

IN THE SUPREME COURT OF THE NAVAJO NATION

In the Matter of Frank Seanez.

OPINION

Before YAZZIE, Chief Justice, and SHIRLEY, Associate Justice.¹

This matter comes before the Court following an Order to Show Cause hearing held this day. On October 18, 2010, the Court *sua sponte* issued an *Order and Writ of Prohibition* against Frank Seanez, Chief Legislative Counsel in which the Court ordered Mr. Seanez to immediately desist and refrain from giving legal advice and issuing opinions and memoranda that defy orders of the Navajo Nation courts and to appear at the above hearing to show cause why this Court should not take disciplinary action against him for his conduct as set forth in that Order. A copy of the Order is attached herein.

Mr. Seanez appeared and filed his response *pro se*. Upon review of the response and Mr. Seanez' testimony, the Court issued a verbal opinion and now issues its written decision.

I.

The Supreme Court shall have the power to issue any writs or orders "necessary and proper" to the complete exercise of its jurisdiction. 7 N.N.C. § 303(A). Additionally, the Supreme Court has the exclusive regulatory authority in the regulation of the practice of law within the Navajo Nation. *See Eriacho v. Ramah Dist. Ct.*, 8 Nav. R. 598 (Nav. Sup. Ct. 2004); *Navajo Nation v. MacDonald*, 6 Nav. R. 222 (Nav. Sup. Ct. 1990); *Boos v. Yazzie*, 6 Nav. R. 211 (Nav. Sup. Ct. 1990); *In re Practice of Law by Avalos*, 6 Nav. R. 191 (Nav. Sup. Ct. 1990); *In re*

¹ The Court is not restricted in issuing a two-justice opinion where "necessary and proper" as long as the Chief Justice or his or her designate presides in the case. *Benally v. Mobil Oil Corp.*, 8 Nav. R. 365, 368 (Nav. Sup. Ct. 2003).

Practice of Law in the Courts of the Navajo Nation, 4 Nav. R. 75 (Nav. Ct. App. 1983); *In re Battles*, 3 Nav. R. 92 (Nav. Ct. App. 1982). Ordinarily, the NNBA, pursuant to delegated power, will usually review complaints against bar members. *In re Bowman*, 6 Nav. R. 101 (Nav. Sup. Ct. 1989) citing *In re Practice of Law in the Courts of the Navajo Nation*, 4 Nav. R. 75 (Nav. Sup. Ct. 1983). However, if gross misconduct occurs in proceedings before this Court, or when the bar member participates in a scheme to interfere with the operation or proceeding of any court of the Navajo Nation, this Court has the authority to immediately discipline the attorney, without deferring to the NNBA. See *In re Bowman*, 6 Nav. R. 101 (Nav. Sup. Ct. 1989).

Pursuant to Council Resolution No. CD-94-85, resolved clause 9 “Tribal sovereignty requires strong and independent tribal courts to enforce and apply the law.” In addition, this Court has inherent authority to regulate court processes and conduct of attorneys.

Admission to practice law before the Courts of the Navajo Nation is a privilege not a right. *In re Admission of Wilson*, 4 Nav. R. 137 (Nav. Ct. App. 1983); *Boos v. Yazzie*, 6 Nav. R. 211 (Nav. Sup. Ct. 1990) (an individual does not have an absolute right to practice law within Navajo jurisdiction). Members of the NNBA are officers of the court and have a special responsibility to ensure the integrity of the Navajo legal system. *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. (Nav. Sup. Ct. August 7, 2006).

II.

It is rare for the Court, *sua sponte*, to initiate disciplinary actions against members of the Navajo Nation Bar. We have only initiated such proceedings once before, in *In re Bowman*, *supra*. We understand the gravity of such proceedings to the individual and also to the Navajo people, who depend on appropriate legal advice from members of the Navajo Nation Bar. In this case, as Mr. Seanez himself pointed out in his testimony and in his response, we have a member

of the Navajo Nation Bar serving as the Chief Legislative Counsel to the Navajo Nation Council, advises and works with our leaders, our Council Delegates, our *nataanis*, and advises our government on the passage or interpretation of laws affecting the people and other branches of government. Due to recent amendments enacted by the Navajo Nation Council, the legal advice of the Chief Legislative Counsel to our government through legal opinions has the legal effect of absolving any member of the government from liability for conduct taken in reasonable reliance upon the advice given in such an opinion. *Response*, p. 2 *citing* Resolution CF-12-10 amending the enabling legislation for the Office of Legislative Counsel (February 23, 2010). Accordingly, the matter of Mr. Seanez's exercise of his legal duties is of overwhelming significance to the Navajo people.

A fundamental duty of legal advisors who are Navajo Nation Bar members and also government lawyers is to inform their clients what the law is, not merely re-state the law as what they wish it should be. Here, the laws in question are holdings of this Supreme Court. Pursuant to 7 N.N.C. §206, a government lawyer for the Navajo Nation has a fiduciary duty not to obstruct, interfere or influence the functions of our courts. Such a provision is not in our statutes for show. It shows how vital it is that the government is accountable to all the laws of the Navajo Nation—statutes, court rulings, rules and regulations.

In legal opinions and memoranda that he issued as Chief Legislative Counsel to the Council, Mr. Seanez intentionally and knowingly advised the Council to act contrary to what he, a government practitioner of his experience, knows or ought to know to be law. He informed the Council that our holdings should not be followed, and presented his own arguments as the law that the Council must follow. Specifically, he dismissed our unambiguous holding that the People have ultimate authority to determine their governmental structure and amend all

provisions that concern doctrines of separation of powers, checks and balances, accountability to the people, and service of the anti-corruption principle. *Shirley v. Morgan*, No. SC.CV-02-10, p. 25 (Nav. Sup. Ct. May 28, 2010) clarified in *Shirley v. Morgan, supra*, at 7 (Nav. Sup. Ct. July 16, 2010). In the face of our unambiguous holding, he persisted in advising the Council that they have “unquestioned” authority to amend Titles 2, 7 and 11 without restriction. This legal opinion of Mr. Seanez alone constitutes gross misconduct of a Navajo Nation Bar member.

In addition, in a legal memorandum to the Council, Mr. Seanez advised that the Court had no authority to invalidate the Navajo Government Development Act of 2007 and call for the reestablishment and re-funding of the Government Reform Commission. In his testimony, Mr. Seanez attempted to point out parts of his legal memorandum where he did agree with the Court, as if these small pieces of agreement nullified the entirety of his opinion in which the authority of this Court was denied. When asked, Mr. Seanez denied knowledge as to whether his legal advice facilitated the Speaker of the Navajo Nation Council’s subsequent instructions that the Commission neither be permitted to meet or be funded. However, the Speaker’s reliance on Mr. Seanez’ legal advice to justify non-compliance with our holding is plain from the Speaker’s memorandum itself.

Mr. Seanez pointed out that there is a difference between his legal opinions and memoranda. He stated that he had only issued four opinions thus far with the rest of his advice in memoranda. It bears repeating here that according to CJA-06-10, the Council is free to defy our holdings with impunity so long as they rely on the Chief Legislative Counsel’s opinions. Ultimately, Mr. Seanez admitted that whether in a legal opinion or memorandum, his legal advice was intended to be taken by the Council.

In his testimony, Mr. Seanez was given the opportunity to take responsibility for the

Council's reliance on either his opinions or memoranda in proposing legislation in defiance of this Court's holdings, but did not do so. He claimed attorney-client privilege when asked if he ever advised his client about ways in which the branches may communicate according to the Diné fundamental principle of *k'é*, which we have described in our holdings as vital in the way our leaders are to approach each other. In his testimony he attempted to make a claim that the Court was unclear in our holdings. However, his assertion of the Council's supremacy in amending Titles 2, 7 and 11 regarded holdings which we clarified in a second opinion at the Council's request, therefore his claim that the law is unclear is meritless.

People as individuals will always have differing opinions regarding the application of various court holdings, regulations, policies and statutes. Such differences are a matter of free speech that this Court fully supports. However, we cannot and will not condone a government lawyer intentionally using his position to undermine the very foundation of a stable Navajo Nation government by providing justifications for unlawful conduct. There can be no doubt that Mr. Seanez knew, or should have known, that through his denial of this Court's authority he was facilitating the breaking of Navajo Nation laws.

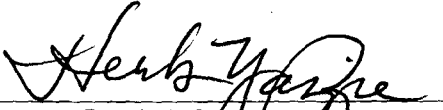
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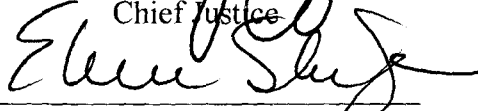
For the foregoing reasons, we deem the conduct of Mr. Seanez that was described in the *Order and Writ of Prohibition* of October 18, 2010 as gross misconduct, unbecoming of an Officer of the Navajo Nation Court and member of the Navajo Nation Bar. Furthermore, this conduct amounts to interference with the functions of this Court in violation of 7 N.N.C. § 206.

It is the order of this Court that Mr. Frank Seanez is permanently disbarred from the Navajo Nation Bar Association effective this date. The Navajo Nation Bar Association is directed to notify the members of the Bar, the district courts, and administrative agencies of this

Court's decision.

Dated this 27th day of October, 2010.



Chief Justice


Associate Justice Shirley

No. SC-CV-58-10

IN THE SUPREME COURT OF THE NAVAJO NATION

In the Matter of Frank Seanez.

ORDER AND WRIT OF PROHIBITION

THE NAVAJO NATION SUPREME COURT TO
FRANK SEANEZ:

Before YAZZIE, Chief Justice, and SHIRLEY, Associate Justice.¹

The Navajo Nation Supreme Court *sua sponte* issues this *Order and Writ of Prohibition*² to you, as Chief Legislative Counsel of the Navajo Nation Council, a member of the Navajo Nation Bar Association (NNBA), a government lawyer and an Officer of the Court, as follows:

I.

The Court is aware that you have issued opinions as Chief Legislative Counsel, pursuant to your responsibilities under the *Office of Legislative Counsel Amendments of 2010*, that defy the opinions of this Court. Specifically, on September 10, 2010, in your legal opinion No. CLC-04-10, you advised the Navajo Nation Council that “It is unquestionable that the Navajo Nation Council itself has the authority to amend Titles 2, 7 and 11 of the Navajo Nation Code.” This advice is in defiance of our opinion in *Shirley v. Morgan*, No. SC-CV-02-10 (Nav. Sup. Ct. May 28, 2010) in which we stated that Title II and other provisions impacting the structure of government through principles of separation of powers, checks and balances, and service of the anti-corruption principle, among others, may only be amended by the People. Your legal advice runs counter to Navajo Nation

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² In accordance with *In re Bowman*, 6 Nav. R. 101, 101 (Nav. Sup. Ct. 1989), this matter is raised *sua sponte*. The Court in *Bowman* addressed the gross misconduct of a member of the Navajo Nation Bar Association *sua sponte* under its disciplinary powers over bar members and issued a writ of prohibition *sua sponte* . . . upon information and belief” that Bowman “may attempt” to act contrary to Navajo law.

law and is in violation of 7 N.N.C. §206 which imposes upon you, as a government lawyer, a duty not to obstruct interfere or otherwise influence the functions of the Navajo Nation Courts.

II.

On August 4, 2010, you issued a legal memorandum advising the Speaker of the Navajo Nation Council that the Court in its July 16, 2010 *Opinion and Order on Reconsideration, Shirley v. Morgan*, No. SC-CV-02-10, exceeded its jurisdiction in a number of holdings, even though the holdings are now settled law, with the time period for reconsideration having passed and no motion for reconsideration having been filed or raised by the party Council. You advised the Navajo Nation Council that it is legal to defy our holdings, and the result was in fact defiance by the Office of the Speaker in its August 4, 2010 memorandum to Office of Navajo Government Development staff. Your legal advice runs counter to Navajo Nation law and is in violation of 7 N.N.C. §206 which imposes upon you, as a government lawyer, a duty not to obstruct interfere or otherwise influence the functions of the Navajo Nation Courts.

Contents of concern in the *Memorandum, Frank M. Seanez to Lawrence T. Morgan, August 4, 2010* are underlined below:

“This memorandum follows the distribution to the Navajo Nation Council of the Opinion and Order on Reconsideration issued on July 16, 2010 by the Navajo Nation Supreme Court. As noted within the cover memorandum, the Court has purported to invalidate the following additional provisions of Navajo Nation statutory law...1) Navajo Nation Council Resolution CO-37-07; and 2) 2 N.N.C. § 102(B); and 3) 11 N.N.C. § 401(A) and (B); and 4) 11 N.N.C. § 240(C).” *Id.* at 1.

As to Resolution CO-37-07, restoration of the Commission: “The Court has taken for itself the authority to restore the Commission and Office. The Court has no such authority within the powers delegated to it by the Navajo Nation Council.” *Id.* at 2.

“Accordingly, it appears that the Navajo Nation Supreme Court exceeded its authority in purporting to restore the Commission and Office.[] As such, the Court exceeded its jurisdiction, as set forth at 7 N.N.C. § 302.” *Id.* at 3.

“It appears that by purporting to take a legislative action in the restoration of the

Commission and Office, the Navajo Nation Supreme Court has exceeded its limited jurisdiction, as delegated by the Navajo Nation Council.” *Id.* at 3

“According to the extent that the July 16, 2010 Order purports to immediately restore the Commission, the Order was issued by the Navajo Nation Supreme Court in excess of its limited jurisdiction. The Commission was not restored by the Order. Nor was a new Commission endowed with new authorities, lines of oversight, or funding created by the Order. To the extent that the Council now wishes to recreate the Commission, it may do so through normal legislative process. Likewise, the Court’s Order to restore the Office and Navajo Government Development to its configuration prior to the passage of Resolution CO-37-07 is outside the limited jurisdiction of the Navajo Nation Supreme Court.” *Id.* at 4.

As to Resolution CO-37-07, funding of the Commission and Office: “The Court held that the Commission and Office “shall be funded at their original funding levels or at sufficient levels to fulfill their duties and responsibilities, whichever is greater.” The Court’s Order relative to the funding of the Commission and Office further exceeds the limited jurisdiction of the Navajo Nation Supreme Court. While the original funding level of the Commission and Office can be determined by reference to the budget resolutions passed by the Navajo Nation Council, the Court has no jurisdiction to appropriate funds, or to require the reallocation of funds with any branch of the Navajo Nation Government to fund a non-existent Commission. Further, the Court lacks jurisdiction to determine the level at which the Office must be funded in order to ‘fulfill its duties and responsibilities.’” *Id.* at 4.

“Accordingly, the Navajo Nation Supreme Court has no jurisdiction to make an appropriation of Navajo Nation funds for creation of the Commission.” *Id.* at 4.

“Accordingly, the Navajo Nation Supreme Court has no jurisdiction to make a supplemental appropriation of Navajo Nation funds for additional funding of the Office.” *Id.* at 5.

As to 2 N.N.C. § 102(B): “The Navajo Nation Supreme Court stated in its Order that “2 N.N.C. § 102(B) relating to powers reserved to the Council is invalid under principles of egalitarianism, and the reserved, fundamental and inherent right of the People to make laws and determine their form of government as previously elucidated by this Court.” Shirley at 11. This is the sole statement of the Court with regards to its purported invalidation of 2 N.N.C. § 102(B).” *Id.* at 5.

“Accordingly, it appears that the Navajo Nation Supreme Court exceeded its authority in purporting to invalidate 2 N.N.C. § 102(B).[] As such, the Court exceeded its jurisdiction, as set forth at 7 N.N.C. § 302.” *Id.* at 6.

As to 11 N.N.C. § 401 (A) and (B): “The Navajo Nation Supreme Court stated in its Order that, ‘11 N.N.C. § 401 (A) and (B) relating to referendum/initiative matters in which yearly appropriations for a fiscal year budget, laws determined by the Council

to be emergencies, use of trust funds, issuance of bonds, acquisition of property, granting of public utility franchises, rate regulations, tax measures and zoning, among others, are exempted from the referendum/initiative process are invalid as they purport to remove matters of intrinsic public concern from public vote.’ This is the sole statement of the Court with regards to its purported invalidation of 11 N.N.C. § 401 (A) and (B).” *Id.* at 6.

“Accordingly, it appears that the Navajo Nation Supreme Court exceeded its authority in purporting to restore the Commission and Office.[] As such the Court exceeded its jurisdiction, as set forth at 7 N.N.C. § 302.” *Id.* at 6.

“In conclusion, the legal advice of the Office of Legislative Counsel is that the Navajo Nation Supreme Court exceeded its jurisdiction in a number of its holdings in the Order issued on June 16, 2010.” *Id.* at 7.

III.

Upon information and belief, you continue to advise the Navajo Nation Council that they may legally defy our holdings notwithstanding that the judgments of this Court are final, and holdings of this Court are the settled law of the Navajo Nation pursuant to *Navajo Nation Council Resolution No. CD-94-85, Enacting the Judicial Reform Act of 1985*, Whereas Clause 13 and 7 N.N.C. §302.

* * *

The Supreme Court shall have the power to issue any writs or orders “necessary and proper” to the complete exercise of its jurisdiction. 7 N.N.C. § 303(A). Additionally, the Supreme Court has the exclusive regulatory authority in the regulation of the practice of law within the Navajo Nation. *See Eriacho v. Raman Dist. Ct.*, 8 Nav. R. 598 (Nav. Sup. Ct. 2004); *Navajo Nation v. MacDonald*, 6 Nav. R. 222 (Nav. Sup. Ct. 1990); *Boos v. Yazzie*, 6 Nav. R. 211 (Nav. Sup. Ct. 1990); *In re Practice of Law by Avalos*, 6 Nav. R. 191 (Nav. Sup. Ct. 1990); *Matter of Practice of Law in the Courts of the Navajo Nation*, 4 Nav. R. 75 (Nav. Ct. App. 1983); *Matter of Practice of Law in the Courts of the Navajo Nation*, 4 Nav. R. 75 (Nav. Ct.

App. 1983); *Matter of Battles*, 3 Nav. R. 92 (Nav. Ct. App. 1982). Ordinarily, the NNBA, pursuant to delegated power, will usually review complaints against bar members. *In re Bowman*, 6 Nav. R. 101 (Nav. Sup. Ct. 1989) citing *In re Practice of Law in Navajo Courts*, 4 Nav. R. 75 (Nav. Sup. Ct. 1983). However, if gross misconduct occurs in proceedings before this Court, or when the bar member participates in a scheme to interfere with the operation or proceeding of any court of the Navajo Nation, this Court has the authority to immediately discipline the attorney, without deferring to the NNBA. See *Matter of Bowman*, 6 Nav. R. 101 (Nav. Sup. Ct. 1989).

Pursuant to Council Resolution No. CD-94-85, resolved clause 9 “Tribal sovereignty requires strong and independent tribal courts to enforce and apply the law.” In addition, this Court has inherent authority to regulate court processes and conduct of attorneys.

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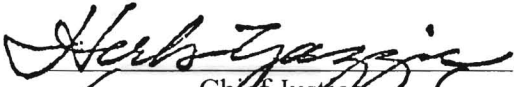
Accordingly,

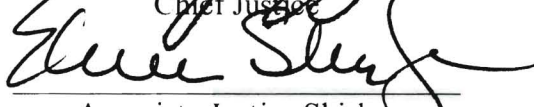
You are, therefore, commanded, immediately, to desist and refrain from giving legal advice and issuing opinions and memorandums that contravene, disclaim, refute, or defy this Court’s or any other court of the Navajo Nation’s judgment or order.

It is further ordered that you show cause before the Navajo Nation Supreme Court at 9:00 A.M., October 22, 2010, at the Navajo Nation Labor Commission Hearing Room, in Window

Rock why this Court should not take disciplinary action against you for your conduct as set forth herein.

Dated this 18th day of October, 2010.



Chief Justice


Associate Justice Shirley