jurisdiction within a five consecutive year period prior to the date the application is submitted.

3. Education. Each applicant shall have earned, at a minimum, an Associate of Arts or Science degree from an accredited institution of higher education. An applicant who has earned a higher educational degree shall be preferred, with particular preference being given to a

law degree (J.D. or LL.M.).

4. Experience. Each applicant shall have at least four years direct work experience in a law related area and shall have a working knowledge of Navajo and applicable federal and state laws. Those applicants with experience working with the Navajo Nation Courts or with state and federal courts shall be preferred.

5. Knowledge of Navajo Language, Culture and Tradition. Each applicant must be able to speak both Navajo and English, and have some practical knowledge of the fundamental laws of the Diné. The applicant must be able to demonstrate:

a. An understanding of K'é, including the Diné clan system;
and

b. A basic understanding of traditional Navajo religious ceremonies; and

c. An understanding of the traditional Navajo lifestyle.

6. Health. Each applicant shall produce a current statement from a licensed physician indicating that the applicant is in good mental health.

7. Driver's License. Each applicant shall possess a valid driver's license.

8. No Substance Abuse or Addiction. In addition to the requirement of obtaining a medical statement pursuant to Subsection (A)(6) above, each applicant must attest that he or she does not abuse or have a harmful physical addiction to any mood altering substance.

9. Writing Test. Upon initial screening of applicants by the Judiciary Committee, those applicants selected shall submit to a writing test that illustrates each applicant's organizational, analytical and communicative legal writing abilities.

10. Ethics. Each applicant shall show that he or she has neither present nor past conflicts of interests that give the appearance of partiality or bias in cases brought in the Courts of the Navajo Nation. Each applicant must demonstrate a commitment to judicial independence and an impartial background that will indicate neutrality and fairness for proper decision making. An applicant shall not have been found in violation of:

a. The Navajo Nation Ethics in Government Law;

b. Standards of ethics or professional conduct for lawyers in any jurisdiction; or

c. Standards of ethics for judges or judicial codes of conduct in any jurisdiction;

within a five consecutive year period prior to the date the application is submitted.

11. References. Each applicant must be of good moral character and shall submit a minimum of four current letters of reference specifically regarding his or her application for judicial appointment. At least one letter of reference shall be from a regular member in good standing with the Navajo Nation Bar Association. Such letters shall outline the applicant's legal skills, motivation and employment performance, and the applicant's character and capacity for independence, honesty and impartiality.

12. Management Ability. Each applicant shall possess managerial and independent decision-making skills necessary for the efficient operation of a Court. Information such as the applicant's record of supervising staff, coordinating budget and personnel requirements, verbal communication and writing abilities shall be carefully considered by the Judiciary Committee.

13. Navajo Nation Bar Association. Each applicant shall provide proof in his or her application that he or she is presently a regular or inactive member in good standing with the Navajo Nation Bar Association and shall maintain membership in good standing throughout his or her judicial career.

14. Removal from office. Navajo Nation probationary and permanent judges removed from office for any reason shall not be eligible for subsequent judicial appointment.

B. Supreme Court. The standards and qualifications applicable to judicial appointments to the District Courts of the Navajo Nation shall apply to all judicial appointments to the Supreme Court of the Navajo Nation with the following variations:

1. Education. Each applicant for judicial appointment to the Supreme Court shall have earned, at a minimum, a four-year Bachelor's degree from an accredited institution of higher education. An applicant who has earned a J.D. or LL.M. shall be preferred.

2. Judge Applicants. A sitting Navajo Nation District Court Judge applicant who meets all requirements for appointment to the Supreme Court shall be preferred, in accordance with the following:

a. A Navajo Nation District Court Judge (permanent or probationary) beginning service before the effective date of this Section shall be eligible for appointment to the Supreme Court irrespective of the increased minimum educational qualifications for either District Court Judges or Supreme Court Justices enumerated in this Section. Provided, however, that such District Court Judge applicant shall meet all other minimum qualifications as set forth in this Section.

b. A Navajo Nation District Court Judge (permanent or probationary) beginning service after the effective date of this Section shall not be eligible for appointment to the Supreme Court unless he or

she meets all minimum qualifications for Supreme Court Justices as set forth in this Section.

C. These minimum qualifications and educational requirements shall not affect the status of probationary or permanent Justices or Judges beginning service before the effective date of this Section.

D. Each applicant shall be objectively evaluated, selected, appointed and confirmed based solely on their qualifications for the particular judicial position at issue and without regard to political affiliation or association.

History

CO-72-03, October 24, 2003.

CAP-28-03, April 25, 2003.

CD-94-85, December 4, 1985.

Annotations

1. Application

"The contents of the application, including the supporting documents, must conform to 7 N.T.C. § 354." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

2. Screening of applicants

"The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1)." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

§ 355. Appointment; term of office

A. The President of the Navajo Nation shall appoint the Chief Justice, Associate Justices, and District Court Judges with confirmation by the Navajo Nation Council from among those applicants recommended by the Judiciary Committee of the Navajo Nation Council.

B. The Chief Justice and the Associate Justices of the Supreme Court, and all District Court Judges shall be appointed for a probationary period of two years and upon permanent appointment shall serve thereafter during good behavior.

C. A probationary Chief Justice, Associate Justice or Judge shall not be recommended for permanent appointment unless he or she has successfully completed a course of training accredited for judges and he or she has received a satisfactory performance evaluation from the Chief Justice and the Judiciary Committee of the Navajo Nation Council at the conclusion of the probationary Justice's or Judge's two-year probationary term.

D. At any time during the probationary term of any Chief Justice, Associate Justice or Judge, the Judiciary Committee may recommend to the President of the Navajo Nation that the probationary Justice or Judge be removed from office. The President of the Navajo Nation, pursuant to such recommendation, shall remove such probationary Justice or Judge from office. Any Justice or Judge so removed shall not be eligible for the status of retired Judge, shall not be eligible for reappointment as a Justice or Judge, and shall not be called to sit in any case pursuant to 7 N.N.C. § 353(F).

E. At the conclusion of the two-year probationary term, the Judiciary Committee shall review the record and qualifications of each probationary Justice or Judge and shall recommend to the President whether or not each probationary Justice or Judge has satisfactorily completed the probationary term and should be appointed to a permanent position. The President shall not appoint to a permanent position any probationary Justice or Judge not recommended by the Judiciary Committee. The appointments shall be submitted to the Navajo Nation Council for confirmation.

History

CO-72-03, October 24, 2003.

CJY-60-00, July 21, 2000.

CD-94-85, December 4, 1985.

Cross References

Judiciary Committee authority, see 2 N.N.C. § 574.

Annotations

1. Construction and application

"Different events occur if the Judiciary Committee recommends a probationary judge to a permanent position. [....] The legislative scheme does not allow the Chairman's denial of permanent appointment to a probationary judge to be final. [....] The Navajo Tribal Council will make a final decision as to whether to grant permanent status to this type of probationary judge." *In re: Certified Questions II*, 6 Nav. R. 105, 108-110 (Nav. Sup. Ct. 1989).

"If the Judiciary Committee's recommendation is that the probationary judge be denied permanent appointment, the Chairman must deny the appointment. [....] The Chairman is required to follow the Judiciary Committee's recommendation of denial." *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

"The process for either appointment to permanent judge or denial of appointment to permanent judge begins with the Chief Justice. [....] The Chief Justice has first-hand knowledge of the work of the probationary judge during the probationary term. The Chief Justice's recommendation will be based upon the training requirement and the performance evaluation required under 7 N.T.C. § 355(c)." *In re: Certified Questions II*, 6 Nav. R. 105, 107-108 (Nav. Sup. Ct. 1989).

"At the conclusion of the probationary period, the judge is evaluated and recommended for or against permanent appointment." *In re: Certified Questions II*, 6 Nav. R. 105, 107 (Nav. Sup. Ct. 1989).

"The above cited statute providing for removal of probationary judge is not discretionary because the statute gives the public an overwhelming and compelling interest in ensuring that only qualified and ethics-conscious individuals become judges. The Navajo public has an interest in a strong and independent judiciary. Navajo sovereignty is strengthened by a strong and independent judiciary. For these reasons, a probationary judge who has been determined to be unfit for office by the Judiciary Committee must be removed by the Chairman. The public is protected by the removal of the judge." *In re: Certified Questions II*, 6 Nav. R. 105, 107 (Nav. Sup. Ct. 1989).

"The Navajo Tribal Council also has the power to deny a judgeship to any person that the Chairman appoints as a judge. Any judge appointment made by the Chairman or the Advisory Committee without following the laws contained in the Navajo Tribal Code is illegal and shall not be recognized as valid." *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

"The Chairman [President] has no independent authority to appoint a person as judge who has not been screened and recommended by the Judiciary Committee. As a collateral matter, the Advisory Committee has absolutely no authority to either recommend, not recommend, confirm, or on its own appoint a person as judge of the Navajo Nation. All recommendations for appointment of judges are initiated by the Judiciary Committee." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

"The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1)." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

"The appointment of judges to the Navajo Nation bench is governed by the Navajo Tribal Code." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

2. Confirmation of judges

"Confirmation by the Navajo Tribal Council is complete when the judge receives a majority vote from those delegates voting during a duly called session of the Navajo Tribal Council." *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

"The confirmation of judges now rests exclusively with the Navajo Tribal Council pursuant to the [Judicial Reform] Act [of 1985]." *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

3. Removed judges

"A probationary judge who has been removed by the Chairman upon recommendation of the Judiciary Committee also has no status as a retired judge and cannot be

recalled to service." *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

4. Termination

"If a probationary judge is to be removed prior to the expiration of his probationary period, the Judiciary Committee must make a recommendation of removal to the Chairman. Pursuant to such recommendation, the Chairman *must* remove the probationary judge. No further removal proceeding is required. The removal is final." *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

"The Chairman of the Navajo Tribal Council is not empowered to act alone in either removing a probationary judge or denying a permanent appointment to a probationary judge. The Navajo Tribal Code laws on the Judicial Branch provide for two ways by which a probationary judge can be terminated. The first is by removal and the second is by denial of permanent appointment. In either case the Chairman cannot act until after the Judiciary Committee of the Navajo Tribal Council has formally acted by recommendation." *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

5. Evaluation of judges

"The Committee makes an independent determination of the training requirement and whether the probationary judge has performed satisfactorily over the two-year probationary term." *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

§ 356. Probationary term

A. The probationary term for District Court Judges, the Chief Justice and Associate Justices shall be two years from the date of confirmation by the Navajo Nation Council.

B. A permanent District Court Judge subsequently appointed as Chief Justice or Associate Justice shall also be subject to a two-year probationary term as described in Subsection (A) of this Section.

History

CO-72-03, October 24, 2003.

§ 357. Evaluation

Permanent Justices and Judges shall be subject to periodic objective evaluations in accordance with Judicial Performance Evaluation Policies and Procedures approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

Cross References

Judiciary Committee authority, see 2 N.N.C. § 574.

Article 2. Chief Justice

§ 371. Administrative duties

In addition to his or her judicial duties, the Chief Justice of the Navajo Nation shall supervise all Justices and Judges of the Navajo Nation and administer the Judicial Branch in accordance with applicable standards, rules, policies or procedures. The Chief Justice shall also exercise such duties that are consistent with the Office of Chief Justice.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Construction and application

"All the parties to a case have a basic right to a fair and impartial judge. If the Chief Justice, acting alone and using his administrative powers, can remove district judges, there is the risk that parties may attempt to use political influence to decide cases." *In re: Excusal of Judge Ferguson*, 7 Nav. R. 320, 323 (Nav. Sup. Ct. 1998).

"The Chief Justice is the administrative as well as the judicial head of the Judicial Branch." *In the Matter of Contempt of Sells*, 5 Nav. R. 37, 38 (Nav. Ct. App. 1985).

2. Construction with other laws

"There is clearly no need for the Chief Justice to create an extra-judicial remedy and unilaterally remove a district judge from a case when we have abundant procedures, rules, and decisional law available to handle to process." *In re: Excusal of Judge Ferguson*, 7 Nav. R. 320, 323 (Nav. Sup. Ct. 1998).

§ 372. Acting Chief Justice

A. The Chief Justice of the Navajo Nation shall designate in writing one Associate Justice of the Supreme Court to act as Chief Justice whenever the Chief Justice is absent from the territorial jurisdiction of the Navajo Nation, is on vacation, ill or otherwise unable to perform the duties of the Chief Justice. The Chief Justice shall delegate to the acting Chief Justice some or all of the powers of the office of Chief Justice. The Chief Justice may at any time change his or her written designation of the Associate Justice empowered to act as Chief Justice.

B. The Chief Justice may designate in writing one permanent District Court Judge to carry out the administrative duties of the Office of Chief Justice whenever the Chief Justice and both Associate Justices are absent from the territorial jurisdiction of the Navajo Nation, ill or otherwise unable to perform the duties of the Chief Justice. The designation shall expire at a time designated by the Chief Justice or whenever withdrawn in a separate writing by the Chief Justice and, in any event, shall automatically expire in five working days after the date of designation unless renewed in writing by the Chief Justice.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

Annotations

1. Review

"In considering the provisions of Title 7 as a whole, the Court holds that the appointment of Honorable Dean Wilson, a retired judge, as Acting Chief Justice or Special Presiding Justice in this proceeding is authorized by Navajo Tribal law and is therefore proper." *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 46 (Nav. Ct. App. 1985).

§ 373. Residence

A residence shall be furnished in Window Rock, Navajo Nation (Arizona), together with the cost of water, sewer, refuse disposal, electricity and natural gas, without charge to the sitting Chief Justice. The Navajo Nation shall not be responsible or liable for any costs or expenses associated with an alternative residence if the sitting Chief Justice declines to reside in the specific residence provided by the Navajo Nation as set forth in this Section.

History

CO-72-03, October 24, 2003.

§ 374. Oath of Office

The Chief Justice of the Navajo Nation shall administer the oath of office to the President, Vice President, Navajo Nation Council Delegates, and all other elected officials as provided by law. The Chief Justice may designate another Justice or Judge of the Navajo Nation to administer the oath.

History

CO-72-03, October 24, 2003.

Subchapter 9. Judicial Branch Personnel Policies

§ 401. Judicial Branch personnel policies and procedures

All employment positions, including judicial appointments, within the Judicial Branch shall be governed by Judicial Branch personnel policies and procedures and Justices' and Judges' personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

Cross References

Judiciary Committee authority to approve policies, see 2 N.N.C. § 574(L).

Subchapter 10. Navajo Nation Peacemaking Program (Hózh==jí Naat'áanii)

§ 409. Establishment

It is hereby recognized and affirmed that there is a Navajo Nation Peacemaking Program (Hózh==jí Naat'áanii) within the Judicial Branch of the Navajo Nation. The Peacemaking Program shall be the central point of peacemaking information and coordination with the Navajo Nation Judicial Branch.

History

CO-72-03, October 24, 2003.

CO-76-01, October 17, 2001.

§ 410. Purposes

The purposes of the Navajo Nation Peacemaking Program include: to promote a non-adversarial forum for solving disputes where the parties to the dispute voluntarily agree or are referred to peacemaking; to promote peacemaking counseling services to clients of the Navajo Nation Courts; to promote peacemaking support and assistance to Navajo Nation Courts when requested to make recommendations on sentencing; to provide education and training on Navajo culture, traditions and other Navajo accepted beliefs to individuals, organizations, and communities; to provide support and technical assistance to peacemakers; to promote the research, development, and learning of Navajo culture, traditions, and other Navajo accepted beliefs in support of judicial and community programs; and provide problem solving assistance to peacemakers, Judges, Court staff, and others concerning the peacemaking process. Peacemaking is intended to promote healing and reestablish harmony among those persons participating in peacemaking.

History

CO-72-03, October 24, 2003.

CO-76-01, October 17, 2001.

§ 411. Responsibility and authority

The Navajo Nation Peacemaking Program shall have the authority and power to undertake the following functions and duties:

A. To conform the procedures of Hózh==jí Naat'áanii to traditional Hózh==jí Naat'áanii concepts, including K'é, clanship, and other principles of Navajo culture, traditions, and other Navajo accepted beliefs, establish standards and procedures for that process, and otherwise develop standards, principles, and procedures for the development of Hózh==jí Naat'áanii in accordance with Navajo culture, traditions, and other Navajo accepted beliefs and the laws of the Navajo Nation.

B. To maintain a list of peacemakers and provide technical support to peacemakers to facilitate the conduct of peacemaking.

C. To periodically evaluate the techniques of peacemakers and the peacemaking process.

D. To authorize peacemakers to enter into funding agreements with the Judicial Branch for mileage and training.

E. To perform such other functions and duties that are in accordance with Navajo Nation law and purposes of the Navajo Nation Peacemaking Program and that will promote the practice of peacemaking.

History

CO-72-03, October 24, 2003.

CO-76-01, October 17, 2001.

§ 412. Personnel

The Navajo Nation Peacemaking Program shall be administered by a Peacemaking Program Coordinator. All personnel, including the coordinator, shall be subject to Navajo Nation Judicial Branch personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

CO-76-01, October 17, 2001.

§ 413. Legislative oversight

The Navajo Nation Peacemaking Program shall operate under the legislative

oversight of the Judiciary Committee of the Navajo Nation Council pursuant to the powers granted that Committee in 2 N.N.C. § 571 *et seq.* The Navajo Nation Peacemaking Program shall operate pursuant to a Plan of Operation approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

CO-76-01, October 17, 2001.

Subchapter 11. Judicial Conduct Commission

§ 421. Establishment

The Judicial Conduct Commission is established as an independent commission receiving administrative support and assistance from the Judicial Branch of the Navajo Nation.

History

CO-72-03, October 24, 2003.

§ 422. Purposes and powers

A. The purposes and powers of the Judicial Conduct Commission are:

1. To enhance public confidence in the Navajo Nation Judiciary by providing a fair, impartial and expeditious forum to hear complaints and grievances against Navajo Nation Justices and Judges involving alleged violations of the Code of Judicial Conduct, personnel policies for Justices and Judges, and any other Navajo Nation laws or policies that set standards of ethics and conduct for Justices and Judges.

2. To investigate or direct the investigation of complaints or grievances against Justices and Judges;

3. To make findings and recommend sanctions, as appropriate; and

4. To forward recommendations for suspension or removal of Justices and Judges to the Judiciary Committee and to the Chief Justice.

B. The Judicial Conduct Commission shall refer all complaints not properly before the Judicial Conduct Commission to the proper authorities, such as the Chief Prosecutor, the Ethics and Rules Office, or the Disciplinary Committee of the Navajo Nation Bar Association, as necessary.

C. The Judicial Conduct Commission shall develop and recommend its Plan of Operation, rules, policies and procedures, and operating budget, for approval by the Judiciary Committee, the Budget and Finance Committee, and the Navajo Nation Council, as necessary.

History

CO-72-03, October 24, 2003.

§ 423. Composition and personnel

A. Composition. The Judicial Conduct Commission shall consist of five members serving staggered four year terms.

1. One member shall be a sitting or retired federal or state court Justice or Judge in good standing in their respective jurisdiction selected by the Justices and Judges of the Navajo Nation Courts.

2. One member shall be a retired Navajo Nation Justice or Judge in good standing with the Navajo Nation Bar Association selected by the Justices and Judges of the Navajo Nation Courts.

3. Two members shall be regular or inactive members of the Navajo Nation Bar Association in good standing with no pending disciplinary proceedings against them and who have not been formally reprimanded or suspended within a four consecutive year period prior to their selection, selected by the voting membership of the Navajo Nation Bar Association. The NNBA-selected members shall not be retired or removed Justices or Judges of the Navajo Nation Courts.

4. One member shall be a member of the Navajo Nation public selected by the Judiciary Committee of the Navajo Nation Council from among applicants submitting letters of interest and resumes to the Judiciary Committee. The Judiciary Committee selected member shall not be a current NNBA member, nor a sitting, retired, or removed Justice or Judge of the Navajo Nation or any other jurisdiction.

B. Personnel. The Judicial Conduct Commission shall receive administrative support and assistance from the Judicial Branch of the Navajo Nation and shall hire personnel and approve Commission expenditures as provided for in the Judicial Conduct Commission Plan of Operation and the Navajo Nation operating budget.

History

CO-72-03, October 24, 2003.

§ 424. Legislative oversight

The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and policies and procedures recommended by the Judicial Conduct Commission and approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

Chapter 5. Procedure

Subchapter 1. Generally

§ 601. Court rules; authority to adopt

A. The Supreme Court of the Navajo Nation shall, after providing reasonable public notice and a meaningful opportunity to respond, adopt rules of pleading, practice, and procedure applicable to all proceedings in the Courts of the Navajo Nation. The Supreme Court shall specifically consult with the Attorney General of the Navajo Nation, the Chief Legislative Counsel, and the President of the Navajo Nation Bar Association prior to adopting any proposed rules of pleading, practice and procedure.

B. The Supreme Court shall, after providing reasonable public notice and a meaningful opportunity to respond, adopt uniform rules for the admission of evidence in Navajo Nation Courts. The Supreme Court shall specifically consult with the Attorney General of the Navajo Nation, the Chief Legislative Counsel, and the President of the Navajo Nation Bar Association prior to adopting any proposed uniform rules for the admission of evidence.

C. The Supreme Court may independently adopt standard forms for pleadings, motions and other papers filed in Navajo Nation Courts by litigants.

D. The Supreme Court may independently adopt standard forms for Navajo Nation District Court and Supreme Court judgments, writs, orders and opinions.

E. No rule adopted by the Supreme Court shall be effective unless adopted in strict compliance with the requirements of this Section.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Construction and application

"Consistent with the principle of *íishjání ádoonií*[, in which our laws and rules should be clear, this Court, pursuant to 7 N.N.C. § 601 (as amended by the Navajo Nation Council Resolution No. CO-72-03 (October 24, 2003)) will amend the domestic violence rules to address this issue." *Yazzie v. Thompson*, No. SC-CV-69-04, slip op. at 4 (Nav. Sup. Ct. July 18, 2005).

"In a direct conflict between a statute passed by the Navajo Nation Council and a rule approved by this Court, the statute must prevail. This Court has already stated that the statute requires filing of the notice of appeal within five (5) days. *Benally*. Our rule purports to extend that period to thirty

(30) days. This Court may set our own rules when specifically authorized in the Navajo Nation Code. See 7 N.N.C. § 601. However, the doctrine of separation of powers in our Navajo form of government prevents this Court from setting rules that directly contradict a clear mandate of the Council." *Fort Defiance Housing Corporation v. Allen*, No. SC-CV-01-03, slip op. at 4 (Nav. Sup. Ct. June 7, 2004).

"The Navajo Nation Supreme Court has the power to adopt rules of 'pleading, practice, and procedure,' with the approval of the Judiciary Committee of the Navajo Nation Council." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

§ 602. Limitation of actions

A. There shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following civil actions:

1. For personal injuries. When death ensues from such injuries, such action for wrongful death shall be considered as accruing at the death of the party injured except as otherwise provided for in Section 602(A) (4) and (5).

2. For trespass or property damage, or for detaining and converting the personal property of another to one's own use.

3. For malicious prosecution, or for false imprisonment, or for injuries done to the character or reputation of another for libel or slander.

4. No cause of action accrues for personal injury or wrongful death until the party having the right to sue has discovered the nature of the injury, the cause of the injury, and the identity of the party whose action or inaction caused the injury, or until, in the exercise of reasonable diligence, in light of available knowledge and resources, the party should have discovered these facts, whichever is earlier. This Subsection applies to and revives all injured parties' claims, regardless of whether the claim may have been barred in the absence of this Subsection.

5. Notwithstanding any provision of law to the contrary, an action to recover damages for property damage, personal injury or wrongful death caused by contact with, or exposure to, any substance causing injury resulting from the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within the property shall be commenced and prosecuted:

a. Within three years of the date when the party having the right to sue has discovered the injury, the cause of the injury, and the identity of the person liable for the injury, or within three years of the time when, in light of the knowledge and resources available and of reasonable diligence, the party should have discovered these facts, whichever is earlier.

b. This Subsection applies to and revives all injured

parties' claims, regardless of whether the claims may have become barred in the absence of this Subsection, provided further, that no claim to recover such damages for injury prior to the date of this amendment will be barred on the basis of any law, until two years after the date of this amendment.

B. There shall be commenced and prosecuted within three years after the cause of action accrues, and not afterward, the following actions:

1. For debt where the indebtedness is not evidenced by a contract in writing.

2. Upon stated or open accounts other than mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, but no item of a stated or open account shall be barred so long as any item thereof has been incurred within three years immediately prior to the bringing of an action thereon.

3. For relief on the ground of fraud or mistake, which cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

C. There shall be commenced and prosecuted within four years after the cause of action accrues, and not afterward, actions by one partner against a co-partner or co-partners for settlement of the partnership account, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, and the cause of action shall be considered as having accrued upon a cessation of the dealings in which they were interested together.

D. There shall be commenced and prosecuted within five years after the cause of action accrues, and not afterward, all probate actions.

E. Civil actions for which no limitation is otherwise prescribed shall be brought within five years after the cause of action accrues, and not afterward.

F. If an action is not barred by existing law, the time fixed in an amendment of such law shall govern the limitation of the action. If an amendment to existing law would bar an action previously not barred by existing law, such action may be brought within one year from the time the amendment takes effect, and not afterward.

G. If a person entitled to bring an action is at the time the cause of action accrues under disability of minority, mental incapacity or imprisonment, the period of disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the time after removal of the disability which is allowed to others. The period of limitation shall not, however, be extended by the tacking or connection of one disability with another already commenced, notwithstanding any supervening disability.

H. When a person dies in whose favor or against whom there is a cause of action, the limitation of the action ceases to run until 12 months after the death, unless a personal representative of the deceased person's estate is

sooner qualified, in which case the limitation shall cease to run only until such qualification.

I. When an action is barred by limitation, no acknowledgment of the justness of the claim or of liability therefor made subsequent to the time it becomes due shall be admitted in evidence to take the action out of the operation of the law, unless the acknowledgment is in writing and signed by the party to be charged hereby.

History

CO-72-03, October 24, 2003.

CAP-40-01, April 20, 2001.

CD-94-85, December 4, 1985.

CF-1-82, February 2, 1982.

CJ-51-56, July 19, 1956.

Annotations

1. Construction and application

" ... [W]e will read the statute of limitations in conjunction with the computation of time rule." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 3 (Nav. Sup. Ct. January 22, 2002).

" ... [A]pplying Rule 6(A) principles to statutes of limitation." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 3 (Nav. Sup. Ct. January 22, 2002).

"Both the statute of limitations at 7 N.N.C. § 602(1)(1995) and Rule 6(A) of the Nav. R.Civ.P. on the computation of time are derived from general American civil procedure. Therefore ... we ... apply them, if they are in accord with Navajo Nation statutory intent and Navajo commonlaw." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 2 (Nav. Sup. Ct. January 22, 2002).

2. Exempt actions

" ... [O]rders providing for child support payments, or for payment of arrearage resulting from delinquent child support payments, cannot be barred by the statute of limitations, the doctrine of laches, or any reliance by the father on the mother's previous failure to act to enforce the father's obligation." *Notah v. Francis*, 5 Nav. R. 147, 149 (Nav. Sup. Ct. 1987).

§ 603. Action in name of Navajo Nation; authority to bring

A. All actions or the defense of all actions in the name of the Navajo Nation shall be brought by the Attorney General of the Navajo Nation or his or her designee.

B. The attorney for any party claiming to sue or defend in the name of the Navajo Nation or on behalf of the Navajo Nation shall be required to submit proof of his or her authority.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-19-80, February 13, 1980.

CJ-51-56, July 19, 1956.

Cross References

Attorney General's authority, see 2 N.N.C. § 1964(F).

§ 604. Notice and opportunity to appear

No judgment shall be given on any suit unless the defendant has been served notice in accordance with the applicable Court rules of such suit and given ample opportunity to appear in Court in his/her defense. Evidence of the provision and receipt of notice shall be kept as part of the record in the case.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Cross References

Navajo Nation Bill of Rights, see 1 N.N.C. § 3.

Annotations

1. Notice

Fact that natural mother received notice of pending adoption proceeding because she was told of it by a relative and acknowledged knowledge of it to relatives did not satisfy requirements of this Section nor the requirements of due process because it was not reliable notice. *In the Matter of the Adoption of Four Children*, 4 Nav. R. 9 (Nav. Ct. App. 1983).

There must be evidence in writing of proper notice to persons in a law suit. *In the Matter of the Adoption of Four Children*, 4 Nav. R. 9 (Nav. Ct. App. 1983).

2. Voidable actions

Where there was a lack of proof in the case file showing proper publication of notice in the termination of parental rights action, the subsequent adoption was voidable. *Navajo Nation, ex rel. Division of Social Welfare in the Interest of Two Minor Children*, 4 Nav. R. 57 (Nav. Ct. App. 1983).

§ 605. Witnesses

A. The Judges of the Courts of the Navajo Nation shall have the power to issue subpoenas for the attendance of witnesses either on their own motion or upon motion of any of the parties to the case, which subpoena shall bear the signature of the clerk of the Court issuing it. Failure to obey such subpoena shall be deemed to be a contempt and punishable according to applicable laws. Service of such subpoenas shall be by a regular commissioned Navajo Nation Police Officer or by a person appointed by the Court for that purpose.

B. Witnesses who testify voluntarily may be paid by the party calling them. If the Court so orders, their actual expenses incurred in the performance of their function shall be assessed as a cost awarded to the prevailing party.

C. Witnesses attending Court under subpoenas shall be entitled to the same fees as jurors.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Uniform act to secure attendance of witnesses from without a state in criminal proceedings, 440 A.L.R.2d 732 (1955).

Generally, 81 Am. Jur. 2d Witnesses, § 34.

§ 606. Legal counsel; right of representation; unauthorized practice of law

A. Legal counsel shall be allowed to appear in any proceedings before the Courts of the Navajo Nation provided that the legal counsel is a member in active status and in good standing of the Navajo Nation Bar Association. Every defendant in a criminal case shall have the right to representation by legal counsel and in the event he has no such representation, he may proceed without legal counsel or a legal counsel may be appointed by the Judge.

B. Only persons who are members in good standing of the Navajo Nation Bar Association shall provide legal representation in the Courts of the Navajo Nation, quasi-judicial, legislative, and administrative law forums, and other legal services within the territorial jurisdiction of the Navajo Nation. Persons who are not members in active status and in good standing of the Navajo Nation Bar Association and who provide legal representation or other legal services within the territorial jurisdiction of the Navajo Nation, and who are

not duly associated with members in good standing of the Navajo Nation Bar Association, shall be deemed to be conducting the unauthorized practice of law, and shall be subject to civil and/or criminal sanctions under Navajo Nation law.

C. Persons conducting the unauthorized practice of law shall be subject to civil penalties, including triple the amount of all legal fees, costs, and other funds paid to them by persons to whom they have purported to provide legal representation or other legal services, a civil fine in the amount of five hundred dollars (\$500) per occurrence, and, if not a member of the Navajo Nation, will be subject to exclusion from the Navajo Nation.

D. Judges of the Navajo Nation Courts, administrative law judges, hearing officers, and the presiding officials of quasi-judicial or legislative bodies shall have the authority to determine, relative to matters heard before them, whether a person is a member in active status and in good standing of the Navajo Nation Bar Association, or duly associated with members in active status and in good standing of the Navajo Nation Bar Association, and the power to impose any of the civil sanctions set forth in Subsection (C) above.

E. Persons conducting the unauthorized practice of law shall be liable for both actual and consequential damages suffered by persons with whom they have contracted for the provision of legal representation or other legal services. Civil actions alleging the unauthorized practice of law shall be brought in the District Courts of the Navajo Nation.

History

CO-72-03, October 24, 2003.

CAP-38-00, April 20, 2000.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Cross References

Criminal Offense of "Unauthorized Practice of Law," see 17 N.N.C. § 377.

Annotations

1. Construction and application

"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).

2. Unauthorized practice of law

"As expressed by the Navajo Nation Council through the provision of civil and criminal sanctions, the unauthorized practice of law undermines the integrity of our legal system." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 5 (Nav. Sup. Ct. August 7, 2006).

"Through the Title 7 provision, the Council guides the Judicial Branch in maintaining the integrity of the Diné legal system by restricting who may appear before Navajo Nation courts and tribunals to members of the Navajo Nation Bar Association or those 'duly associated' with Bar Association members." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 8 (Nav. Sup. Ct. August 7, 2006).

"While the resulting corporation is treated as a 'person' for various purposes, the Court holds it has a separate legal existence from its officers and staff and is therefore a separate 'person' for purposes of the prohibition against the unauthorized practice of law. The choice to incorporate carries benefits but also, importantly, consequences. Among the consequences of incorporation is the inability of its agents to represent the corporate entity 'pro se'." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

§ 607. Extradition

Any person lawfully arrested for violating Navajo Nation criminal law(s) or detained by Navajo Nation Court order shall not be released to any other jurisdiction, including the federal government, except pursuant to formal extradition procedures as set forth in 17 N.N.C. § 1951 *et seq.*

History

CO-72-03, October 24, 2003.

Note. Previous Section 607 was revised and relocated to Section 621.

Subchapter 2. Statutory Causes of Action

Article 1. Repossession

§ 621. Repossession of consumer goods

A. The consumer goods (goods regularly used or bought for use for personal, family or household purposes, including vehicles and mobile homes) of individuals possessed under credit agreements shall not be taken by any person, or agent of any person, except in strict compliance with this Section. Self-help repossession is prohibited on the Navajo Nation. Unsuccessful attempts to repossess in violation of this Section shall also constitute a violation of this Section.

B. Any person desiring to repossess consumer goods pursuant to any credit agreement where the goods are security for a debt, or other arrangement involving credit, must first obtain the written and informed consent of the debtor at the time the repossession is sought. The written consent must be retained by the creditor or the creditor's agent and exhibited to any law enforcement or other Navajo Nation official upon demand. No written consent obtained by fraud shall be deemed valid, and no repossession obtained by the enticement of the debtor or individual in possession to a place where self-help repossession is permitted shall be valid. Only the debtor can give a valid

consent to repossession.

C. Where a debtor under this Section fails or refuses to give informed and written consent to a repossession, repossession may be effected only by a judgment of a Navajo Nation District Court in an appropriate proceeding.

D. Transactions between merchants properly secured under the Navajo Uniform Commercial Code (5A N.N.C. § 9-101 *et seq.*) are not transactions for consumer goods. Transactions between merchants are exempt from the process set forth in Subsections (A), (B) and (C). Neither consent to repossession nor judicial process are required to repossess goods obtained in a transaction between merchants.

E. For purposes of this Section, the term "merchant" is defined in the Navajo Uniform Commercial Code, 5A N.N.C. § 2-104, as may be amended.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-26-68, February 7, 1968.

Note. This Section was previously located at Section 607.

Cross References

Navajo Uniform Commercial Code, see 5A N.N.C. § 9-503.

Applicability to territories and Indian nations, 16B Am. Jur. 2d Constitutional Law, § 977.

Annotations

1. Validity

Navajo regulations governing self-help vehicle repossessions on the reservation and providing that written consent was required for repossession from either owner of vehicle or tribal court, that any party who willfully violated the written consent requirement could be excluded from the reservation, and that liquidated damages could be granted to an owner whose personalty was repossessed on reservation in violation of the written consent requirement, were a valid exercise of tribal jurisdiction, because the regulations were a necessary exercise of tribal self-government, they were designed to keep reservation peace and protect the health and safety of the tribal members, and regulating conduct of non-Indians repossessing automobiles on reservation land was a valid exercise of tribe's power to exclude nonmembers from the reservation. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, (9th Cir.(Ariz.) 1983), cert. denied 466 U.S. 926. Indians <KEY> 223

2. In general

RE: *Repossession statute*. "In essence, the law permits the repossession of personal property only with the written consent of the purchaser at the time of repossession, or repossession pursuant to a court order." *Nelson v. Basin Motor Company*, 6 Nav. R. 399, 400 (Nav. Sup. Ct. 1991).

3. Applicability

Non-Indian, off-reservation automobile dealer could not avoid application of Indian tribe's civil laws regulating the conduct of non-Indians attempting to repossess vehicles on tribal land on ground that contracts for the sales of the vehicles were entered into off the reservation land or on the ground that the tribe's repossession laws were inapplicable because the sales contracts gave dealer the right to enter reservation land to conduct repossessions, because the mere existence of a lawful property right to be on Indian land does not immunize non-Indians from tribe's power to place other conditions on non-Indian's conduct or continued presence on Indian land. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, (9th Cir.(Ariz.) 1983), cert. denied 466 U.S. 926. Indians <KEY> 223

4. Jurisdiction

"Here, we hold that because Basin did not initiate the act of repossession and did not commit any wrongful act within the Navajo Nation, the district court properly found that the repossession took place outside our territorial jurisdiction. The Navajo Nation repossession law does not apply under the facts of this case." *Nelson v. Basin Motor Company*, 6 Nav. R. 399, 401 (Nav. Sup. Ct. 1991).

Navajo court has subject matter jurisdiction over a wrongful repossession action claiming noncompliance with this Section, under code section giving court jurisdiction over certain actions and also over all other matters over which jurisdiction has vested or may vest in the future. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

The Navajo Nation has the power to grant its courts personal jurisdiction over foreign corporations as a consequence of such corporations' acts in Navajo territory, such as wrongful repossession alleged in the instant case, according to modern expansions of the "minimum contacts" due process standard. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

Court has jurisdiction over a non-Indian, non-resident business or individual which is alleged to have wrongfully repossessed personal property on Navajo land. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

5. Purpose

"The Navajo repossession laws are the result of a necessary exercise of tribal sovereign powers and are designed to protect the health, safety, and welfare of Navajo Nation citizens." *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 32 (Nav. Sup. Ct. 1988) citing *Babbitt Ford, Inc. v. The Navajo Indian Tribe*, 710 F.2d 587, 593 (9th Cir. (Ariz.) 1983), cert. denied 466 U.S. 926.

6. Waivers, generally

"A release of claims under the Navajo repossession laws made as part of a settlement agreement after an illegal repossession has occurred does not further infringe on the public interest, but any such waiver of claims under the Navajo repossession laws will be scrutinized closely by the Navajo courts to ensure that the agreements were made openly and fairly. Such close scrutiny is necessary in order to ensure the same protection of consumers which the Navajo repossession laws seek." *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 33 (Nav. Sup. Ct. 1988).

§ 622. Violation—Penalty

A. Any nonmember of the Navajo Nation found to be in willful violation of 7 N.N.C. § 621 may be excluded from the territorial jurisdiction of the Navajo Nation in accordance with the procedure set forth in 17 N.N.C. §§ 1901-1906.

B. Any business whose employees are found to be in willful violation of 7 N.N.C. § 621 may be denied the privilege of doing business within the territorial jurisdiction of the Navajo Nation. Any business that uses agents or others to repossess property in willful violation of § 621 and avoids entering the Navajo Nation may be denied the privilege of advertising in Navajo Nation media, including newspapers, radio stations, and television channels, and no such business shall have the privilege of enforcing any contract within the Navajo Nation. No state judgment obtained by such a business may be enforced in the Navajo Nation. It shall be an affirmative defense to any action in debt or contract or to enforce a foreign judgment that the plaintiff was in willful violation of § 621 or has engaged in a pattern or practice of violations of that Section.

C. Any person who violates any provision of 7 N.N.C. § 621 shall be subject to a fine of not less than five thousand dollars (\$5,000). In addition, the person found in violation of this Subsection shall pay the fine set forth in 7 N.N.C. § 623, or a minimum of five thousand dollars (\$5,000) in liquidated damages as restitution to the debtor. The restitution shall be paid at the same time or before the fine.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-26-68, February 7, 1968.

Note. This Section was previously located at Section 608.

Annotations

1. Construction and application

"The Navajo repossession laws are the result of a necessary exercise of tribal sovereign powers and are designed to protect the health, safety, and welfare of Navajo Nation citizens." *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 32 (Nav. Sup.

Ct. 1988) citing *Babbitt Ford, Inc. v. The Navajo Indian Tribe*, 710 F.2d 587, 593 (9th Cir. 1983), cert. denied 466 U.S. 926.

§ 623. Civil liability

A. Any person who violates 7 N.N.C. § 621 and any business whose employee violates such section is deemed to have breached the peace of the Navajo Nation, and shall be civilly liable to the debtor for any loss caused by the failure to comply with 7 N.N.C. §§ 621-623.

B. The debtor has the right to recover an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the debt or the time price differential plus ten percent (10%) of the cash price.

C. Debtor means the person who owes payment or other performance of an obligation secured by consumer goods, whether or not the debtor owns or has rights in the consumer goods.

D. A Court may award punitive damages for any repossession that is willful, fraudulent, or unconscionable.

E. No foreign judgment may be enforced permitting a repossession or replevin in substantial violation of 7 N.N.C. § 621 or obtained to evade its provisions.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJN-53-69, June 4, 1969.

Note. This Section was previously located at Section 609.

Annotations

1. Construction and application

"The Navajo repossession laws are the result of a necessary exercise of tribal sovereign powers and are designed to protect the health, safety, and welfare of Navajo Nation citizens." *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 32 (Nav. Sup. Ct. 1988) citing *Babbitt Ford, Inc. v. The Navajo Indian Tribe*, 710 F.2d 587, 593 (9th Cir. 1983), cert. denied 466 U.S. 926.

§ 624. Severability

If any provision or clause of 7 N.N.C. §§ 621, 622 or 623, or application thereof to any person or any business or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, and to this end, the provisions of the sections are declared to be severable.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJN-53-69, June 4, 1969.

Note. This Section was previously located at Section 610.

Article 2. Action against provider of an alcoholic beverage

§ 631. Action against provider of an alcoholic beverage

A. Any person who directly gives, sells, or otherwise provides liquor or any alcoholic beverage to any other person shall be strictly liable for any personal injuries, property damage, means of support to any third person (or to the spouse, child(ren) or parent(s) of that third person), or to a person who may bring an action for wrongful death where:

1. The person who obtained the liquor or alcoholic beverage consumed the same; and

2. The consumption of the liquor or alcoholic beverage was a proximate cause of the injury, death or property damage.

B. For the purposes of this Section, if it is found that the person who obtained the liquor or alcoholic beverage causes injuries or property damage as a result of the consumption of the liquor or alcoholic beverage within a reasonable period of time following his or her first obtaining the liquor or alcoholic beverage, it shall create a rebuttable presumption that the person consumed the liquor or alcoholic beverage provided to him or her by the person who gave, sold or otherwise provided the liquor or alcoholic beverage.

C. If a person having rights or liabilities under this Section dies, the rights or liabilities provided by this Section survive to or against that person's estate.

D. An action based upon a cause of action under this Section shall be commenced within five years after the date of injury or property damage.

E. Nothing in this Section precludes any cause of action or additional recovery against the person causing the injury.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-10-78, January 24, 1978.

Note. This Section was previously located at Section 207.

Cross References

Manufacture or Delivery of Liquor, see 17 N.N.C. § 411 (E) and (F).

Annotations

1. Construction and application

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [now § 631], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

Subchapter 3. Jury

§ 651. Right to jury trial

In any criminal or civil case, but not in any domestic relations, decedent's estate, equitable proceeding, or miscellaneous case, as set out in 7 N.N.C. § 253, any party shall, upon demand, be entitled to jury trial on any issue of fact.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Tribal Council Resolution 1921-1951, Res. p. 212, December 19, 1945.

Annotations

1. Waiver of right

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with

Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

2. Prepayment of jury costs

"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).

§ 652. Lists of jurors; preparation

The Judicial Branch shall prepare lists of eligible jurors from time to time. Such lists shall constitute a fair cross-section of the Judicial District where jury trials will be held.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 653. Number of jurors

In any case, a jury shall consist of six residents of the Judicial District in which the trial is held, selected from the list of eligible jurors.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 654. Eligibility of jurors

Any person residing within the territorial jurisdiction of the Navajo Nation over the age of 18 years, of at least ordinary intelligence, and not under judicial restraint, shall be eligible to be a juror.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Construction and application

" ... 1) juries must be drawn from a source which is fairly representative of the community, but need not mirror it; 2) all defendants may assert the right, including people who are not members of an excluded group (i.e. Indians can challenge the exclusion of non-Indians from juries); and 3) a defendant can prevail by showing a systematic exclusion of distinctive groups of people; but not an occasional mistaken exclusion." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 434 (Nav. Sup. Ct. 1991).

§ 655. Challenges to jury

Any party to the case may exercise no more than three peremptory challenges, and shall have an unlimited number of challenges for cause.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Note. Slightly reworded.

Annotations

1. Challenges

" ... Navajo trial judges may not require parties to exhaust their peremptory challenges first, before permitting a challenge for cause." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 435 (Nav. Sup. Ct. 1991).

§ 656. Instructions to jury

The judge shall instruct the jury in the law governing the case. Jury instructions may be selected by the judge from instructions prepared and presented by the parties.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 657. Verdict of jury

The jury shall bring a verdict for the plaintiff or the defendant. In civil cases, a verdict may be rendered by a majority vote of the jury. In criminal cases, a verdict shall be by a unanimous vote of the jury.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 658. Jurors' fees

A. Every person who is required to attend Court for selection or service as a juror shall be entitled to a reasonable fee not to exceed actual expenses incurred for attendance and reasonable compensation for mileage to and from his home to Court not to exceed the rate established for Navajo Nation employees for each separate day he is required to be present in court provided funds therefore are appropriated by the Navajo Nation Council.

B. The party demanding a jury trial in a civil action may be required to prepay the mileage and compensation of jurors, and other costs of a jury trial. Prepayment of such costs shall not be required if the party is proceeding in forma pauperis or if prepayment would deny that person the right to a trial by jury.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Annotations

1. Prepayment of jury costs

"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).

Subchapter 5. Judgment and Execution

§ 701. Judgment—Form and contents

A. The judgment in all civil cases shall be an order of the Court awarding money damages to the injured party, directing the surrender of certain property to the injured party, directing the performance of an act for the benefit of the injured party, directing that a party refrain from taking action with regard to the injured party, or a declaration of rights of the parties.

B. Where the injury was inflicted as the result of negligence, the judgment shall fairly compensate the injured party for his or her injuries or loss. The Court shall consider the comparative fault of the parties in making an award of damages.

C. Where the injury was inflicted deliberately, intentionally, willfully, wantonly, recklessly, unconscionably, or as the result of gross negligence, the judgment may impose additional penalties in the form of punitive damages in favor of the injured party . Where punitive damages are awarded, there may be additional award of damages to the Navajo Nation for patterns and practices of conduct in violation of public policy or egregious conduct contrary to clear public policy.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Annotations

1. Compulsory award of damages

Under Subsection (D) of this Section, even though it may be said that the injury is the result of an "accident", the court need not award a reasonable part of the loss suffered, where there is no just or equitable consideration to cause it to do so. *Mann v. Navajo Tribe*, 4 Nav. R. 83 (Nav. Ct. App. 1983).

2. Garnishment

Under the powers outlined in 7 N.N.C. §§ 255, 701(a) and 706, the Navajo Courts have the statutory authority to utilize garnishment procedures. *Navajo Tribal Utility Authority v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).

3. Definitions

" ... [O]ur judgment statute ... requires the court to determine whether an injury was the result of carelessness, deliberate infliction, or accident, with varying degrees of damages, depending upon the nature of the injury." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 5 (Nav. Sup. Ct. January 22, 2002).

" ... [F]ailure to exercise ordinary care in avoiding foreseeable harm to others constitutes negligence. [] Thus, the duty of care owed by an individual is closely related to the foreseeability that another individual will be

harm. [] The extent of the duty depends on the circumstances. [] Where the danger of injury to others is greater, so is the duty to exercise care." *Wilson v. Begay*, 6 Nav. R. 1, 4 (Nav. Sup. Ct. 1988).

"In determining whether a party was negligent, a court must determine whether that party owed a duty of care to the individual who was injured." *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988), citing *Mann v. Navajo Tribe*, 4 Nav. R. 83, 85 (1983).

"This Court has held that, " '[c]arelessness' is actually the same legal standard as 'negligence'.... ' " *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988), citing *Mann v. Navajo Tribe*, 4 Nav. R. 83, 85 (1983).

4. Damage awards

"Courts must carefully scrutinize claims for damages even after the defendant's liability has been proven, and the record must contain a reasonable justification for the amount of damages awarded." *Wilson v. Begay*, 6 Nav. R. 1, 7 (Nav. Sup. Ct. 1988).

"The plaintiff has the burden of proving damages. The plaintiff must first establish with reasonable certainty that the defendant's conduct caused the plaintiff damages. The plaintiff must then establish the amount of his damages with reasonable certainty. The rule within the Navajo Nation is that an award of damages must be based upon proof and not speculation." *Wilson v. Begay*, 6 Nav. R. 1, 5 (Nav. Sup. Ct. 1988), citing *Hall v. Arthur*, 3 Nav. R. 35, 40 (1980).

"The legal basis for awarding compensatory damages in Navajo law is 7 N.T.C. § 701.... " *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988).

5. Compensation

"To clarify these questions, we hold that 7 N.N.C § 701 (1995), which addresses judgments, permits all causes of action generally recognized by law to compensate an 'injured party,' including survival and wrongful death actions. Our holding is reinforced by the provisions of 7 N.N.C. § 255 (1995), which provides that '[t]he district courts shall have the power to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction.' " *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 5 (Nav. Sup. Ct. January 31, 2001).

6. Jurisdiction

"The drafters of our judicial code had the foresight to provide that all actions involving an 'injured party' require the compensation outlined in 7 N.N.C. § 701 and to provide that once a Navajo Nation court has jurisdiction over the person, there is general subject matter jurisdiction to provide relief based upon any generally-recognized legal theory. As we have said before, the Navajo Nation courts are courts of general jurisdiction, and all actions which are generally recognized in the United States are available in the Navajo Nation." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 5 (Nav. Sup. Ct. January 31, 2001).

7. Interest

"We therefore amend our previous holding and set the time at which Allstate's responsibility to pay pre-judgment interest ended at the time of its request to deposit the funds. In this case, that was at the filing of its complaint." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 9 (Nav. Sup. Ct. May 20, 2005).

"We decline to reverse our previous ruling, and state again that pre-judgment interest must be paid by the insurance company, regardless of contractual provisions capping liability. Our conclusion is consistent with other jurisdictions that have recognized an obligation by an insurance company to pay pre-judgment interest to an injured party regardless of contractual caps." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 8 (Nav. Sup. Ct. May 20, 2005).

"Strong public policy considerations compel us to award pre-judgment interest against the insurance company regardless of the contractual cap, particularly, as in this case, where the insurance company controls settlement discussions and any subsequent litigation." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 8 (Nav. Sup. Ct. May 20, 2005).

"On remand, the Kayenta District Court must hold a hearing concerning the interest rate. The main question is what rate is reasonable during the time period between the date of the first claim submitted by the Blackgoats to when Allstate requested that the court allow it to submit the funds." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 10 (Nav. Sup. Ct. May 20, 2005).

"On further review of the approach announced in *Singer*, we modify our previous opinion in one significant way. In *Singer*, we suggested use of insurance company return rates based on a theory of pre-judgment interest that emphasized punishment for the insurance company's delay in paying the claim: [...] However, as our previous opinion in this case makes clear, pre-judgment interest is not awarded to punish the holder of the money, but to fully compensate the injured." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 10-11 (Nav. Sup. Ct. May 20, 2005).

"Therefore, as punishment is not the basis for the award, the rate earned by the insurance company is not the absolute measure of what the injured should receive. Instead, the correct focus is the interest rate the injured would have received had he or she had use of the money. The actual rate of return on Allstate's different funds therefore does not define the rate in this matter." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 11 (Nav. Sup. Ct. May 20, 2005).

"Based on Navajo statutory law and the Navajo Common Law doctrine of *nályééh*, we do not apply the parties' bad faith approach to this case, but hold that pre-judgment interest is an element of damages regardless of the conduct of the party responsible for compensation or the liquidated or unliquidated nature of the claim." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 5 (Nav. Sup. Ct. January 12, 2005).

"While *Singer* emphasized the procedural aspect of *nályééh* to recognize

prejudgment interest, the award of interest is consistent with the substantive result as well, as it is an element of complete compensation designed to make whole an injured person." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 6 (Nav. Sup. Ct. January 12, 2005).

"We therefore conclude that prejudgment interest is not dependent on the conduct of the parties (except to the extent that the responsible party continues to delay payment) or whether the amount of damages may be known with certainty, but is a central element of full compensation that makes sure that an injured party has no hard feelings. The Kayenta District Court therefore abused its discretion when it declined to award pre-judgment interest under *nályééh*, as prejudgment interest is a mandatory substantive element of full compensation." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 7 (Nav. Sup. Ct. January 12, 2005).

"While pre-judgment interest is required and therefore not in the discretion of the district court to deny, the interest rate depends on the circumstances of the case, and is within the discretion of the district court to calculate and apply. The rate of pre-judgment interest as an element of *nályééh* is affected by the ability of the party responsible for compensating the injured to pay. [...] The rate is also affected by outside economic factors concerning the interest rate available at the time that the interest accrues, as it is that rate of return which is lost when compensation is delayed." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 8 (Nav. Sup. Ct. January 12, 2005).

"The time period within which to apply interest also depends on the circumstances of the case. We follow *Singer* to hold that in tort cases the date the interest begins accruing is the date the request for compensation is received by the party responsible for payment. [...] Here, in the context of interpleader, we hold that the period for calculating interest ends when the insurance company actually deposits the money in the court, and therefore ends its control over the funds. In non-interpleader cases, the date is the date judgment on damages is rendered by the court." *Allstate Indemnity Co. v. Blackgoat*, No. SC-CV-15-01, slip op. at 8 (Nav. Sup. Ct. January 12, 2005).

"... [W]hen a plaintiff claiming prejudgment interest proposes an interest rate, it is up to the defendant to show that it is unreasonable." *Singer v. Nez*, No. SC-CV-04-99, slip op. at 9 (Nav. Sup. Ct. July 16, 2001).

"An award of prejudgment interest as compensatory damages should be computed by establishing the past loss or economic damage, the period of time between the events recited above and the date of judgment in terms of years or months, and the appropriate interest rate." *Singer v. Nez*, No. SC-CV-04-99, slip op. at 9 (Nav. Sup. Ct. July 16, 2001).

"There should be an offer made to the person who committed the injury ... with a discussion of the facts of liability, proof of the loss and a showing of the injury actually suffered. If that offer is rejected in objective bad faith, or a counter-offer which is unreasonable is made, then that is the point when prejudgment interest should begin accruing. Otherwise, prejudgment interest will begin accruing from the date the complaint is filed. Prejudgment interest must be claimed in a prayer for relief, although the plaintiff need not plead the circumstances which justify the award." *Singer v. Nez*, No. SC-CV-04-99,

slip op. at 7 (Nav. Sup. Ct. July 16, 2001).

"The purpose of prejudgment interest is to place the injured person in as good a position as he otherwise would have been, because damages also include 'the foregone use of the money.' *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655-656 (1983).... 'Prejudgment interest is an element of complete compensation.' *West Virginia v. United States*, 479 U.S. 305, 310 (1987).... Another way of putting it is, prejudgment interest is designed to 'make whole' an injured person." *Singer v. Nez*, No. SC-CV-04-99, slip op. at 6 (Nav. Sup. Ct. July 16, 2001).

8. Discretion

"The trial court's discretion is limited by 'custom.' *Little v. Begay*, 7 Nav. R. at 354 We have said that *nalyeeh* is based upon the effects of the injury, and it should be enough so that there are no hard feelings." *Benalli v. First Nat'l Ins. Co. of America*, 7 Nav. R. 329, 338 (1998).

9. Insurance

"We compared insurance to a bag with monies available to see to the plaintiff's needs.... There are procedures for arriving at *nalyeeh* that involve the respectful talking out of a dispute. The person requesting *nalyeeh* should be willing to lay out all the facts of the problem and the injury, and the listener should acknowledge the request to talk out the problem and then participate in good faith." *Singer v. Nez*, No. SC-CV-04-99, slip op. at 8 (Nav. Sup. Ct. July 16, 2001).

10. Comparative negligence

"The District Court erred, as there is no absolute prohibition on hearing a comparative negligence/*nályééh* case against a tortfeasor if other tortfeasors cannot be joined in the action." *Joe v. Black*, No. SC-CV-62-06, slip op. at 5 (Nav. Sup. Ct. November 29, 2007).

"The Court holds that the evidentiary rule barring evidence of settlements does not bar consideration of settlements in comparative negligence cases, when necessary to consider the proper amount of damages the plaintiff is due under *nályééh*." *Joe v. Black*, No. SC-CV-62-06, slip op. at 7 (Nav. Sup. Ct. November 29, 2007).

"Even if these prior opinions did not exist, there is no conflict between comparative negligence and *nályééh*." *Joe v. Black*, No. SC-CV-62-06, slip op. at 9 (Nav. Sup. Ct. November 29, 2007).

"This Court therefore holds that the Navajo Nation is a pure comparative negligence jurisdiction, and any award to Benally, if Mobil is found liable, should be reduced to reflect only Mobil's portion of responsibility for the injury. The doctrine of *t'aash shi akwiisdzaa* is consistent with comparative negligence, as reduction of the award makes certain Benally takes responsibility for his own actions, but still compensates him for that part of injury caused by Mobil." *Benally v. Mobil Oil Corporation, nka ExxonMobil Corporation*, No. SC-CV-05-01 slip op. at 8 (Nav. Sup. Ct. November 24, 2003).

§ 702. Rendition

The judge shall render judgment in accordance with the verdict of the jury and existing law.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

§ 703. Lawful debt in proceedings to distribute decedents' estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of the Navajo Nation to distribute decedents' estates.

History

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

§ 704. [Reserved]

§ 705. Writs of execution—Generally

The party in whose favor a money judgment is given by the Courts of the Navajo Nation may at any time within five years after entry thereof have a writ of execution issued for its enforcement. Provided, however, there shall be no limitation to the issuance of writs of execution for judgments for the payment of child support. No execution, however, shall issue after the death of the judgment debtor, with the exception that judgments for the payment of child support shall survive against the estate of the judgment debtor. A judgment creditor may have as many writs of execution as are necessary to effect collection of the entire amount of the judgment.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

Annotations

1. Purpose

The obvious purpose of this Section is to prevent stale judgments and to require judgment creditors to be diligent in seeking to collect on their judgments. *Becenti v. Laughlin*, 4 Nav. R. 147 (Nav. Ct. App. 1983).

2. Limitations period

" ... [T]he statute of limitations at 7 N.T.C. § 705, is tolled during the periods that a stay of execution is in effect." *The Navajo Housing Authority v. Dana and Associates*, 5 Nav. R. 157, 159 (Nav. Sup. Ct. 1987).

Partial satisfaction of the judgment and legitimate attempts to collect by execution or otherwise toll the five-year limitation on executions under this Section. *Becenti v. Laughlin*, 4 Nav. R. 147 (Nav. Ct. App. 1983).

3. Garnishment

Pursuant to this Section and 7 N.N.C. § 255 coupled with Rule 23, Rules of Navajo Civil Procedure, garnishment is permitted. *Tracey v. Heredia*, 4 Nav. R. 149 (Nav. Ct. App. 1983).

4. Scope of court's power

" ... [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).

5. Construction with other laws

"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).

§ 706. Issuance; contents

A writ of execution shall be issued by the Clerk of Court and addressed to any regular commissioned Navajo Nation Police Officer and shall direct him to seize and deliver to the Clerk of Court sufficient unrestricted and nonexempt personal property of the debtor to pay the judgment and costs of sale. The writ shall specify the particular unrestricted and nonexempt property to be seized.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

Annotations

1. Garnishment

Under the powers outlined in 7 N.N.C. §§ 255, 701(A) and this Section, the

Navajo Courts have the statutory authority to utilize garnishment procedures. *Navajo Tribal Utility Authority v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).

2. Property subject to garnishment

"We coalesce Navajo concepts of property (Navajo common law) and English common law, and apply it to modern situations, to hold that bank accounts in the name of a judgment debtor are personal property subject to execution under Sections 706 and 711." *Billie v. Nez*, 7 Nav. R. 253, 255 (Nav. Sup. Ct. 1996).

3. Notice

"We hold that the statutory execution provisions and the existence of a final judgment in the court record are sufficient notice to a judgment debtor that a court clerk may issue a writ of execution." *Billie v. Nez*, 7 Nav. R. 253, 256 (Nav. Sup. Ct. 1996).

§ 707. Return

Within 90 days of his receipt of the writ of execution, the police officer shall return it to the Clerk of Court with the property seized, or with a written explanation of why the property cannot be delivered.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

§ 708. Appraisal of property seized

Immediately upon receipt of the property seized under a writ of execution, the Clerk of Court shall cause it to be appraised item by item by an appraiser selected by the plaintiff and defendant to make an impartial appraisement. If the plaintiff and defendant fail to agree on an appraiser, the Clerk shall make the selection. The appraiser shall submit the appraisal to the Clerk of Court and send copies of the same to the plaintiff and defendant.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

§ 709. Notice and public sale of property seized; proceeds; bill of sale

A. Within seven days of appraisal of property seized under a writ of execution, the Clerk of Court shall post in public places at least two notices

of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale. The clerk shall also notify the judgment debtor of the time and place of sale, by means of first class mail if the judgment debtor's address is known, or by means of publication if such address is not known.

B. The sale shall be held within a reasonable time after posting, in the same Judicial District in which the Court rendering the judgment of foreclosure is located.

C. The Clerk shall sell the property publicly, to the highest bidder for cash, but for not less than the appraised price. The clerk may sell the property by item or in bulk, at his or her discretion.

D. The Clerk shall pay into court the expenses of sale and any unpaid court costs of either party from the proceeds of sale, and shall pay the balance up to the full amount of the judgment (less unpaid court costs of plaintiff) to the plaintiff. Any excess shall be paid to the defendant.

E. The Clerk shall deliver a bill of sale to the buyer upon request.

F. Procedures for execution, storage and sale shall be in accordance with Court rules.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

§ 710. Private sale of property seized; delivery of unsold property to plaintiff or return to defendant

A. If the Clerk is unable to sell the property seized under a writ of execution for its appraised value, he or she may hold it for 14 days after the date of the attempted sale, during which time he or she shall sell it to the first person offering the appraised value in cash.

B. The Clerk may at any time, however, after an unsuccessful attempted public sale and before an actual sale, upon request of the plaintiff and payment of all costs, deliver the property to the plaintiff and credit the appraised value thereof against the judgment debt. If the appraised value is greater than the debt the Clerk shall not deliver the property to the plaintiff until the plaintiff pays the defendant in cash for such excess value.

C. At the end of 14 days if the property remains unsold and unclaimed by the plaintiff the Clerk shall return it to the defendant.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

§ 711. Property subject to execution and property exempt from execution

A. The following property shall be exempt from execution:

1. One motor vehicle;
2. Personal effects and clothing of a reasonable value as determined by the Court;
3. Tools or equipment for a trade or profession of a reasonable value as determined by the Court;
4. Health or medical equipment required by the judgment debtor to maintain health;
5. An interest in a home where the judgment debtor resides of a reasonable value as determined by the Court;
6. A reasonable subsistence amount of livestock as determined by the Court;
7. Bona fide religious, ceremonial or sacred items and paraphernalia, and family heirlooms, as agreed to by the parties or determined by the Court.

B. All other property shall be subject to execution and sale.

C. A court may issue writs of garnishment upon the wages or monies of a judgment debtor held by third parties, subject to adoption of a Navajo Nation garnishment statute and associated rules, and further subject to limitations upon wage executions in federal law.

D. A judgment debtor may challenge the seizure of property for sale as being exempt under Subsections (A) (2), (3), (4), (5), (6) or (7) in objections filed with the Court following the seizure of that property under § 706.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

Annotations

1. Exemption

Land interests within the Navajo Nation are exempt from execution under this Section. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

Even though outrageous inflation rates have existed since this statute was passed, the Appeals Court had no jurisdiction to enlarge the provisions of this Section; it is up to the Navajo Tribal Council to make more liberal exemption provisions if it so chooses. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

2. Bank accounts

"We coalesce Navajo concepts of property (Navajo common law) and English common law, and apply it to modern situations, to hold that bank accounts in the name of a judgment debtor are personal property subject to execution under Sections 706 and 711." *Billie v. Nez*, 7 Nav. R. 253, 255 (Nav. Sup. Ct. 1996).

§ 712. Execution prior to judgment

A. Prejudgment attachments are prohibited.

B. Despite the prohibition in § 712(A), a Court may, upon notice and an opportunity to be heard by the person who possesses the property, enter appropriate orders to prevent the destruction, removal, transfer, or disposition of the property which is the subject of the suit or the property which may be subject to a writ of execution.

C. Where the action involves the ongoing payment of monies to the plaintiff or defendant making a cross or counterclaim, the court may require the payment of such monies to the Court pending the outcome of the action.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJ-51-56, July 19, 1956.

Subchapter 7. Costs, Fees and Fines

§ 751. Security for costs

In all civil suits a party may be required to deposit with the Clerk of the Court a fee or other security in a reasonable amount to cover costs and other disbursements in the case, such amount to be determined by Court rules.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

§ 752. Assessment of costs

The court may assess the costs of the case against the party or parties against whom judgment is given. Such costs may consist of the expenses of voluntary witnesses and witnesses attending court under subpoenas, fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the proceeding as the court may order.

History

CD-94-85, December 4, 1985.

CJA-1-59, January 6, 1959.

Annotations

1. Discretion of court

"This Court holds that actions for dissolution of marriage are special circumstances in which the judge may order one party to pay a reasonable amount toward the attorney fees of the other party. It is within the discretion of the judge to determine what is a reasonable amount." *Morgan v. Morgan*, 5 Nav. R. 64, 65 (Nav. Sup. Ct. 1985).

§ 753. Fees and fines; collection and disposition

A. Fees, fines, and assessments (as permitted by law) shall be collected by the Courts of the Navajo Nation, in amounts set by Court rules.

B. Fees, fines, and assessments (as permitted by law) shall be regularly deposited into the the Unreserved, Undesignated Fund Balance of the Navajo Nation.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Subchapter 9. Appeals

§ 801. Appeal from final judgment or order

Every person aggrieved by a final judgment or order of a District Court, or the order of an administrative agency where the law provides for an appeal to the Supreme Court, shall file a notice of appeal in accordance with the applicable rules of appellate procedure within 30 days from the date of the judgment or order, or as otherwise provided by law.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

Annotations

1. In general

"No sanctions were imposed, and the attorney did not take an appeal. The finding of contempt was personal to the attorney, collateral to the action, and neither party has any rights as a result of the contempt finding which are part of this appeal." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 9 (Nav. Sup. Ct. July 25, 2001).

"7 N.T.C. § 801(a) is not the Supreme Court's jurisdictional statute. 7 N.T.C. § 801(a) establishes the time limits and the requirements for filing a notice of appeal. Instead, the basis of the Supreme Court's appellate jurisdiction is located at 7 N.T.C. § 302." *Navajo Nation Division of Resources v. Spencer*, 5 Nav. R. 109, 110 (Nav. Sup. Ct. 1986).

2. Prosecution

"There is no express statutory right for the prosecution to take an appeal in the Navajo Nation." *Navajo Nation v. Yellow*, ACR-03-93, slip op. at 5 (Nav. S. Ct. January 18, 1994).

3. Time to file

"With regard to the first issue, an appeal is not deemed filed unless a Notice of Appeal is filed with the Supreme Court 'in accordance with the applicable rules of appellate procedure within 30 days from the date of the judgment or order, or as otherwise provided by law.' 7 N.N.C. § 801 (2005). Rule 8(a) of the Navajo Rules of Civil Appellate Procedure is very explicit on the prescribed time frame if a party wishes to appeal a trial court's decision; the Appellant must file a Notice of Appeal with the Supreme Court within thirty (30) days after the entry of the judgment lest the appeal be dismissed. This rule has been consistently and strictly enforced by this Court. *Riverview Service Station*, 5 Nav. R. 135. This requirement of timely filing is so fundamental that in order for this Court to assume jurisdiction over the matter, the Appellant must comply with Rule 8(a)." *Begay v. Alonzo*, No. SC-CV-40-08, slip op. at 3 (Nav. Sup. Ct. November 7, 2008).

"The trust duty of a Navajo leader as expressed in the *Thinn* case cannot be stretched to allow for a flexible time period of filing appeals." *Begay v. Alonzo*, No. SC-CV-40-08, slip op. at 5 (Nav. Sup. Ct. November 7, 2008).

"The right to file an appeal is granted and fixed by 7 N.T.C. § 801(a). [....] A party may appeal only a final judgment or order, and interlocutory appeals are not allowed." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 206, 207 (Nav. Sup. Ct. 1990).

" ... Appellant assumed the risk of delay when he decided to file his appeal by mail. The time limits set forth in 7 N.T.C. § 801(a) will not be enlarged for mail filings." *Riverview Service Station v. Eddie*, 5 Nav. R. 135, 136 (Nav. Sup. Ct. 1987).

"7 N.T.C. § 801(a) is a jurisdictional statute, [....] We will always dismiss an appeal which has not been filed within thirty (30) days of entry of the final judgment by the district court. Entry of final judgment means the day the judgment is signed by the district judge. The thirty (30) days appeal period begins to run the day after the judgment is signed by the district judge." *The Navajo Tribe of Indians v. Yellowhorse, Inc.*, 5 Nav. R. 133, 134 (Nav. Sup. Ct. 1987).

4. Final orders

"The record shows that at the time the Interlocutory Divorce Decree was issued, the only matter remaining between the parties was the distribution of their community property and debt. This Court holds that the divorce between Ms. Hall and Mr. Watson became effective on July 5, 2005 as the case was decided on the merits, the substantial rights of the party in regards to their marriage was determined and there were no further proceedings remaining in the Family Court on the question of the marriage. The Interlocutory Divorce Decree was a *final* order for the purpose of terminating the marriage between the parties; this order was affirmed by a second order in which the issue of the distribution of property was dismissed so that the matter of the marital property and debt could proceed in probate." *Hall v. Watson*, No. SC-CV-52-07, slip op. at 5-6 (Nav. Sup. Ct. February 24, 2009).

"Here, Ms. Ward's request that this Court determine the rightful personal representative of Ms. Hall's estate is best characterized as an improper interlocutory appeal of the probate action, which is prohibited by law. See *Johnson v. Tuba City*, No. SC-CV-12-07 slip op. at 4 (Nav. Sup. Ct. November 7, 2007). In other words, Ms. Ward's challenge of the personal representative is a matter to be adjudicated first by the Family Court-that is the remedy still available to her. This Court will not decide upon the validity of the appointment of Mr. Hall as personal representative to the estate and instead, remands the question to the Family Court." *Hall v. Watson*, No. SC-CV-52-07, slip op. at 7 (Nav. Sup. Ct. February 24, 2009).

"In the case of *Chuska Energy Co. v. Navajo Tax Comm'n*, we construed the word 'final' in our appellate jurisdiction statute ... to mean the procedural stage where 'all the substantial rights of the parties have been determined in the lower tribunal.' 5 Nav. R. 98, 102 (1986)." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 3 (Nav. Sup. Ct. July 25, 2001).

"Thus, a final order will generally show on its face that the case has been decided on the merits, the substantial rights of the parties have been determined, and there are no further proceedings remaining in the lower court on the merits of the case." *Tsosie v. Charlee*, 6 Nav. R. 280, 282 (Nav. Sup. Ct. 1990).

5. Sufficiency of notice

"Deposit in the mail is not the equivalent of filing a notice of appeal for

purposes of the rule governing time within which a notice of appeal must be filed." *Pioche, Sr. v. Begay*, 6 Nav. R. 403, 404 (Nav. Sup. Ct. 1991).

6. Meaningful judicial review

"Findings of fact and conclusions of law by the trial courts are required by this Court and matters will be remanded when this requirement is not complied with. See *Help v. Silvers*, 4 Nav. R. 46, 47 (Nav. Ct. App. 1983) and *Navajo Transport Services v. Schroeder*, No. SC-CV-44-06, slip op. at 5 (Nav. Sup. Ct. April 30, 2007). Meaningful judicial review also cannot occur if the lower quasi-judicial tribunal does not provide reasons why it decided a certain way and not another." *Charley and Looking Glass v. Benally, et al.*, No. SC-CV-19-07, slip op. at 7-8 (Nav. Sup. Ct. December 10, 2008).

7. Motion for reconsideration

"In other words, there is no time limit on when the motion must be filed after the judgment. However, a motion for reconsideration is deemed automatically denied if the trial court fails to rule on the motion within 5 days of its filing. *NN v. Morgan*, 8 Nav. R. 732, 737 (citing *Help* at 47). Furthermore, we glean from the discussion in *Help* about jurisdiction between the trial court and the appellate court that the notice of appeal can only be considered by this Court after the 5-day period for the district court to act has expired. We therefore hold there are two prerequisites to perfect [sic] an appeal: 1) the notice of appeal shall be filed within 30 days of the judgment and 2) the 5-day ruling period for a district court to act upon a motion for reconsideration must have expired." *Navajo Nation v. John*, No. SC-CR-01-09, slip op. at 2 (Nav. Sup. Ct. October 30, 2009).

§ 802. [Reserved]

§ 803. Scope of the appeal

Appeals shall be limited to the issues of law raised in the record on appeal.

History

CD-94-85, December 4, 1985.

Annotations

1. Construction and application

"This Court's review on appeal is limited to questions of law. [] Thus, this Court may set aside a finding of fact only if evidence in the record is insufficient, as a matter of law, to support the finding. This Court must uphold the district court's finding of negligence if the evidence most favorable to that finding is sufficient to establish the defendant's negligence." *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988).

2. Standard of review

"The parameters of discretion are whether the district court acted within the

rules, principles and customs applicable to the facts of the case. We will not overturn a discretionary decision unless the record shows that there was an actual abuse of discretion. *Little v. Begay*, 7 Nav. R. 353, 354 (1998)."
Singer v. Nez, No. SC-CV-04-99, slip op. at 4 (Nav. Sup. Ct. July 16, 2001).

"This Court will review evidentiary rulings of the district court under the abuse of discretion standard. If this Court holds an evidentiary ruling incorrect, we must still accept the factual finding it supports, unless the incorrect evidentiary ruling affects the substantial rights of the parties." *Rough Rock Community School v. Navajo Nation*, 7 Nav. R. 313, 317 (Nav. Sup. Ct. 1998).

"Generally, this Court reviews questions of law decided by the district courts *de novo*. [....] We give no deference to the district court's determination on questions of law." *Rough Rock Community School v. Navajo Nation*, 7 Nav. R. 313, 316 (Nav. Sup. Ct. 1998).

"As a general principle, we will give considerable deference to a district court's exercise of discretion." *Higdon v. Nelson*, 7 Nav. R. 158, 159 (1995).

§ 804. Proceedings on appeal

A. The Chief Justice of the Supreme Court shall preside at all proceedings before the Supreme Court. If the Chief Justice is unable to preside for whatever reason, he or she shall designate in writing a presiding Justice from the Associate Justices.

B. The Chief Justice of the Supreme Court may designate in writing any District Court Judge of the Courts of the Navajo Nation to sit on an appeal panel if the Chief Justice or an Associate Justice is unable to serve for whatever reason.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

Subchapter 11. Rules of General Construction

§ 851. Construction

This Title shall be so construed as to effectuate its general purposes and in such a manner as to assure judicial independence, the right of access to fair and independent remedies, the observance of Diné bi beenahaz'áanii, and the protection of the rights guaranteed by the Navajo Nation Bill of Rights.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

§ 852. Amendment

This Title may be amended by two-thirds (2/3) vote of the full membership of the Navajo Nation Council at a regular session of the Navajo Nation Council, upon favorable recommendation by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

§ 853. Severability

If any provision of this title or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application and to this end, the provisions of this title are severable.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

Chapter 7. Navajo Nation Arbitration Act

§ 1101. Short title

This Act may be cited as the Navajo Nation Arbitration Act.

History

CJY-26-04, July 20, 2004.

Annotations

1. Unconscionable arbitration clause

"Considering all of these principles together, the Court holds that the specific arbitration clause in the financing contract is unenforceable. Though arbitration generally is encouraged, clauses that mandate arbitration are not immune from scrutiny for unconscionability or consistency with Fundamental Law." *Green Tree Servicing, LLC v. Duncan*, No. SC-CV-46-05, slip op. at 12 (Nav. Sup. Ct. August 18, 2008).

§ 1102. Jurisdiction

An agreement providing for arbitration in the Navajo Nation may be enforced by the Navajo Nation district court in the judicial district where the parties to the controversy reside or may be personally served.

History

CJY-26-04, July 20, 2004.

§ 1103. Written agreement to submit controversy to arbitration is valid

A written agreement to submit any existing or future controversy to arbitration is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of the contract.

History

CJY-26-04, July 20, 2004.

Annotations

1. Unconscionable arbitration clause

"Considering all of these principles together, the Court holds that the specific arbitration clause in the financing contract is unenforceable. Though arbitration generally is encouraged, clauses that mandate arbitration are not immune from scrutiny for unconscionability or consistency with Fundamental Law." *Green Tree Servicing, LLC v. Duncan*, No. SC-CV-46-05, slip op. at 12 (Nav. Sup. Ct. August 18, 2008).

§ 1104. Duty of court on application of party to arbitrate

A. On application of a party showing an arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to determine the issue raised and shall order or deny arbitration accordingly.

B. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications to compel arbitration, the application shall be made therein. Otherwise, the application shall be made in the court of proper venue.

C. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

D. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated has not been shown.

History

CJY-26-04, July 20, 2004.

§ 1105. When court may appoint arbitrators

If the arbitration agreement provides a method of appointment of arbitrators this method shall be followed. In the absence thereof, or if the agreed method fails or cannot be followed, or when an arbitrator fails or is unable to act and his successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

History

CJY-26-04, July 20, 2004.

§ 1106. Qualification of arbitrators

The qualifications of a person allowed to serve as an arbitrator, under this Act shall be set by the Navajo Nation Judicial Branch.

History

CJY-26-04, July 20, 2004.

§ 1107. Powers of arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by law.

History

CJY-26-04, July 20, 2004.

§ 1108. Notice and hearing

A. Whenever the Navajo Nation is a party to an arbitration, notice of intent to invoke arbitration shall be filed in compliance with 1 N.N.C. § 555.

B. The arbitrators shall appoint a time and place for the hearing and serve the parties with notice either personally or by registered mail not less than 10 days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing from time to time as necessary, and on request of a party or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

C. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

D. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy.

History

CJA-05-07, January 24, 2007. Added a new Subsection A.

CJY-26-04, July 20, 2004.

§ 1109. Right to be represented by attorney or Navajo tribal court advocate; effect of waiver

A party may be represented by a member in good standing of the Navajo Nation Bar Association at any arbitration proceeding or hearing. A waiver of representation at an arbitration proceeding made prior to the proceeding is ineffective.

History

CJY-26-04, July 20, 2004.

§ 1110. Authority of arbitrators to issue subpoenas and administer oaths; service of subpoenas; depositions; compelling person to testify

A. The arbitrators may issue subpoenas for the attendance of witnesses, for the production of books, records, documents and other evidence and may administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

B. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner designated by the arbitrators.

C. All provisions of law compelling a person under subpoena to testify are applicable.

History

CJY-26-04, July 20, 2004.

§ 1111. Award of arbitrators

A. The award shall be in writing and signed by the arbitrators joining in the decision. A copy shall be delivered to each party personally, or by registered mail or as provided in the agreement.

B. An award shall be made within the time fixed by the agreement, or if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

C. An award against the Navajo Nation shall be in conformance with the provisions of 1 N.N.C. § 554(K).

History

CJA-05-07, January 24, 2007. Amended Subsection C.

CJY-26-04, July 20, 2004.

§ 1112. Modification of award

A. On application of a party or an order of the court, the arbitrators may modify the award:

1. When there was an evident miscalculation of figures or description of a person or property referred to in the award;

2. When the award is imperfect as to form not affecting the merits of the controversy; or

3. For the purpose of clarifying the award.

B. The application shall be made within 20 days after delivery of the award to the applicant. Written notice shall be given promptly to the opposing party, stating he must serve his objections within 10 days from receipt of the notice.

History

CJY-26-04, July 20, 2004.

§ 1113. Expenses and fees for arbitrators

A. The arbitrators' fees shall be set by regulation adopted by the Navajo Nation Supreme Court in accord with 7 N.N.C. § 601.

B. The arbitrators' expenses, fees and other costs, not including counsel fees, incurred in the arbitration shall be paid as provided in the award, unless otherwise provided in the arbitration agreement.

History

CJY-26-04, July 20, 2004.

§ 1114. Confirmation of an arbitration award by court

Upon application of a party the court shall confirm the award unless within the time limits allowed grounds are urged for vacating or modifying the award.

History

CJY-26-04, July 20, 2004.

§ 1115. When court may vacate award

A. Upon application of a party the court shall vacate an award where:

1. The award was procured by corruption, fraud or other undue means;

2. There was evident partiality by an arbitrator appointed as a neutral, or corruption of any of the arbitrators or misconduct prejudicing the rights of any party;

3. The arbitrators exceeded their powers;

4. The arbitrators refused to postpone the hearing upon sufficient cause being shown, or refused to hear evidence material to the controversy or otherwise conducted the hearing as to substantially prejudice the rights of a party; or

5. There was no arbitration agreement, the issue was not adversely determined by a court as provided by law and the applicant did not participate in the arbitration hearing without raising the objection. The fact that the relief was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.

B. An application for vacating an award shall be made within 90 days after delivery of a copy of the award to the applicant, or if predicated upon corruption, fraud or other undue means it shall be made within 90 days after the grounds are known or should have been known.

C. In vacating the award on grounds other than stated in Subsection (A)(5) the court may order a rehearing before new arbitrators chosen as provided in the agreement or by the court. If the award is vacated on grounds set forth in Paragraph (A)(3) or (4) of this Section the court may order a rehearing before the arbitrators who made the award or their successors appointed. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

D. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History

CJY-26-04, July 20, 2004.

§ 1116. When court may modify or correct award

A. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person or property referred to in the award;

2. The arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision

upon the issues submitted; or

3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

B. If the application is granted, the court shall modify and correct the award as to intent and shall confirm the award as so modified and corrected. Otherwise the court shall confirm the award as made.

C. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History

CJY-26-04, July 20, 2004.

§ 1117. Judgment upon granting order confirming, modifying or correcting award; costs and disbursements

Upon the granting of an order confirming, modifying or correcting an award, the judgment shall conform and be enforced as any other judgment. Costs of the application, proceedings and disbursements may be awarded by the court.

History

CJY-26-04, July 20, 2004.

§ 1118. Application to court to be by motion; notice and hearing to be in manner provided by law

An application to the court for relief shall be by motion and shall be heard in the manner provided by law or rule of court. Notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action unless otherwise specified by the parties.

History

CJY-26-04, July 20, 2004.

§ 1119. Appeals

An appeal to the Navajo Nation Supreme Court may be taken from:

A. An order denying the application to compel arbitration;

B. An order granting an application to stay arbitration;

C. An order confirming or denying confirmation of an award;

D. An order modifying or correcting an award;

E. An order vacating an award without directing a rehearing; or

F. A final judgment or decree entered by the court.

History

CJY-26-04, July 20, 2004.

Title 8

Decedents' Estates

Chapter 1. Descent and Distribution

§ 1. Jurisdiction

The Family Court of the Navajo Nation shall have original jurisdiction over all cases involving the descent and distribution of deceased Indians' unrestricted property found within the territorial jurisdiction of the Court.

History

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Revision note. "Tribal" changed to "Family", and "Tribe" changed to "Nation". See 7 N.N.C. § 253(B).

Cross References

Descent and distribution of grazing permits, see 3 N.N.C. § 785.

Disposition of land use permit, personal property and improvements on death of assignee, see 3 N.N.C. §§ 154 and 217.

United States Code

Descent and distribution of property, see 25 U.S.C. §§ 348, 371-379.

Code of Federal Regulations

Issuance of patents in fee, certificates of competency, removal of restrictions, and sale of certain Indian lands, see 25 CFR § 152.1 *et seq.*

Probate of Indian estates, see 25 CFR § 15.1 *et seq.*

Annotations

1. Construction and application

"The family court has original jurisdiction over the descent and distribution of 'deceased Indians' unrestricted property' (probate jurisdiction)." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).