

(480) 921-9296

**JUDICIAL DISTRICT OF WINDOW ROCK, NAVAJO NATION**

Defendants.

—

**MOTION TO DISMISS  
WITH PREJUDICE RE:  
LOUIS DENETSOSIE,  
HARRISON TSOSIE,  
LEONARD TSOSIE, AND  
LORENZO BATES**

///

RESPECTFULLY SUBMITTED this 6th day of July, 2012.

**SPECIAL PROSECUTOR FOR THE  
NAVAJO NATION**

**ROTHSTEIN, DONATELLI, HUGHES,  
DAHLSTROM, & SCHOENBURG, LLP**

By: 

Eric N. Dahlstrom, Esq.  
80 E. Rio Salado Parkway  
Suite 305  
Tempe, AZ 85281  
(480) 921-9296  
[edahlstrom@rothsteinlaw.com](mailto:edahlstrom@rothsteinlaw.com)

Richard W. Hughes, Esq.  
Mark H. Donatelli, Esq.  
John W. Day, Esq.  
1215 Paseo De Peralta  
P.O. Box 8180  
Santa Fe, New Mexico 87504  
(505) 988-8004  
[rwhughes@rothsteinlaw.com](mailto:rwhughes@rothsteinlaw.com)  
[mhd@rothsteinlaw.com](mailto:mhd@rothsteinlaw.com)  
[jday@rothsteinlaw.com](mailto:jday@rothsteinlaw.com)

### CERTIFICATE OF SERVICE

A copy of the foregoing and the Memorandum In Support of Motion to Dismiss with Prejudice Re: Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates was served by U.S. First Class Mail on each Defendant, or where counsel has appeared on behalf of Defendant, then, on such counsel, at the addresses shown below, this 6th day of July, 2012.

Elsie Redbird, Esq.  
Redbird Navajo Law Offices  
3301-R Coors Blvd. NW, No. 109  
Albuquerque, New Mexico 87120  
*On behalf of Alice White Benally*

Marcella King, Esq.  
P.O. Box 3882  
YaTaHey, NM 87375  
*On behalf of Amos Johnson and Leonard Anthony*

Peterson M. Wilson, Advocate  
PMW Consultant  
P.O. Box 2638  
Tuba City, AZ 86045  
*On behalf of Bobby Robbins, Sr., Tommy Tsosie,  
and Lena Manheimer*

Justin Jones, Esq.  
The Law Office of Justin Jones, P.C.  
P.O. 2240  
Farmington, NM 87499  
*On behalf of Elbert Wheeler, Harry Willeto, and  
Roy Dempsey*

John F. Dietz, Esq.  
6565 Americas Parkway NE, Suite 200  
Albuquerque, NM 87110  
*On behalf of Norman John, II*

Troy Eid, Esq.  
Greenberg Traurig, LLP  
1200 17<sup>th</sup> St., Suite 2400  
Denver, CO 80202  
*On behalf of Harrison Tsosie*

William Ryan Battles, Esq.  
William P. Battles & Associates  
P.O. Drawer 460  
Window Rock, AZ 86515  
*On behalf of Harrison Tsosie*

David R. Jordan, Esq.  
The Law Office of David R. Jordan  
309 East Nizhoni Blvd.  
P.O. Box 840  
Gallup, NM 87305  
*On behalf of Andy Ayze, Curran Hannon, Ervin  
Keeswood, Evelyn Acothley, Harry Clark, Harry  
Claw, Harry Hubbard, Harry Williams, Sr., Herman  
Morris, Hope MacDonald Lonetree, Ida M. Nelson,  
Joe Shirley, Jr., Harriet Becenti, Kee Allen Begay, Jr., Larry  
Noble, Lawrence T. Morgan, Nelson Gorman, Jr., Omer  
Begay, Jr., Peterson B. Yazzie, Preston McCabe, Sr.,  
Ralph Bennett, Ray Berchman, Roy Laughter  
Sampson Begay, and Young Jeff Tom*

Michael E. Day, Esq.  
Law Office of Michael E. Day  
Post Office Box 1211  
Keams Canyon, AZ 86034  
*On behalf of Jack Colorado and Lorenzo Bedonie*

R. Linda Riley James, Esq.  
P.O. Box 1797  
Gallup, NM 87305  
*On behalf of Larry Anderson, Sr.*

Mark Grant, *Pro Se*  
P.O. Box 306  
Chinle, AZ 86504

Benjamin Curley, *Pro Se*  
P.O. Box 30  
Window Rock, AZ 86515

Cecil Frank Eriacho, *Pro Se*  
HC 61, Box 11  
Ramah, NM 87321

David B. Rico, *Pro Se*  
P.O. Box 87  
Cuba, NM 87013

David Shondee, *Pro Se*  
P.O. Box 956  
Kayenta, AZ 86033

Elmer L. Milford, *Pro Se*  
P.O. Box 564  
Ft. Defiance, AZ 86504

Ernest D. Yazzie, Jr. *Pro Se*  
P.O. Box 156  
Sanders, AZ 86512

George Arthur, *Pro Se*  
P.O. Box 3390  
Window Rock, AZ 86515

Hoskie Kee, *Pro Se*  
P.O. Box 864  
Prewitt, NM 87045

Jerry Freddie, *Pro Se*  
HC 63, Box 6070  
Winslow, AZ 86047

Joe M. Lee, *Pro Se*  
P.O. Box 353  
Vanderwagon, NM 87325

Lee Jack, Sr., *Pro Se*  
P.O. Box 3358  
Indian Wells, AZ 86031

Leonard Chee, *Pro Se*  
HC 61, Box 93  
Winslow, AZ 86047

Leslie Dele, *Pro Se*  
P.O. Box 891  
Tonalea, AZ 86044

Louis Denetsosie, *Pro Se*  
P.O. Box 1797  
Window Rock, AZ 86515

Nelson Begaye, *Pro Se*  
P.O. Box 997  
St. Michaels, AZ 86511

Orlanda Smith-Hodge, *Pro Se*  
P.O. Box 53  
Ganado, AZ 86505

Pete Ken Atcitty, *Pro Se*  
P.O. Box 491  
Shiprock, NM 87420

Phillip Harrison, Jr., *Pro Se*  
P.O. Box 661  
Shiprock, NM 87420

Raymond Joe, *Pro Se*  
P.O. Box 1906  
Chinle, AZ 86503

Thomas Walker, Jr., *Pro Se*  
HC 61, Box K  
Winslow, AZ 86047

Tim Goodluck, *Pro Se*  
P.O. Box 324  
Lupton, AZ 86508

Willie Begay, *Pro Se*  
P.O. Box 1613  
Kayenta, AZ 86033

Willie Tracey, Jr., *Pro Se*  
P.O. Box 2466  
Window Rock, AZ 86515

Davis Filfred, *Pro Se*  
P.O. Box 774  
Montezuma Creek, UT 84534

Edward V. Jim, Sr., *Pro Se*  
P.O. Box 1443  
Sheep Springs, NM 87364

Francis Redhouse, *Pro Se*  
P.O. Box 850  
Teec Nos Pos, AZ 86514

Gloria Jean Todacheene, *Pro Se*  
P.O. Box 2220  
Shiprock, NM 87420

Kee Yazzie Mann, *Pro Se*  
P.O. Box 1823  
Kaibeto, AZ 86053

Raymond Maxx, *Pro Se*  
P.O. Box 3905  
Tuba City, AZ 86045

Woody Lee, *Pro Se*  
P.O. Box 981  
Teec Nos Pos, AZ 86514

Dana Bobroff  
Acting Attorney General  
Paul Spruhan  
Assistant Attorney General  
Navajo Nation Department of Justice  
Post Office Drawer 2010  
Window Rock, AZ 86515-2010  
*Attorneys for Incident Management Team*

A copy of the foregoing and the Memorandum In Support of Motion to Dismiss with Prejudice Re: Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates was served by Electronic Mail at the address shown below, as authorized by the District Court's February 27, 2012 *Order Authorizing Service of Pleadings by Electronic Mail*, this 6th day of July, 2012.

Paul E. Frye, Esq.

[pef@fryelaw.us](mailto:pef@fryelaw.us)

Paul Frye Law Firm, P.C.

10400 Academy NE, Suite 310

Albuquerque, NM 87111

*On behalf of Charles Damon, III, Danny Simpson,  
David Tom, Edmund Yazzie, Elmer Begay, George  
Apachito, Mel Begay, Johnny Naize, Jonathan Nez,  
Katherine Benally, Kenneth Maryboy, Leonard  
Tsosie, Lorenzo Bates, and Lorenzo Curley*



---

Joan Davis

Legal Assistant to Eric N. Dahlstrom

Special Prosecutor for the Navajo Nation



(480) 921-9296

It is the duty of the Special Prosecutor to determine whether the evidence supports a claim as well as to prosecute claims that are in fact supported by evidence. The Special Prosecutor Act,

2 N.N.C. §§ 2021-2024 (2005), serves an important function of providing an independent mechanism to sort out allegations of misconduct made against key governmental officials. The goals of the Special Prosecutor Act are served when a government official is cleared as well as when a government official is prosecuted. Thus, it is appropriate for this Motion to seek dismissal with prejudice of the claims against these Defendants based on the determination of the Special Prosecutor that the claims made in the Complaint against Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates are not supported by the facts and the law.

The Special Prosecutor has conducted an extensive investigation into the allegations made in the Complaint. The Special Prosecutor has reviewed the evidence developed by the former Special Prosecutor; reviewed the extensive records which establish the facts surrounding the allegations in the Complaint; conducted numerous interviews of witnesses with personal knowledge of the facts alleged in the Complaint; and interviewed Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates. The Special Prosecutor also carefully reviewed applicable Navajo law relating to the claims made in the Complaint. Finally, the Special Prosecutor relied on the fact that Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates cooperated fully with the Special Prosecutor's investigation.

Based upon a careful review of the evidence and the law relating to the claims made in the Complaint, the Special Prosecutor has concluded that the facts and the law do not establish the claims of alleged misconduct made in the Complaint against these Defendants and, further, that a trial of the claims made in the Complaint against these Defendants would not result in a judgment against these Defendants.

///

///

Thus, the Special Prosecutor's obligation to the Navajo Nation under the Special Prosecutor Act and the best interest of the Navajo Nation require that the claims against these Defendants be dismissed with prejudice.

Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates have each provided a written statement of facts which the Special Prosecutor has relied upon in deciding to bring this Motion to Dismiss. Each of those statements are attached to this Memorandum.

This voluntary Motion to Dismiss is brought with a request that the Court enter an Order of Dismissal. Rule 39(a)(1), Nav. R. Civ. P., allows a plaintiff to voluntarily dismiss a complaint without requesting the approval of the court or other parties where the motion to dismiss is filed before the defendant files an answer or motion for summary judgment. Louis Denetsosie has not filed either an answer or a motion for summary judgment. He filed a Request for an Extension of Time to Answer on August 19, 2011 and no other pleading. Louis Denetsosie appears in this action *pro se*. Harrison Tsosie filed an Answer on October 25, 2011 and thus a dismissal of the Complaint against Harrison Tsosie requires an order of the Court. Harrison Tsosie appears through counsel William Ryan Battles and Troy Eid. Neither Leonard Tsosie nor Lorenzo Bates have filed either an answer or a motion for summary judgment. Each have joined in motions to dismiss. Leonard Tsosie and Lorenzo Bates appear by counsel, Paul Frye.

Each Defendant has separately stipulated to the entry of an order dismissing the Complaint against them with prejudice.

///

///

///

Based on the foregoing and in the interest of justice, the Special Prosecutor requests that the Court enter its Order dismissing the Complaint with prejudice against Defendants Louis Denetsosie, Harrison Tsosie, Leonard Tsosie, and Lorenzo Bates.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of July, 2012.

**SPECIAL PROSECUTOR FOR THE  
NAVAJO NATION**

**ROTHSTEIN, DONATELLI, HUGHES,  
DAHLSTROM, & SCHOENBURG, LLP**

By: 

Eric N. Dahlstrom, Esq.  
80 E. Rio Salado Parkway  
Suite 305  
Tempe, AZ 85281  
(480) 921-9296  
[edahlstrom@rothsteinlaw.com](mailto:edahlstrom@rothsteinlaw.com)

Richard W. Hughes, Esq.  
Mark H. Donatelli, Esq.  
John W. Day, Esq.  
1215 Paseo De Peralta  
P.O. Box 8180  
Santa Fe, New Mexico 87504  
(505) 988-8004  
[rwhughes@rothsteinlaw.com](mailto:rwhughes@rothsteinlaw.com)  
[mhd@rothsteinlaw.com](mailto:mhd@rothsteinlaw.com)  
[jday@rothsteinlaw.com](mailto:jday@rothsteinlaw.com)

## STATEMENT OF LOUIS DENETSOSIE

I am Louis Denetsosie and I reside at 611 Jeddito Drive, Window Rock, within the Navajo Nation.

1. I was the Attorney General of the Navajo Nation from January 14, 2003 to January 11, 2011. This statement is made in support of an Agreement with the Special Prosecutor of the Navajo Nation to dismiss all claims against me in *Navajo Nation v. Benally*, WR-CV-218-11 (filed July 28, 2011), which was filed in the Window Rock District Court by Alan Balaran, then the Special Prosecutor for the Navajo Nation.

2. The Attorney General is the Chief Legal Officer of the Navajo Nation, 2 N.N.C. § 1964 (2005), and administers the Department of Justice which provides legal services to the Navajo Nation government. 2 N.N.C. § 1961B (2005). The Attorney General is in charge of all legal matters in which the Navajo Nation government has an interest. 2 N.N.C. § 1964A (2005). The Department of Justice is funded through the Navajo Nation budget enacted by the Navajo Nation Council. The Attorney General is authorized to hire outside counsel with specialized expertise (1) to supplement the legal services available through attorneys employed by the Department of Justice, or (2) when the representation by the Department of Justice would pose a conflict under the *Rules of Professional Conduct*. 2 N.N.C. §§ 1963B, 1964E&H (2005).

3. As Navajo Nation Attorney General, I represented the entire Navajo Nation government, which includes the President, the Executive Branch, and the Navajo National Council. 2 N.N.C. § 552 (2005). If litigation is threatened or commenced by one department or branch of the Navajo Nation government against another part of the Navajo Nation government, the Attorney General might, under some circumstances, represent one part of the government against another part. However, in the more common situation, it would be a conflict of interest for the Attorney General to represent one part of the government against another part. Such a conflict can arise in a dispute between two branches of the Navajo Nation government. Of course not all disputes within a government create a conflict for the Attorney General. Policy disagreements within a branch, or between branches, are commonplace in any government. Such policy disputes are ordinarily worked out through the administrative and governmental processes of the government. Internal disagreements can be resolved by government officials and employees and do not require that each side of the dispute retain separate counsel. The *Rules of Professional Conduct* allow a government attorney to participate in an internal dispute, including by advocating for a position internally or by helping the client resolve the internal dispute. However, if an internal dispute ends up in litigation, then the same attorney or law firm cannot simultaneously represent both sides in the

litigation. The Department of Justice, supervised by the Attorney General, is treated the same as a law firm under the *Rules of Professional Conduct*. The Department of Justice cannot represent both sides in litigation, even if a different Department of Justice attorney represents each side.

4. A dispute between the Executive Branch and the Navajo Nation Council developed in 2009. On October 26, 2009, the Navajo Nation Council adopted emergency legislation, CO-041-09, placing President Joe Shirley, Jr. on administrative leave. President Shirley contended that the action of the Navajo Nation Council exceeded its authority and violated the rights of the President under Navajo Nation law. The President contended that the administrative leave was equivalent to removing the President from his position, but without establishing grounds for removal. The action of the Navajo Nation Council prevented the President from exercising the duties, responsibilities, and prerogatives entrusted to him by the members of the Navajo Nation. The Attorney General ordinarily represents the President. President Shirley wanted to challenge the action of the Navajo Nation Council placing him on administrative leave as invalid and exceeding the authority of the Navajo Nation Council. In addition, the Counsel to the President, who advises the Office of the President and Vice President in its official capacity, concluded that the Navajo Nation Council's action was unlawful. I understood that the Navajo Nation Council was receiving its own legal advice from the Office of Legislative Counsel. The Navajo Nation government was faced with a substantial internal dispute which posed a conflict of interest for the Attorney General. As Attorney General, I decided that the Office of the Attorney General should not represent either the President or the Navajo Nation Council in the dispute. At the same time, I concluded that it was in the best interest of the Navajo Nation that the dispute be resolved in an orderly fashion in the Courts of the Navajo Nation.

5. I decided that exercising the authority of the Attorney General to retain outside counsel would best serve the interests of the Navajo Nation. I therefore agreed to allow President Shirley to retain outside counsel, independent of the Office of the Attorney General, to represent the President and the Office of the President and Vice President. Outside counsel would be able to seek a judicial determination of whether President Shirley was validly placed on administrative leave by the Navajo Nation Council. I also understood that the Navajo National Council would be represented in the dispute by separate counsel of its choice.

6. President Shirley selected Paul Charlton, Esq. of the firm Gallagher & Kennedy to represent him in his capacity as President of the Navajo Nation. The President selected Mr. Charlton and Gallagher & Kennedy without input from or review by the Attorney General. Mr. Charlton was retained to represent President Shirley to avoid any conflict of interest that the Attorney General would have challenging the action of the Navajo Nation Council.

7. The Resolution of the Navajo Nation Council placing President Shirley on administrative leave, CO-041-09, also directed the Attorney General to apply for the appointment of a Special Prosecutor to evaluate and potentially prosecute claims arising out of the Navajo Nation's business relationships with OnSat and BCDS.

8. President Shirley requested that the scope of representation by Mr. Charlton include representation of President Shirley with respect to any of the allegations identified in Council Resolution CO-041-09. The Work Plan attached to the contract approved on December 7, 2009 by the Deputy Attorney General on behalf of the Attorney General stated:

The law firm shall represent President Shirley in his official capacity as President of the Navajo Nation. The work plan shall include representation as it relates to the Navajo Nation Council's suspension of President Shirley, court action in regard to that suspension, investigation regarding the underlying facts of that suspension, court appearances in the Navajo Nation District Court regarding that suspension, liaison with the Navajo Nation Department of Justice and the Attorney General, as well as liaison with the U.S. Department of Justice and the FBI.

The work plan shall also include representation of President Shirley as it relates to any and all criminal and/or ethical charges filed against President Shirley, court action in regard to criminal and/or ethical charges, investigation regarding the underlying facts of the criminal and/or ethical charges, court appearances in the Navajo Nation District Court and/or the Ethics Committee of the Navajo Nation Council regarding the criminal and/or ethical charges, liaison with the Navajo Nation Department of Justice and the Attorney General, as well as liaison with the U.S. Department of Justice and the FBI.

Navajo Nation Attorney Contract with Gallagher & Kennedy (December 7, 2009).

9. The attorney contract between Gallagher & Kennedy and the Navajo Nation was based upon the standard form contract used by the Department of Justice for the retention of outside counsel. The scope of work included in the contract accurately reflects the understanding of the parties. However, another provision, taken from the standard form contract, stated:

8. SUPERVISION

The legal work performed under this Agreement shall be under the direct supervision of the Attorney General or his delegate. Decisions normally made by the client in an attorney-client relationship shall be made by the President or his delegate in consultation with appropriate officials of the Nation.

Navajo Nation Attorney Contract with Gallagher and Kennedy (December 7, 2009).

10. The first sentence of this provision does not reflect the agreement of the parties. The second sentence does. However, the Attorney General did not, in fact, supervise the work of Mr. Charlton. Mr. Charlton and the Attorney General agreed that the Attorney General would not supervise his representation of President Shirley and that President Shirley would make all client decisions.

11. The attorney contract between the Navajo Nation and Gallagher & Kennedy was subsequently modified on four separate occasions to increase the total amount authorized for fees and expenses and to extend the term of the contract. Neither the scope of work nor the work plan was changed. The Fourth Modification extended the term of the Contract to March 31, 2011.

12. On December 28, 2009, I applied to the Special Division of the Window Rock District Court for the appointment of a Special Prosecutor based upon my determination that reasonable grounds existed to require further investigation and evaluation of potential civil claims or violations of criminal laws against designated tribal officials with respect to OnSat and the E-rate program, BCDS, and the disbursement of Discretionary Funds by Navajo Nation Council Delegates.

13. Alan Balaran was appointed as the Special Prosecutor for the Navajo Nation by the Special Division of the Window Rock District Court on January 26, 2010, as provided for in 2 N.N.C. § 2021 (2005). This was several months after Mr. Charlton was retained by President Shirley and after President Shirley had filed the action in the Window Rock District Court which held that CO-041-09 was invalid.

14. I have reviewed the Complaint in *Navajo Nation v. Benally* (the “Benally Complaint”), including paragraphs 192 through 223, which contain the specific allegations against me as the Attorney General. The *Benally* Complaint misstates the facts and the duties and authority of the Attorney General and the Department of Justice. It includes several allegations against me for actions I either took or failed to take as Attorney General, including that I:



- a. Violated the Special Prosecutor Act by approving the retention of Mr. Charlton to represent President Shirley;
- b. Suborned the unauthorized practice of law by Mr. Charlton;
- c. Failed to prevent the Navajo Nation Council from appropriating funds for an unlawful Discretionary Fund Program; and
- d. Failed to prevent individual Council Delegates from approving unlawful expenditures of Discretionary Funds.

I will address each of these in turn below.

**a. The Attorney General Did Not Violate the Special Prosecutor Act or Obstruct Justice.**

15. Paragraphs 201 to 205 of the *Benally* Complaint set out facts describing the retention of Mr. Charlton. Mr. Charlton was retained before the Special Prosecutor was appointed by the Special Division. The appointment of a Special Prosecutor alters the authority of the Attorney General. The Special Prosecutor Act provides:

Whenever the matter is within the jurisdiction of a Special Prosecutor, the Attorney General, the Chief Prosecutor, and all officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter.

2 N.N.C. § 2021(J). However, the Special Prosecutor Act allows the Attorney General to assist and support the Special Prosecutor in his or her work. 2 N.N.C. § 2023(G).

16. In my opinion, the appointment of the Special Prosecutor did not diminish the authority of the Attorney General under 2 N.N.C. §§ 1963-1964 (2005), to approve the retention of outside counsel to represent officials, branches, or departments of the Navajo Nation where providing such counsel is in the best interests of the Navajo Nation.

17. I am not aware of any allegation that any action taken by Mr. Charlton or Gallagher & Kennedy interfered in an inappropriate or unlawful way with the proper exercise of the duties of the Special Prosecutor. The legal positions asserted by Mr. Charlton on behalf of President Shirley, including that various privileges and immunities protected President Shirley against the release of records under a Subpoena Duces Tecum issued by the Special Prosecutor, did not, in my view, amount to an obstruction of justice or improperly interfere with the Special Prosecutor. I am not aware of any actions taken by Mr. Charlton on behalf of President Shirley that were improper or outside the bounds of the law.

18. As Attorney General, I made sure that the Department of Justice provided administrative support to the Special Prosecutor. I never did anything to frustrate the

Special Prosecutor's pursuit of claims within his jurisdiction under the Navajo Nation Special Prosecutor Act, nor am I aware of any improper or obstructive conduct taken by any staff member at the Department of Justice.

**b. The Attorney General Did Not Suborn the Unauthorized Practice of Law.**

19. Paragraph 6 of the *Benally* Complaint alleges that the Attorney General "suborned the unauthorized practice of law by entering into a contract with Gallagher and Kennedy." Webster's defines subornation as "encouraging another to do something illegal." The Complaint does not allege any specific conduct by the Attorney General that arguably amounted to encouraging Mr. Charlton to engage in the unauthorized practice of law. The unauthorized practice of law allegation is based on the fact that Mr. Charlton and the attorneys at Gallagher & Kennedy were not members of the Navajo Nation Bar Association but, nevertheless, represented President Shirley before the Courts of Navajo Nation. Any attorney practicing law within the jurisdiction of the Navajo Nation is required to comply with applicable Navajo Nation Rules of Procedure, including the rules setting the requirements to practice before the Navajo Nation Courts. These rules apply to all lawyers, including Mr. Charlton. The attorney contract between the Navajo Nation and Mr. Charlton did not by its terms exempt him from any procedural rules of the Navajo Nation Courts. However, even if Mr. Charlton did in fact engage in the unauthorized practice of law, the attorney contract with the Navajo Nation approved by the Attorney General did not "suborn" any such unauthorized practice of law because the Attorney General did not supervise or participate in Mr. Charlton's representation of President Shirley.

20. The *Benally* Complaint alleges in paragraph 218 that the Attorney General "undermine[d] the functions of the special prosecutor to investigate former President Shirley and by secretly entering into contracts subsidized by Navajo Nation funds with outside counsel to engage in the unauthorized practice of law to represent Defendant Shirley." The same paragraph 218 also alleges, very broadly, that the Attorney General "breached his fiduciary duty to the Navajo Nation as well as his ethical duties as an attorney." The *Benally* Complaint does not identify a particular ethical rule or describe any specific conduct that arguably violates an ethical rule. This allegation is apparently based entirely on the retention of Mr. Charlton.

21. The standard form attorney contract used by the Navajo Nation Department of Justice requires that an attorney retained by the Navajo Nation must be a member in good standing of any bar association of which they are a member. Beyond that, it is the responsibility of the attorney retained under a Navajo Nation contract to ensure that he or she is authorized to practice before a court, including the courts of the Navajo Nation, before appearing in that court. In this instance, Mr. Charlton associated with local counsel when he filed *Shirley v. Morgan*, WR-CV-512-09, on December 7, 2009. He was thus authorized to appear in that case under the rules of the Navajo Nation Courts.

Mr. Charlton appeared pro hac vice in that case in the District Court and in the Navajo Nation Supreme Court.

22. Mr. Charlton eventually was disqualified from representing President Shirley in another case, *Shirley v. Balaran*, WR-CV-359-10. That case was not filed until November 29, 2010, nearly a year after the Nation had entered into the contract with Gallagher & Kennedy to represent President Shirley and after the Special Division of the Window Rock District Court had appointed Special Prosecutor Alan Balaran. Special Prosecutor Balaran was authorized under Navajo law to prosecute civil or criminal charges against President Shirley and other officials of the Navajo Nation. On October 4, 2010, the Special Prosecutor issued an Amended Subpoena Duces Tecum to the office of the President and Vice President of the Navajo Nation, and President Shirley decided to challenge the scope of the Subpoena.

23. President Shirley filed a Complaint for Declaratory and Injunctive Relief, and an Application for Temporary Restraining Order and Preliminary Injunction seeking an injunction against the Special Prosecutor to prevent the immediate disclosure of material that President Shirley claimed was privileged and not subject to disclosure. President Shirley moved to have Mr. Charlton admitted pro hac vice on his behalf in that case. The Motion was filed by Michelle Dotson, counsel to the President and a member in good standing of the Navajo Nation Bar Association. On May 2, 2011, the District Court denied the Motion to Appear Pro Hac Vice and Mr. Charlton was not allowed to appear in WR-CV-359-10. By this time, I was no longer the Attorney General. The denial of the Motion to Appear Pro Hac Vice was appealed by President Shirley. President Shirley was represented in the appeal by other counsel, not Mr. Charlton. That appeal was ultimately dismissed by the Supreme Court.

24. The Attorney General did not participate in the issuance of the Subpoena Duces Tecum by the Special Prosecutor or in President Shirley's response to the Subpoena. The Attorney General was not consulted on the filing of President Shirley's Complaint seeking protection from the Subpoena, on President Shirley's selection of counsel, or on the Motion to Appear Pro Hac Vice. Furthermore, the *Benally* Complaint does not allege any specific facts that would support an allegation that I encouraged Mr. Charlton to engage in any unauthorized practice of law.

25. The *Benally* Complaint bases the claim of subornation of the unauthorized practice of law solely on the fact that as Attorney General I approved an attorney contract with Mr. Charlton to represent President Shirley. Nothing in the contract suggests that Mr. Charlton was entitled or encouraged to violate any Navajo Nation law or rule of procedure in the representation of President Shirley. Finally, the *Benally* Complaint does not allege that Mr. Charlton engaged in the unauthorized practice of law once his Motion to Appear Pro Hac Vice was denied by the Window Rock District Court.

**c. The Attorney General Had No Legal Right or Obligation to Prevent the Navajo Nation Council from Adopting the Discretionary Fund Program.**

26. The *Benally* Complaint claims that I breached my fiduciary duty by not preventing the Navajo Nation Council from adopting the Discretionary Fund Program, and by not thereafter stopping the program. Paragraph 211 of the *Benally* Complaint alleges that the Attorney General has “a fiduciary duty to ensure that all resolutions and appropriations comport with Fundamental, common and statutory law.” The allegations continue at paragraph 216: “[H]e mounted no legal challenge to those unlawful resolutions which resulted in the unlawful expenditure of approximately \$36,000,000.”

27. The *Benally* Complaint alleges that the Attorney General breached a fiduciary duty to the Navajo Nation by not initiating legal action to prevent or to declare invalid the appropriations by the Navajo Nation Council approving funds for the Discretionary Fund Program. In fact, the Navajo Nation Code does not authorize the Attorney General of the Navajo Nation to initiate a lawsuit against the Navajo National Council or to file a lawsuit to declare that an action of the Navajo Nation Council is invalid. The Attorney General of the Navajo Nation represents the Navajo Nation, including the Navajo Nation Council. Only in the most extreme circumstance would it be appropriate for the Attorney General to sue the Navajo Nation Council or to seek a judicial declaration that a resolution or appropriation of the Navajo Nation Council is invalid. I am not aware of any circumstance where the Attorney General of the Navajo Nation has ever brought a lawsuit against the Navajo National Council. In any event, the failure by the Attorney General to bring such an action does not violate any legal or ethical obligation of the Attorney General and, thus, does not breach any fiduciary duty.

28. The *Benally* Complaint asserts that the Attorney General has a fiduciary duty “to ensure that all council resolutions comport with Fundamental, common, and statutory law.” This is inaccurate. The Attorney General is not required or expected to review or opine on the legality of any resolution or appropriation of the Navajo Nation Council either in advance or after it is enacted by the Navajo Nation Council. As of August 29, 2003 when the Navajo Nation Council overrode the Presidential veto of CJY-32-03, which amended 2 N.N.C. § 164(A)(1)(2005), and for the remainder of my term as Attorney General, the Office of Legislative Counsel was responsible for drafting Navajo Nation Council legislation and appropriations. Proposed legislation and appropriations were not subject to legal review by the Attorney General. The so-called “SAS,” the signature authorization sheet, used for approval of contracts and other Executive Branch actions, did not apply during this time to actions of the Navajo Nation Council. The *Benally* Complaint alleges that the Attorney General should have prevented the Navajo Nation Council from adopting budget resolutions or reallocations which allocated funds to the Discretionary Fund Program. However, even assuming that these budget-related actions of the Navajo Nation Council were unlawful, they were not approved in advance by the Attorney General or the Department of Justice.

29. The *Benally* Complaint also alleges a breach of fiduciary duty because the Attorney General failed to mount a legal challenge to the Discretionary Fund appropriations after they were enacted. I am not aware of the Attorney General of the Navajo Nation ever bringing a legal case to declare an action of the Navajo Nation Council unlawful. Certainly in most cases, such a legal challenge by the Attorney General would be counter to the Attorney General's duty to enforce and defend the laws of the Navajo Nation as adopted by the Navajo Nation Council. Even if the Attorney General might, in some limited circumstance, be authorized to bring an action to challenge the legality of the actions of the Navajo Nation Council, there is no such duty which would render the Attorney General liable for failing to mount such a challenge.

**d. The Attorney General Sought the Appointment of a Special Prosecutor as Provided By Navajo Law when Abuses of the Discretionary Fund Program Were Discovered.**

30. The Attorney General, along with the public at large, became aware of allegations of abuses of the Discretionary Fund Program in October of 2009 from articles published in the *Navajo Times*. At that point, I took it upon myself to obtain further information from the Controller and Auditor General to determine whether the alleged abuses likely occurred. In about November of 2009, the Ethics and Rules Office, within the Legislative Branch, issued a subpoena, which had to be approved by the Ethics and Rules Committee, requesting the Speaker to produce information relating to discretionary fund expenditures by the Navajo Nation Council. The Ethics and Rules Committee refused to issue a subpoena. Without regard to the actions of the Ethics and Rules Committee, the Department of Justice acted appropriately under the Special Prosecutor Act to determine if the allegations were serious. The Attorney General never thwarted or hindered any investigation into alleged abuses in the expenditure of discretionary funds. As Attorney General I ultimately applied for the appointment of a Special Prosecutor precisely to investigate the allegations of abuse of the Discretionary Fund Program. The Special Prosecutor Act provided the means under Navajo law to investigate and prosecute wrongdoing by elected officials of the Navajo Nation. I implemented the Special Prosecutor Act exactly as it was intended. In sum, the Attorney General and the Department of Justice acted appropriately to determine if the allegations were serious.

Dated: June 8, 2012

Louis Denetsosie

Louis Denetsosie  
611 Jeddito Drive  
Window Rock Navajo Nation

## STATEMENT OF

### HARRISON TSOSIE

I am Harrison Tsosie and I reside in Waterflow, New Mexico at 3443 US Highway 64.

1. I am the Attorney General of the Navajo Nation and was appointed on January 11, 2011. I also served as the Deputy Attorney General of the Navajo Nation from June 14, 2004 to January 11, 2011. This statement is made to support an Agreement with the Special Prosecutor of the Navajo Nation wherein he will dismiss all claims against me in *Navajo Nation v. Benally*, WR-CV-218-11 (filed July 28, 2011).

2. I reviewed the Complaint in *Navajo Nation v. Benally* (the “*Benally Complaint*”) wherein the Special Prosecutor, Alan Balaran, made allegations against me that by acting in concert with Defendant Denetsosie and Defendant Shirley to contract with and pay the law firm of Gallagher & Kennedy with public funds to obstruct the prosecutorial efforts of the Special Prosecutor, that I breached my fiduciary duty to the Navajo Nation as well as my ethical duties as an attorney. *Benally Complaint* §232.

3. In support of this allegation, the Special Prosecutor makes specific Statement of Facts concerning me in my capacity as Attorney General. *Benally Complaint* §§ 225-230. The Statement of Facts fails to recognize certain authorities, duties and responsibilities of the Navajo Nation Department of Justice, the Attorney General and the Deputy Attorney General.

4. In my capacity as Attorney General and Deputy Attorney General, I exercised the following authorities, responsibilities and duties as delegated to the Attorney General and the Department of Justice:

5. The Attorney General is the Chief Legal Officer of the Navajo Nation and shall have charge of the Department of Justice and of all legal matters in which the Navajo Nation government has an interest, 2 N.N.C. § 1964 (2005). The Deputy Attorney General shall serve in the stead of the Attorney General, with full authority of the Attorney General, in the event of death, disability, or removal of the Attorney General. 2 N.N.C. § 1962 (C) (2005).

6. The Navajo Nation Department of Justice is to provide legal services to the Navajo Nation government, 2 N.N.C § 1961 (B) (2005), and [n]o division, program, enterprise, or other entity of the Navajo Nation government shall retain or employ legal counsel except as may be approved by the Attorney General. 2 N.N.C. § 1964 (C). Further, the Attorney General is authorized and directed to, on behalf of the Navajo Nation and without prior approval of the Navajo Nation Council, or any Committee thereof, the President or any other official of the Navajo Nation, to negotiate and execute attorney contracts, within the approved Navajo Nation budget for attorneys' fees and expenses, to provide legal counsel to the Navajo Nation government or any other legal representation deemed necessary to protect the interests of the Navajo Nation. 2 N.N.C § 1963(B) (2005). The Attorney General in his or her discretion is authorized to represent an officer or employee of the Navajo Nation against whom a civil action is brought in his

or her individual capacity until such time as it is established as a matter of law that the alleged activity or events which form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the officer's or employee's duty of employment. 2 N.N.C § 1964 (I) (2005).

7. While I served in my capacity as Deputy Attorney General, I worked with Attorney General Louis Denetsosie in the Navajo Nation Department of Justice.

8. As Navajo Nation Attorney General and as Deputy Attorney General, I represented the entire Navajo Nation government, which includes the President, the Executive Branch, and the Navajo National Council. 2 N.N.C. § 552 (2005).

9. In 2009, a dispute between the Executive Branch and the Navajo Nation Council developed. On October 26, 2009, the Navajo Nation Council adopted emergency legislation, CO-041-09, placing President Joe Shirley, Jr. on administrative leave. President Shirley contended that the action of the Navajo Nation Council exceeded its authority and violated the rights of the President under Navajo Nation law. The President contended that the administrative leave was equivalent to removing the President from his position, but without establishing grounds for removal. The action of the Navajo Nation Council prevented the President from exercising the duties, responsibilities, and prerogatives entrusted to him by the members of the Navajo Nation. The Attorney General ordinarily represents the President. President Shirley wanted to challenge the action of the Navajo Nation Council placing him on administrative leave as



invalid and exceeding the authority of the Navajo Nation Council. In addition, the Counsel to the President, who advises the Office of the President and Vice President in its official capacity, concluded that the Navajo Nation Council's action was unlawful. Attorney General Louis Denetsosie decided that the Office of the Attorney General should not represent either the President or the Navajo Nation Council in the dispute. At the same time, he concluded that it was in the best interest of the Navajo Nation that the dispute be resolved in an orderly fashion in the Courts of the Navajo Nation. As Deputy Attorney General, I agreed with the Attorney General's decision.

10. Attorney General Louis Denetsosie decided that exercising the authority of the Attorney General to retain outside counsel would best serve the interests of the Navajo Nation. He agreed to allow President Shirley to retain outside counsel, independent of the Office of the Attorney General, to represent the President and the Office of the President and Vice President.

11. President Shirley selected Paul Charlton, Esq. of the firm Gallagher & Kennedy to represent him in his capacity as President of the Navajo Nation. The President selected Mr. Charlton and Gallagher & Kennedy without input from or review by the Attorney General or by the Deputy Attorney General. Mr. Charlton was retained to represent President Shirley to avoid any conflict of interest that the Attorney General would have challenging the action of the Navajo Nation Council.

12. The Resolution of the Navajo Nation Council placing President Shirley on administrative leave, CO-041-09, also directed the Attorney General to apply for the appointment of a Special Prosecutor to evaluate and potentially prosecute claims arising out of the Navajo Nation's business relationships with OnSat and BCDS.

13. President Shirley requested that the scope of representation by Mr. Charlton include representation of President Shirley with respect to any of the allegations identified in Council Resolution CO-041-09. The Work Plan attached to the contract approved by me as Deputy Attorney General on December 7, 2009, on behalf of the Attorney General, stated:

The law firm shall represent President Shirley in his official capacity as President of the Navajo Nation. The work plan shall include representation as it relates to the Navajo Nation Council's suspension of President Shirley, court action in regard to that suspension, investigation regarding the underlying facts of that suspension, court appearances in the Navajo Nation District Court regarding that suspension, liaison with the Navajo Nation Department of Justice and the Attorney General, as well as liaison with the U.S. Department of Justice and the FBI.

The work plan shall also include representation of President Shirley as it relates to any and all criminal and/or ethical charges filed against President Shirley, court action in regard to criminal and/or ethical charges, investigation regarding the underlying facts of the criminal and/or ethical charges, court appearances in the Navajo Nation District Court and/or the Ethics Committee of the Navajo Nation Council regarding the criminal and/or ethical charges, liaison with the Navajo Nation Department of Justice and the Attorney General, as well as liaison with the U.S. Department of Justice and the FBI.

Navajo Nation Attorney Contract with Gallagher & Kennedy (December 7, 2009).

14. The attorney contract between Gallagher & Kennedy and the Navajo Nation was based upon the standard form contract used by the Department of Justice for the retention of outside counsel. The scope of work included in the contract accurately reflects the understanding of the parties. However, another provision, taken from the standard form contract, stated:

8. **SUPERVISION**

The legal work performed under this Agreement shall be under the direct supervision of the Attorney General or his delegate. Decisions normally made by the client in an attorney-client relationship shall be made by the President or his delegate in consultation with appropriate officials of the Nation.

Navajo Nation Attorney Contract with Gallagher and Kennedy (December 7, 2009).

15. The first sentence of this provision does not reflect the agreement of the parties. The second sentence does. However, neither the Attorney General nor the Deputy Attorney General, in fact, supervised the work of Mr. Charlton. Mr. Charlton and the Attorney General agreed that the Attorney General would not supervise his representation of President Shirley and that President Shirley would make all client decisions.

16. The attorney contract between the Navajo Nation and Gallagher & Kennedy was subsequently modified on four separate occasions to increase the total amount authorized for fees and expenses and to extend the term of the contract. Neither

the scope of work nor the work plan was changed. The Fourth Modification extended the term of the Contract to March 31, 2011.

17. On December 28, 2009, Attorney General Louis Denetsosie applied to the Special Division of the Window Rock District Court for the appointment of a Special Prosecutor based upon my determination that reasonable grounds existed to require further investigation and evaluation of potential civil claims or violations of criminal laws against designated tribal officials with respect to OnSat and the E-rate program, BCDS, and the disbursement of Discretionary Funds by Navajo Nation Council Delegates.

18. Alan Balaran was appointed as the Special Prosecutor for the Navajo Nation by the Special Division of the Window Rock District Court on January 26, 2010, as provided for in 2 N.N.C. § 2021 (2005). This was several months after Mr. Charlton was retained by President Shirley and after President Shirley had filed the action in the Window Rock District Court which held that CO-041-09 was invalid.

19. I have reviewed the *Benally* Complaint, including paragraphs 224 through 233, which contain the specific allegations against me as the Deputy Attorney General. The *Benally* Complaint misstates the facts and the duties and authority of the Deputy Attorney General, the Attorney General and the Department of Justice. It includes allegations against me for actions I took as Deputy Attorney General and as Attorney General, including that I:

- a. Impeded the investigation of the Special Prosecutor and violated the terms of the Special Prosecutor Act by approving the retention of Mr. Charlton to represent President Shirley and by authorizing payments to Mr. Charlton; and**
- b. Obstructed the efforts of the Special Prosecutor and violated my ethical duties as an attorney.**

I will address each of these in turn below.

- a. Neither the Attorney General nor Deputy Attorney General Violated the Special Prosecutor Act or Impeded the Investigation of the Special Prosecutor.**

20. Paragraphs 201 to 205 of the *Benally* Complaint set out facts describing the retention of Mr. Charlton. Mr. Charlton was retained before the Special Prosecutor was appointed by the Special Division. The appointment of a Special Prosecutor alters the authority of the Attorney General. The Special Prosecutor Act provides:

Whenever the matter is within the jurisdiction of a Special Prosecutor, the Attorney General, the Chief Prosecutor, and all officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter.

2 N.N.C. § 2021(J). However, the Special Prosecutor Act allows the Attorney General to assist and support the Special Prosecutor in his or her work. 2 N.N.C. § 2023(G).

21. In my opinion, the appointment of the Special Prosecutor did not diminish the authority of the Attorney General, under 2 N.N.C. §§ 1963-1964 (2005), to approve the retention of outside counsel to represent officials, branches, or departments of the Navajo Nation where providing such counsel is in the best interests of the Navajo Nation.

22. I am not aware of any allegation that any action taken by Mr. Charlton or Gallagher & Kennedy interfered in an inappropriate or unlawful way with the proper exercise of the duties of the Special Prosecutor. The legal positions asserted by Mr. Charlton on behalf of President Shirley, including that various privileges and immunities protected President Shirley against the release of records under a Subpoena Duces Tecum issued by the Special Prosecutor, did not, in my view, amount to an obstruction of justice or improperly interfere with the Special Prosecutor. I am not aware of any actions taken by Mr. Charlton on behalf of President Shirley that were improper or outside the bounds of the law.

23. While I served as Deputy Attorney General and as Attorney General, I made sure that the Department of Justice provided administrative support to the Special Prosecutor. I never did anything to frustrate the Special Prosecutor's pursuit of claims within his jurisdiction under the Navajo Nation Special Prosecutor Act, nor am I aware of any improper or obstructive conduct taken by any staff member at the Department of Justice.

24. Once the Special Prosecutor filed criminal complaints against a number of Council Delegates in October, 2010, I recused myself from any activity by the Department of Justice regarding the Special Prosecutor because the Special Prosecutor filed criminal complaints against relatives of mine. Once I was appointed Attorney General, I delegated the responsibility of the Attorney General regarding the Special

Prosecutor to the Deputy Attorney General. That delegation to the Deputy Attorney General will remain in effect for the duration of this Special Prosecutor appointment.

**b. I Did Not Obstruct the Investigation of the Special Prosecutor or Violate my Ethical Duties as an Attorney.**

24. Paragraph 206 of the *Benally* Complaint alleges that the Attorney General “suborned the unauthorized practice of law” by entering into a contract with Gallagher and Kennedy to represent President Shirley. Webster’s defines subornation as “encouraging another to do something illegal.” The Complaint does not allege any specific conduct by the Attorney General or Deputy Attorney General that arguably amounted to encouraging Mr. Charlton to engage in the unauthorized practice of law. The unauthorized practice of law allegation is based on the fact that Mr. Charlton and the attorneys at Gallagher & Kennedy were not members of the Navajo Nation Bar Association but, nevertheless, represented President Shirley before the Courts of Navajo Nation. Any attorney practicing law within the jurisdiction of the Navajo Nation is required to comply with applicable Navajo Nation Rules of Procedure, including the rules setting the requirements to practice before the Navajo Nation Courts. These rules apply to all lawyers, including Mr. Charlton. The attorney contract between the Navajo Nation and Mr. Charlton did not by its terms exempt him from any procedural rules of the Navajo Nation Courts. However, even if Mr. Charlton did in fact engage in the unauthorized practice of law, the attorney contract and contract modifications with the Navajo Nation approved by either the Attorney General or the Deputy Attorney General did not “suborn” any such unauthorized practice of law, because neither the Attorney

General nor the Deputy Attorney General supervised or participated in Mr. Charlton's representation of President Shirley.

25. The *Benally* Complaint alleges in paragraph 232 that the Deputy Attorney General "breached his fiduciary duty to the Navajo Nation as well as his ethical duties as an attorney." The *Benally* Complaint does not identify a particular ethical rule or describe any specific conduct that arguably violates an ethical rule. This allegation is apparently based entirely on the retention of Mr. Charlton.

26. The standard form attorney contract used by the Navajo Nation Department of Justice requires that an attorney retained by the Navajo Nation must be a member in good standing of any bar association of which they are a member. Beyond that, it is the responsibility of the attorney retained under a Navajo Nation contract to ensure that he or she is authorized to practice before a court, including the courts of the Navajo Nation, before appearing in that court. In this instance, Mr. Charlton associated with local counsel when he filed *Shirley v. Morgan*, WR-CV-512-09, on December 7, 2009. He was thus authorized to appear in that case under the rules of the Navajo Nation Courts. Mr. Charlton appeared pro hac vice in that case in the District Court and in the Navajo Nation Supreme Court.

27. Mr. Charlton eventually was disqualified from representing President Shirley in another case, *Shirley v. Balaran*, WR-CV-359-10. That case was not filed until November 29, 2010, nearly a year after the Nation had entered into the contract with



Gallagher & Kennedy to represent President Shirley and after the Special Division of the Window Rock District Court had appointed Special Prosecutor Alan Balaran. Special Prosecutor Balaran was authorized under Navajo law to prosecute civil or criminal charges against President Shirley and other officials of the Navajo Nation. On October 4, 2010, the Special Prosecutor issued an Amended Subpoena Duces Tecum to the office of the President and Vice President of the Navajo Nation, and President Shirley decided to challenge the scope of the Subpoena.

28. President Shirley filed a Complaint for Declaratory and Injunctive Relief, and an Application for Temporary Restraining Order and Preliminary Injunction seeking an injunction against the Special Prosecutor to prevent the immediate disclosure of material that President Shirley claimed was privileged and not subject to disclosure. President Shirley moved to have Mr. Charlton admitted pro hac vice on his behalf in that case. The Motion was filed by Michelle Dotson, counsel to the President and a member in good standing of the Navajo Nation Bar Association. On May 2, 2011, the District Court denied the Motion to Appear Pro Hac Vice and Mr. Charlton was not allowed to appear in WR-CV-359-10. The denial of the Motion to Appear Pro Hac Vice was appealed by President Shirley. President Shirley was represented in the appeal by other counsel, not Mr. Charlton. That appeal was ultimately dismissed by the Supreme Court.

29. Neither the Attorney General nor Deputy Attorney General participated in the issuance of the Subpoena Duces Tecum by the Special Prosecutor or in President Shirley's response to the Subpoena. Neither the Attorney General nor Deputy Attorney

General was consulted on the filing of President Shirley's Complaint seeking protection from the Subpoena, on President Shirley's selection of counsel, or on the Motion to Appear Pro Hac Vice. Furthermore, the *Benally* Complaint does not allege any specific facts that would support an allegation that I encouraged Mr. Charlton to engage in the unauthorized practice of law or any other misconduct.

30. The *Benally* Complaint bases its claim against me on the fact that the Attorney General or the Deputy Attorney General approved an attorney contract with and authorized payments to Mr. Charlton. Nothing in the contract suggests that Mr. Charlton was entitled or encouraged to violate any Navajo Nation law or rule of procedure in the representation of President Shirley. Finally, the *Benally* Complaint does not allege that Mr. Charlton engaged in the unauthorized practice of law once his Motion to Appear Pro Hac Vice was denied by the Window Rock District Court.

**c. As Deputy Attorney General, and as Attorney General I Implemented the Special Prosecutor Act as Provided by Navajo Law.**

31. Neither the Attorney General nor the Deputy Attorney General ever thwarted or hindered any investigation by the Special Prosecutor. The Special Prosecutor Act provided the means under Navajo law to investigate and prosecute wrongdoing by elected officials of the Navajo Nation. I implemented the Special Prosecutor Act exactly as it was intended. In sum, the Attorney General, the Deputy Attorney General and the Department of Justice acted appropriately under the Special Prosecutor Act.

Dated:

*July 02, 2012*

*Harrison Tsosie*  
Harrison Tsosie

**STATEMENT  
OF  
LEONARD TSOSIE**

I am Leonard Tsosie, census number 112966, and I reside at Whitehorse, NY within the Navajo Nation.

I am a Defendant in the civil complaint, *Navajo Nation v. Benally*, WR-CV-218-11, filed July 28, 2011 by Alan Balaran, formerly appointed as a Special Prosecutor in this matter. As part of the Special Prosecutor's investigation into the allegations set forth in the Complaint, I voluntarily provided a statement to the Office of the Special Prosecutor on March 9, 2012 about my use of discretionary funds in my role as a council member of the Navajo Nation.

On March 9, 2012, I truthfully answered questions posed to me by the Office of the Special Prosecutor. I fully understood at that time that I was under no obligation to answer questions posed by the Office of the Special Prosecutor, but that if I did answer any question asked of me that my answers had to be truthful. My understanding was based on the laws of the Navajo Nation. I understand that I can be prosecuted for providing false or misleading information to the Office of the Special Prosecutor.

I understand that based on the truthful information I provided to the Office of the Special Prosecutor, I am being dismissed as a Defendant in the civil action. I also understand that because I provided truthful information to the Office of the Special Prosecutor, no criminal prosecution will be filed against me based on my use of discretionary funds during my tenure as a council member for the Navajo Nation.

  
\_\_\_\_\_  
Leonard Tsosie

Census Number: 112966

Date: 6/28/12

**STATEMENT  
OF  
LOREZO BATES**

I am Lorenzo Bates, census number 84575, and I reside at Upper Fruitland, New Mexico within the Navajo Nation.

I am a Defendant in the civil complaint, *Navajo Nation v. Benally*, WR-CV-218-11, filed July 28, 2011 by Alan Balaran, formerly appointed as a Special Prosecutor in this matter. As part of the Special Prosecutor's investigation into the allegations set forth in the Complaint, I voluntarily provided a statement to the Office of the Special Prosecutor on March 8, 2012 about my use of discretionary funds in my role as a council member of the Navajo Nation.

On March 8, 2012, I truthfully answered questions posed to me by the Office of the Special Prosecutor. I fully understood at that time that I was under no obligation to answer questions posed by the Office of the Special Prosecutor, but that if I did answer any question asked of me that my answers had to be truthful. My understanding was based on the laws of the Navajo Nation. I understand that I can be prosecuted for providing false or misleading information to the Office of the Special Prosecutor.

I understand that based on the truthful information I provided to the Office of the Special Prosecutor, I am being dismissed as a Defendant in the civil action. I also understand that because I provided truthful information to the Office of the Special Prosecutor, no criminal prosecution will be filed against me based on my use of discretionary funds during my tenure as a council member for the Navajo Nation.



Lorenzo Bates

Census Number: 84575

Date: Jun 21, 12

**LOUIS DENETSOSIE**

*Pro Se*

Post Office Box 1797

Window Rock, Arizona 86515

Telephone: (928) 871-2314

Cell: (928) 681-7225

IN THE DISTRICT COURT OF THE NAVAJO NATION

JUDICIAL DISTRICT OF WINDOW ROCK, NAVAJO NATION

THE NAVAJO NATION,

Plaintiff,

v.

ALICE W. BENALLY, et al.,

Defendants.

NO. WR-CV-218-11

**STIPULATION OF  
LOUIS DENETSOSIE  
DISMISSAL WITH PREJUDICE**

Louis Denetsosie, defendant, hereby stipulates and agrees to the granting of the Navajo Nation's Motion to Dismiss all claims brought against me in this action, such dismissal being with prejudice.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of June, 2012.

By:

Louis Denetsosie

Louis Denetsosie

Post Office Box 1797

Window Rock, Arizona 85615

Troy A. Eid, Counsel for Defendant  
**GREENBERG TRAURIG, LLP**  
1200 17<sup>th</sup> Street, Suite 2400  
Denver, CO 80202  
(303) 572-6500

Wm. Ryan Battles, Counsel for Defendant  
Wm. P. Battles and Associates  
Post Office Drawer 460  
Window Rock, Navajo Nation (AZ) 86515-0460  
Tele: 1-928-871-2525 Fax: 1-928-871-2526

IN THE DISTRICT COURT OF THE NAVAJO NATION  
JUDICIAL DISTRICT OF WINDOW ROCK, NAVAJO NATION

THE NAVAJO NATION,	)	
	)	NO. WR-CV-218-11
Plaintiff,	)	
	)	<b>STIPULATION OF</b>
v.	)	<b>HARRISON TSOSIE</b>
	)	<b>DISMISSAL WITH PREJUDICE</b>
ALICE W. BENALLY, et al.,	)	
	)	
Defendants.	)	
_____	)	

Harrison Tsosie, defendant, hereby stipulates and agrees to the granting of the Navajo Nation's Motion to Dismiss all claims brought against me in this action, such dismissal being with prejudice.

RESPECTFULLY SUBMITTED this 02 day of July, 2012.

By:  \_\_\_\_\_  
Harrison Tsosie

Paul E. Frye  
**FRYE LAW FIRM, P.C.**  
10400 Academy Rd., NE  
Suite 310  
Albuquerque, NM 87111  
tel.: (505) 296-9400  
fax: (505) 296-9401  
pef@fryelaw.us  
Counsel for Leonard Tsosie

IN THE DISTRICT COURT OF THE NAVAJO NATION  
JUDICIAL DISTRICT OF WINDOW ROCK, NAVAJO NATION

THE NAVAJO NATION,	)	
	)	NO. WR-CV-218-11
Plaintiff,	)	
	)	<b>STIPULATION OF</b>
v.	)	<b>LEONARD TSOSIE</b>
	)	<b>DISMISSAL WITH PREJUDICE</b>
ALICE W. BENALLY, et al.,	)	
	)	
Defendants.	)	
_____	)	

Leonard Tsosie, defendant, hereby stipulates and agrees to the granting of the Navajo Nation's Motion to Dismiss all claims brought against me in this action, such dismissal being with prejudice.

RESPECTFULLY SUBMITTED this 4 day of July, 2012.

By: \_\_\_\_\_

Leonard Tsosie

Concurrence: \_\_\_\_\_

Paul E. Frye

Counsel for Defendant

Paul E. Frye  
FRYE LAW FIRM, P.C.  
10400 Academy Rd., NE  
Suite 310  
Albuquerque, NM 87111  
tel.: (505) 296-9400  
fax: (505) 296-9401  
pef@fryelaw.us  
Counsel for Lorenzo Bates

IN THE DISTRICT COURT OF THE NAVAJO NATION  
JUDICIAL DISTRICT OF WINDOW ROCK, NAVAJO NATION

THE NAVAJO NATION,

Plaintiff,

v.

ALICE W. BENALLY, et al.,

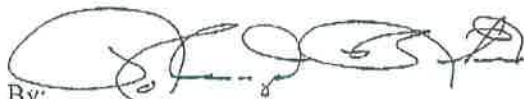
Defendants.

NO. WR-CV-218-11

STIPULATION OF  
LORENZO BATES  
DISMISSAL WITH PREJUDICE

Lorenzo Bates, defendant, hereby stipulates and agrees to the granting of the Navajo Nation's Motion to Dismiss all claims brought against me in this action, such dismissal being with prejudice.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of July, 2012.

By:   
Lorenzo Bates

Concurrence:   
Paul E. Frye  
Counsel for Defendant