

**"Make Life Good":**  
Navajo Case Law Discussing  
Professional Conduct

---

**GERTRUDE LEE**  
Senior Trial Attorney  
McKinley County District Attorney's Office  
&  
NNBA Bar Commissioner: Crownpoint District

# First things first

---

- Where do you find the Rules of Professional Responsibility?
- Where do you find out more information about the Disciplinary Process?

# Rules of Professional Responsibility

---

- You can find it in two places:

- The NNBA website at:

[https://static1.squarespace.com/static/585c36ead482e9dc5dd4d61c/t/58852f081b631b4396739e3b/1485123420128/NNBA\\_RULES\\_PROFESSIONAL\\_CONDUCT.pdf](https://static1.squarespace.com/static/585c36ead482e9dc5dd4d61c/t/58852f081b631b4396739e3b/1485123420128/NNBA_RULES_PROFESSIONAL_CONDUCT.pdf)

- The Navajo Courts website at:

<http://www.navajocourts.org/NNBARulesConduct.htm>

The screenshot shows a web browser window with the address bar containing the URL <https://static1.squarespace.com/static/585c36ead482e9dc5dd4d61c7/588529081...>. The browser's bookmark bar includes "Office of the Prosec...", "Navajo Nation", "Westlaw Signon", and "VersaLaw Research". The main content area displays the title "NNBA RULES OF PROFESSIONAL CONDUCT" in bold, centered text. Below the title is an "INDEX" section. The index lists the following items:

- Navajo Nation Supreme Court Order A-CV-41-92, May 17, 1993 (adopting ABA Model Rules with amendments, additions, and exceptions)
- Chairman's Introduction
- Preamble, Scope, and Terminology
- Client-Lawyer Relationship**
  - 1.1 Competence
  - 1.2 Scope of Representation
  - 1.3 Diligence
  - 1.4 Communication
  - 1.5 Fees
  - 1.6 Confidentiality of Information
  - 1.7 Conflict of Interest: General Rule
  - 1.8 Conflict of Interest: Prohibited Transactions
  - 1.9 Conflict of Interest: Former Client
  - 1.10 Imputed Disqualification: General Rule
  - 1.11 Successive Government and Private Employment
  - 1.12 Former Judge or Arbitrator
  - 1.13 Organization as Client
  - 1.14 Client Under a Disability
  - 1.15 Safekeeping Property
  - 1.16 Declining or Terminating Representation
- Counselor**
  - 2.1 Advisor
  - 2.2 Intermediary
  - 2.3 Evaluation for Use by Third Persons
- Advocate**
  - 3.1 Meritorious Claims and Contentions
  - 3.2 Expediting Litigation
  - 3.3 Candor Toward the Tribunal
  - 3.4 Fairness to Opposing Party and Counsel
  - 3.5 Impartiality and Decorum of the Tribunal
  - 3.6 Trial Publicity

---

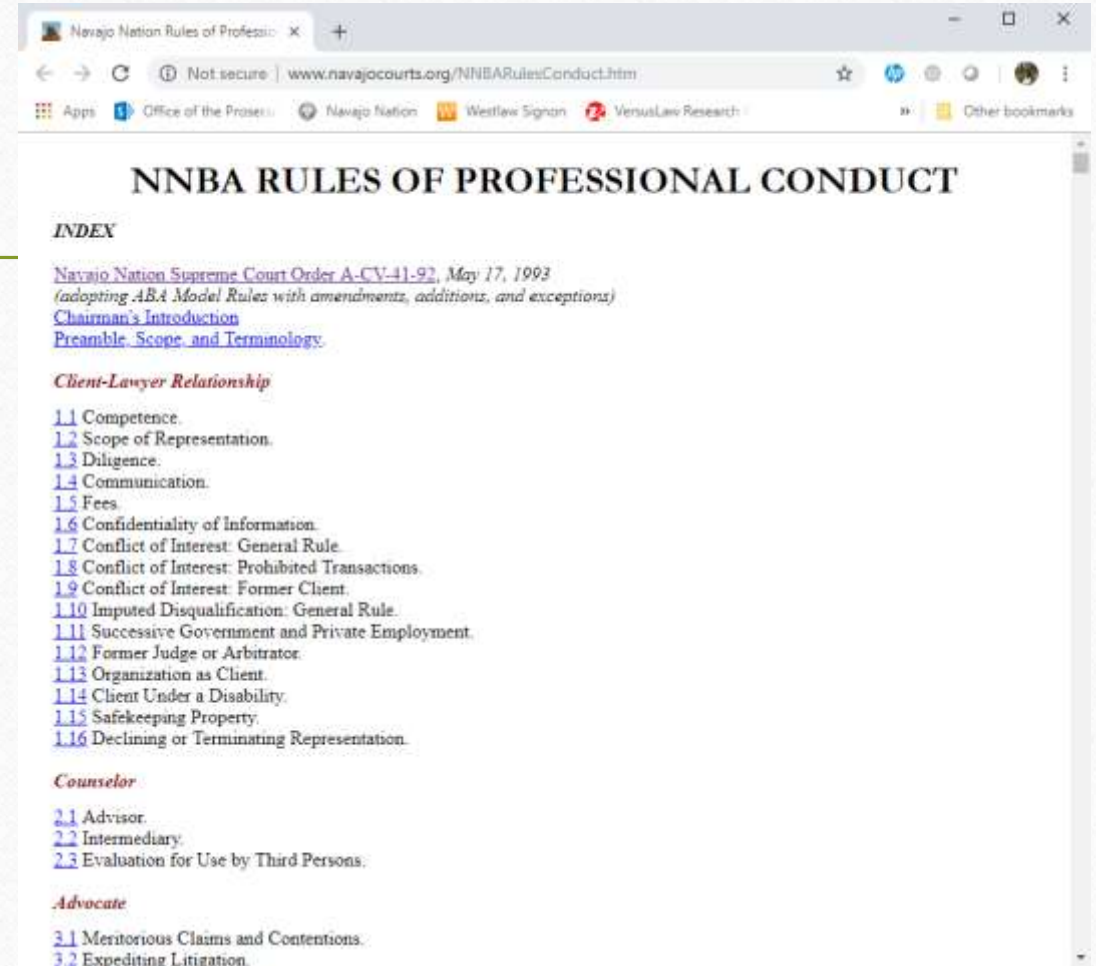
# NNBA Website

## Some things to note

---

- The Rules of Professional Conduct were adopted in **1992**
- The Rules are based upon the Model of Rules of Conduct of the American Bar Association from **1984**
- **Be sure to review the Navajo Rules of Professional Conduct**

# Navajo Courts



The screenshot shows a web browser window with the following details:

- Tab: Navajo Nation Rules of Professional Conduct
- Address Bar: Not secure | www.navajocourts.org/NNBARulesConduct.htm
- Bookmarks: Office of the Prosecutor, Navajo Nation, Westlaw Signon, VersusLaw Research, Other bookmarks

**NNBA RULES OF PROFESSIONAL CONDUCT**

**INDEX**

[Navajo Nation Supreme Court Order A-CV-41-92, May 17, 1993](#)  
(adopting ABA Model Rules with amendments, additions, and exceptions)

[Chairman's Introduction](#)

[Preamble, Scope, and Terminology](#)

**Client-Lawyer Relationship**

- [1.1 Competence.](#)
- [1.2 Scope of Representation.](#)
- [1.3 Diligence.](#)
- [1.4 Communication.](#)
- [1.5 Fees.](#)
- [1.6 Confidentiality of Information.](#)
- [1.7 Conflict of Interest: General Rule.](#)
- [1.8 Conflict of Interest: Prohibited Transactions.](#)
- [1.9 Conflict of Interest: Former Client.](#)
- [1.10 Imputed Disqualification: General Rule.](#)
- [1.11 Successive Government and Private Employment.](#)
- [1.12 Former Judge or Arbitrator.](#)
- [1.13 Organization as Client.](#)
- [1.14 Client Under a Disability.](#)
- [1.15 Safekeeping Property.](#)
- [1.16 Declining or Terminating Representation.](#)

**Counselor**

- [2.1 Advisor.](#)
- [2.2 Intermediary.](#)
- [2.3 Evaluation for Use by Third Persons.](#)

**Advocate**

- [3.1 Meritorious Claims and Contentions.](#)
- [3.2 Expediting Litigation.](#)

# Information about the Disciplinary Process



<https://www.navajolaw.info/forms/>

Forms | Home | Navajo Nation | X

https://www.navajolaw.info/forms

# Standard Forms

### CLE Form for Presenters

To Apply for CLE credit if you presented at any of the NNBA Events.

*CLE Request Form for Presenters*

### CLE Request Form for Attendee

To submit to get CLE credit at NNBA Events.

*CLE Request Form for Attendee*

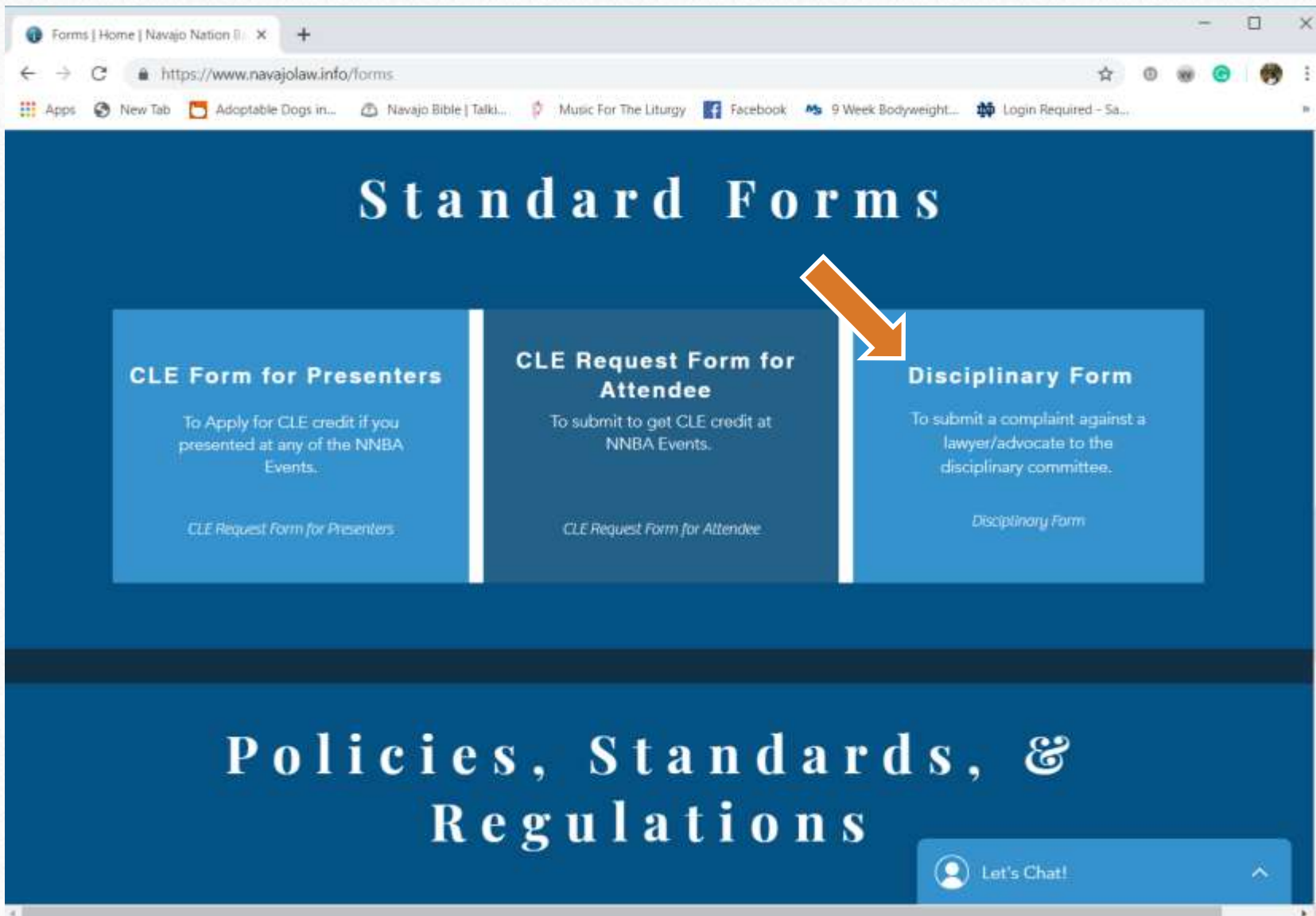
### Disciplinary Form

To submit a complaint against a lawyer/advocate to the disciplinary committee.

*Disciplinary Form*

## Policies, Standards, & Regulations

Let's Chat!





← → ↻ https://www.navajolaw.info/forms ☆ ⓘ 🌐 🌐 🌐 🌐

Apps New Tab Adoptable Dogs in... Navajo Bible | Talki... Music For The Liturgy Facebook 9 Week Bodyweight... Login Required - Sa...

# Policies, Standards, & Regulations

## Appenticeship Program Guidelines

Guidelines for the NNBA apprenticeship Program.

[READ MORE](#)

## NNBA CLE Standards

NNBA CLE Standards for current and new members.

[Read More](#)

## NNBA Disciplinary Rules of Procedures

Procedures that the NNBA Disciplinary follow.

[Read More](#)

## NNBA Disciplinary Rules for Appeals

Rules for appeals for the Board of Bar Commissioners.

[Read More](#)

## NNBA Examination Subjects List

Subjects that will be on the NNBA Bar Exam.

[Read More](#)

## NNSC Order Re: Scheduling Oath for New Members

Re-Scheduling oath for new members when

## Resolution of the Admission Committee

Changes made to Sections III and IV of the

## Resolution of the Board of Bar Commissioners

Changes made to the Continuing Legal

## NNBA Professional Rules of Conduct

NNBA rules professional co

## Admission Policies and Procedures

Let's Chat! ^

# Flashback!!!

---

Remember your oath?

## Attorney Oath of Office

I [name] do solemnly affirm that:

I will support, obey, and defend all the laws of the Navajo Nation.

I will respect the courts, the judges and peacemakers.

I will not maintain causes that are without proper reason.

I will not seek to mislead by misstatement of law or fact.

I will maintain the confidence and the secrets of my client.

I will refrain from all offensive conduct.

I will never reject the cause of the defenseless or oppressed.

I will adhere to the rules of professional responsibility.

With this, I will make life good.

## Attorney Oath of Office

I [name] do solemnly affirm that:

I will **support, obey, and defend** all the laws of the Navajo Nation.

I will **respect** the courts, the judges and peacemakers.

I will **not** maintain causes that are **without proper reason**.

I will **not** seek to **mislead** by misstatement of law or fact.

I will **maintain the confidence** and the **secrets** of my client.

I will **refrain** from all **offensive conduct**.

I will **never reject** the cause of the **defenseless or oppressed**.

I will **adhere** to the rules of **professional responsibility**.

With this, **I will make life good.**

# When does the Supreme Court get involved?

---

- The NNBA is delegated the power to review complaints against bar members
- BUT, “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.” In the Matter of Frank Seanez, 9 Nav. R. 416 (Nav. Sup. Ct. 2010)

# Navajo Nation Supreme Court

---

- In the Matter of Bowman, 6 Nav. R. 101 (Nav. Sup. Ct. 1989)
- In the Matter of Frank Seanez I, II, and III
  - 9 Nav. R. 416 (Nav. Sup. Ct. 2010) (I -decision dated 10/22/2010)
  - 9 Nav. R. 433 (Nav. Sup. Ct. 2010) (II - decision dated 11/24/2010)
  - 9 Nav. R. 467 (Nav. Sup. Ct. 2011) (III - decision dated 1/25/2011)

# In the Matter of Bowman, 6 Nav. R. 101 (Nav. Sup. Ct. 1989)

## Native American Tribal Sovereign Immunity

Panelists discussed the role of tribal courts in administering justice and the federal role, if any, in administering justice in Native American communities. They focused on the concept and reality of tribal sovereign immunity, and the use and waiver of such immunity in allowing suits by Native Americans against their tribal governments. This was part of the convention of the National Congress of American Indians. They also took questions from the audience. [close](#)

Report Via



# In the Matter of Bowman, 6 Nav. R. 101 (Nav. Sup. Ct. 1989)

---

- A contempt proceeding brought by the Supreme Court against a member of the NNBA
- Why?
  - Pretending to be a district judge
  - Holding a sham hearing
  - Intimidating court personnel
  - Interfering with court operations
  - Issuing illegal and invalid orders
  - Disobeying the Supreme Court's orders



In the Matter of Bowman,  
6 Nav. R. 101 (Nav. Sup. Ct. 1989)

---

- “NNBA members are held to very high standards of professional conduct.”
- It doesn’t matter if you’re an advocate or an attorney – the same high standards apply to all.

In the Matter of Bowman,  
6 Nav. R. 101 (Nav. Sup. Ct. 1989)

---

- Every lawyer owes a solemn duty to uphold the integrity and honor of his profession;
- to encourage respect for the law and for the courts and judges thereof;
- to observe the Code of Professional responsibility;
- to act as a member of a learned profession, one dedicated to public service;

## In the Matter of Bowman, 6 Nav. R. 101 (Nav. Sup. Ct. 1989)

---

- to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit;
- to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients, and of the public;
- and to strive to avoid not only professional impropriety but also the appearance of impropriety.

In the Matter of Bowman,  
6 Nav. R. 101 (Nav. Sup. Ct. 1989)

---

- What happened to Mr. Bowman?
- He was permanently disbarred because his “activities [are] prime examples of conduct unbecoming a member of the Navajo Nation Bar Association.”

# In the Matter of Frank Seanez (I, II, III)

**NAVAJO TIMES** Monday  
December 10, 2018  
Last update: November 11, 2018 at 10:11

HOME A&E SPORTS COMICS OPINION POLITICS BUSINESS EDUCATION NEWS CLASSIFIEDS MORE

Where to **BUY** the Times

**STORE LOCATOR**

**High court disbars Council's lawyer**

By Noel Lynn Smith  
Navajo Times  
WINDOW ROCK, Oct. 22, 2018

Text size: A A

Like 75 Tweet Share

In a rare decision, the Navajo Nation Supreme Court disbarred Chief Legislative Counsel Frank Seanez for issuing advice to his client - the Navajo Nation Council - to ignore its rulings regarding the Navajo Government Development Commission.

The high court ordered Seanez to explain why he advised the Council not to obey its order to revive the government development commission.

In an Oct. 18 writ of prohibition, the court ordered Seanez to immediately stop giving legal advice and issuing written opinions.

The justices specifically questioned the advice that Seanez gave to the Council on two matters.

In a Sept. 10 opinion, Seanez advised the delegates that they had the authority to amend Titles 2, 7 and 11 of the Navajo Nation Code in regards to the referendum to elect judges and justices.

On Aug. 4, Seanez issued a legal memo to the Council stating that the Supreme Court exceeded its jurisdiction.



(Times photo - Leigh T. Jirres)

Chief Legislative Counsel Frank Seanez appears in the Navajo Nation Council chambers on Friday.

# In the Matter of Frank Seanez I

The October 2010 Opinion

---

- Emphasis is on the legal advice of Chief Legislative Counsel, Frank Seanez

# In the Matter of Frank Seanez I

## The October Opinion

---

- **What conduct?**
  - Giving legal advice and issuing opinions/memoranda that defy Navajo Nation Supreme Court decisions
  - Major point of contention: CLC issued opinions and memoranda regarding the holding of *Shirley v. Morgan* and advised the counsel the opposite of the *Shirley* decision – ‘he persisted in advising the Council that they have “unquestioned” authority to amend Titles 2, 7, and 11 without restriction.’

# In the Matter of Frank Seanez II

## The November Opinion

---

- Seanez’s disbarment was converted to a suspension “for reasons of compassion and restoration”
- Emphasis on the role of government attorneys
  - “The government lawyer has a duty to exercise independent professional judgment and render candid advice.” Rule 2.1
  - “the government attorney has a duty to the public trust....”



# In the Matter of Frank Seanez II

## The November Opinion

---

“As a representative of the People, a leader for the People, and also for those you work with, you must advise and teach them the laws of the Diné, even though they might not agree with the law; therefore, to be a leader and lawyer for the People, one must use and respect the laws of all the People.”

# In the Matter of Frank Seanez II

## The November Opinion

---

- Suspension:
  - 49 month suspension with conditions:
  - Develop a course and syllabus for NNBA members on ethical standards and special responsibilities of Navajo Nation government lawyers (in consultation with Associate Justice, CLC, and AG)
  - Course and syllabus approved for use by the NNBA Training Committee and the Supreme Court in an annual course for government lawyers

# In the Matter of Frank Seanez II

## The November Opinion

---

- Suspension:
  - NNBA Disciplinary Committee submits a recommendation for reinstatement
  - Upon reinstatement – teach the ethics course in good faith for no less than 3 consecutive years
  - Upon reinstatement – only employed in a capacity where he is not called upon to issue formal legal opinions

*Unfortunately,  
it didn't end there*

# In the Matter of Frank Seanez III

## The January 2011 Opinion

---

- Emphasis is on the unauthorized practice of law
- Result:
  - Frank Seanez was permanently disbarred and his name was removed from the roll of attorneys and advocates in the Navajo Nation
  - A civil penalty of \$72,612 (3x the salary -\$24,204- he was paid from 10/25 – 12/31/10)
  - Not eligible to be employed by or enter into contracts with the Navajo Nation

# In the Matter of Frank Seanez III

## The January Opinion

---

- Emphasis is on the unauthorized practice of law:
  - Submitting draft resolutions as CLC
  - Signature on documents as CLC (2 memos)

# In the Matter of Frank Seanez III

## The January Opinion

---

- Unauthorized practice of law – formerly NN employed disbarred /suspended NNBA members:
  - May not represent themselves as attorneys or advocates in any communication with former Navajo Nation clients or public

# In the Matter of Frank Seanez III

## The January Opinion

---

- Formerly NN employed & disbarred /suspended NNBA members – prohibited conduct:
  - Being present during conferences with clients
  - Talking to clients either directly or by telephone
  - Signing correspondence to clients, contacting clients either directly or indirectly
  - Being present in the courtroom of present during any court proceeding involving clients.



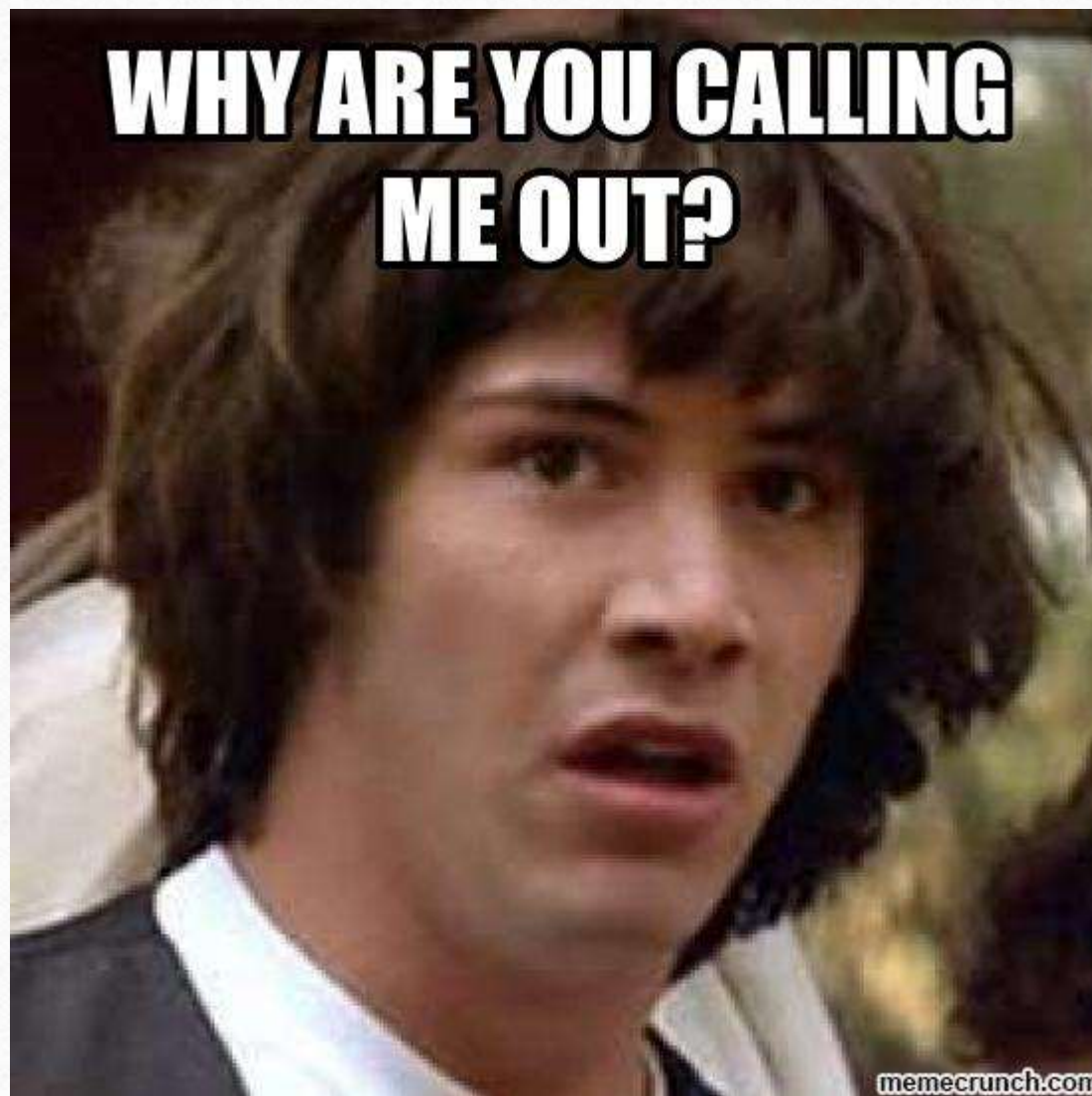
Does the NN Supreme Court  
offer any other guidance?

---

Y E S

On occasion the higher courts will offer words of wisdom  
regarding the conduct of legal counsel.

**WHY ARE YOU CALLING  
ME OUT?**



memecrunch.com

# Navajo Nation Supreme Court

---

“The power to regulate attorney practice is essential to maintain professional and ethical practice before the Court, not only to protect the integrity of the appellate process, but also to protect the litigants who participate in the process.” *Eriacho v. Ramah Dist. Ct.*, 8 Nav. R. 598, 602 (Nav. Sup. Ct. 2005).

# Navajo Nation Supreme Court

---

“...to prevent these situations [conflicts of interest] this Court must have the unencumbered authority to regular attorney practice before the Court.” *Eriacho v. Ramah Dist. Ct.*, 8 Nav. R. 598, 603 (Nav. Sup. Ct. 2005).

# Navajo Nation Supreme Court

---

“Among the inherent powers of the courts to govern their operations is the power to impose sanctions for misconduct by attorneys and parties or for abusive litigation practices.” *Begay v. Navajo Election Admin.*, 7 Nav. R. 139, 140 (Nav. Sup. Ct. 1995).

# FAILURE TO APPEAR

---

The Court specifically identified attorney misconduct in the matter: “...[the] attorney failed on a number of occasions to appear at hearing or notify his client of the proceedings.” *Estate of Joe*, 4 Nav. R. 99 (Nav. Ct. App. 1983).

# FAILURE TO APPEAR

---

Counsel failed to appear for court. The Court held counsel in contempt and sentenced him to 90 days in jail or to pay a fine of \$180. The Case went to the Navajo Nation Court of Appeals which suspended counsel for fifteen (15) days. If the counsel wrote a letter of apology, the suspension would not be imposed. *In re Denetsosie*, 1 Nav. R. 270 (Nav. Ct. App. 1978).

# USE OF CHARGED LANGUAGE

## Nation v. McDonald

---

“This Court will not tolerate inflammatory language, insults, abuses of people (including judges, counsel, parties or witnesses) or any inappropriately aggressive conduct. There is already enough theatrics, hostility, sharpness, harassment and downright nastiness in non-Navajo courts.”  
7 Nav. R. 1, 7 (Nav. Sup. Ct. 1992).



# USE OF CHARGED LANGUAGE

## Nation v. McDonald

---

“Counsel can expect that if they are discourteous, impolite or abusive, they will be disciplined, either through a contempt citation, court disciplinary action, bar disciplinary action or counseling by the court following a trial or hearing.” 7 Nav. R. 1, 8 (Nav. Sup. Ct. 1992).

# FRIVOLOUS APPEALS

## Begay v. Navajo Election Administration

---

- “We note that some members of the Navajo Nation Bar have sloppy practice habits and do not prepare their cases well. They are the minority, given the high standards of most counsel, but sloppy practice should not be tolerated.” 7 Nav. R. 139, 140 (Nav. Sup. Ct. 1995).
- “If an appeal is without merit, the Navajo Nation must be reimbursed for the cost of the time wasted.” *Id.*

# FRIVOLOUS APPEALS

## Begay v. Navajo Election Administration

---

- **When is an appeal “frivolous”?**
  - The appeal is not filed within the permitted time frame
  - Filing of the record or briefs is not complete – “not perfected”
  - Lack of probable cause to file
  - When “it appears that the appeal was filed to delay the execution of judgement”
  - Attorney misconduct

See 7 Nav. R. at 140-141.

# FRIVOLOUS APPEALS

## Begay v. Navajo Election Administration

---

- When does an appeal lack probable cause?
  - “...when simple legal research discloses that points of law for the appeal are settled under our law or when a party does not have the right to take the appeal.”  
7 Nav. R. at 140.

# FRIVOLOUS APPEALS

## Begay v. Navajo Election Administration

---

- What does “probable cause for an appeal” mean?
  - ‘...[it] means the situation where there is a “debatable question or an honest difference of opinion’ and when the briefs and record show “grounds for error ... that are open to doubt or an honest difference of opinion, and over which rational, reasonable, and honest discussion may be had.’ 7 Nav. R. at 141.

# FRIVOLOUS APPEALS

## Begay v. Navajo Election Administration

---

- If the Court makes a finding that an appeal was brought in bad faith/frivolous/lacks probable cause/attorney misconduct
- “...the court may assess attorney fees, costs, or other charges against a party, counsel or both.” 7 Nav. R. at 140.

# FRIVOLOUS APPEALS

Begay v. Navajo Election Administration

---

- Procedure (Contempt)
  - The court will issue an Order to Show Cause
  - The offending party will have a chance to respond

**Don't be a  
lawyer joke...**





Copyright 2000 Stu's Views -- [www.stus.com](http://www.stus.com)

**MAKE LIFE  
GOOD!**

## Attorney Oath of Office

I [name] do solemnly affirm that:

I will support, obey, and defend all the laws of the Navajo Nation.

I will respect the courts, the judges and peacemakers.

I will not maintain causes that are without proper reason.

I will not seek to mislead by misstatement of law or fact.

I will maintain the confidence and the secrets of my client.

I will refrain from all offensive conduct.

I will never reject the cause of the defenseless or oppressed.

I will adhere to the rules of professional responsibility.

With this, I will make life good.