



RULES COMMITTEE OF THE NNBA

2026 Annual Written Report to the NNBA Membership

Submitted by: Chairman Kevin C Barnett, Esq.

Submitted on June 3, 2026

Ahead of June 5, 2026 NNBA Annual Bar Conference

Overview:

The Rules Committee has emerged from a period of inactivity to become focused on actively reviewing the various rules governing the practice of law on the Navajo Nation. The Committee has a full membership that is working to propose changes to decades-old rules, including the Rules of Evidence (1978), the Rules of Criminal Procedure (1990), and the Rules of Appellate Procedure (1978). Other work includes drafting never-before-promulgated rules, such as the Navajo Rules of Extradition Procedure, the promulgation of which is set forth by a 2013 legislation enacted by the Council. *See* 17 N.N.C. § 1958.

The present composition of the Rules Committee is dedicated to producing actual work product that can soon be considered by the appropriate stakeholders (Supreme Court, Board of Bar Commissioners, Attorney General, Chief Legislative Counsel, Bar Membership, etc.). *See* 7 N.N.C. § 601(A) *and* NNBA Bylaws IX.C.

The Rules Committee will be submitting to the membership a survey, at this year's Bar Conference, seeking members' views on existing rules as well as new rules that the Rules Committee could work on (e.g., rules governing name change proceedings do not exist but are needed).

The Rules Committee has received authorization from the Bar Executive Director that one member who completes this survey will be randomly selected to have their fee for next year's bar conference waived as a thank you for completing the survey.

This Annual Report to the Bar Membership is submitted pursuant to Part IX.¹ of the NNBA Bylaws.

¹ "Each Committee Chair shall make a written Annual Report to the NNBA membership, to be delivered at the NNBA Annual Conference." This is distinct from the written quarterly reports to the Board of Bar Commissioners.

Current Members (as of June 3, 2026)

Pursuant to Section IX.C. of the NNBA Bylaws, the Rules Committee consists of **five** members, including the Chair. There are no present vacancies on the Rules Committee.

The current members of the Committee are as follows:

1. Kevin C Barnett, Esq., Chairman (Joined May 2025) (Kayenta) (appointment confirmed by BOBC during September 2025 meeting)
2. Alexandra R. Trousdale, Esq., Vice-Chairwoman (Joined August 2025) (Window Rock) (appointment confirmed by BOBC during September 2025 meeting)
3. Brandy Toelupe, Esq., Secretary (Joined in 2024) (Shiprock)
4. Loya M. Honágháanii Henderson, Esq., Member (Joined August 2025) (Alamo/Ramah/Tó'hajiilee) (appointment confirmed by BOBC during September 2025 meeting)
5. Bradley Burns, Esq., Member (Joined August 2025) (Tuba City) (appointment confirmed by BOBC during September 2025 meeting)

All members of the Committee are actively engaged in meetings and are active participants.

Meetings Held July 2025 through May 2026 (copies of agendas and approved minutes (with the exception of May 2026 which have not yet been approved) are available upon request):

July 2025:

- The scheduled July 13, 2025 meeting was canceled due to lack of quorum present (only 2 members joined the Teams meeting)

August 2025:

- No meeting held as the Committee only consisted of two members, following the Bar President's removal of two members
- Three new appointments were made by the Bar President toward the end of the month, bringing the total number of members to five, the maximum number

September 2025:

- First Rules Committee meeting in around 16 or so months, if not significantly longer
- Meeting held on Sunday, September 14, 2025; all members attended
- Committee determined that future meetings would be held on Fridays in the late afternoons
- Committee selected Kevin C Barnett, Esq. as the Chairman of the Committee
- Committee scheduled the October and November meetings

October 2025:

- Meeting held on Friday October 3, 2025
- Meeting largely focused on triage approach of how to tackle revising extant rules sets as well as new potential rules sets to promulgate in the first instance
- Committee discussed using Member Bradley Burns' law firm's DropBox-esque website to collect Committee documents; Chair later spent significant time working on formatting and organizing this website

November 2025:

- Meeting held on Friday, November 14, 2025
- Alexandra R. Trousdale, JD selected by Committee as Vice-Chairwoman upon nomination by Chair
- Brandy Toelue, Esq. selected by Committee as Secretary upon nomination by Chair
- Highly productive meeting where Committee discussed a great deal of areas to address, each member's "Top Five" rules to fix covered

December 2025:

- Meeting held on December 5, 2025
- Reviewed proposed Rules of Order for Rules Committee
- Discussed efforts to draft changes to Rules of Professional Conduct (to reflect the more-modern MRPC but including the changes made to the MRPC when the current NRPC were adopted in 1996
- Discussed efforts to work with Disciplinary Committee
- Discussed Kiteworks, which is a digital storage site that Member Bradley Burns is offering to the Committee for free from his law firm

January 2026:

- Cancelled due to member availability and fact that members needed more time to put work in on various Rules-sets members are working on; one member was away studying for the February 2026 Arizona Bar Exam

February 2026:

- No meeting was ever scheduled due to shortness of month and member taking Arizona Bar Exam this month

March 2026:

- Meeting held on March 6, 2026
- Again reviewed proposed Rules of Order for Rules Committee
- Discussed efforts to draft changes to Rules of Professional Conduct (to reflect the more-modern MRPC but including the changes made to the MRPC when the current NRPC were adopted in 1996)
- Discussed efforts to work with Disciplinary Committee
- Discussed Kiteworks, which is a digital storage site that Member Bradley Burns is offering to the Committee for free from his law firm
- This was more of a catch-up meeting and setting goals for future meetings after a few months break since the December 2025 meeting

April 2026:

- Meeting held on April 3, 2026
- Completed follow-up discussion regarding the Rules of Professional Conduct and a memo that was later sent (after the April meeting but before the May meeting) to the Disciplinary Committee Chair
- Discussed efforts to work on drafting fixes to the Rules of Criminal Procedure
- Discussed potential fixes to the Civil Procedure Rules, including as they are referenced in the Rules of Criminal Procedure
- Discussed obvious errors in Rules of Evidence and various approaches to bringing them into a more modern stylization/format
- Discussed draft survey for Bar Conference

May 2026:

- Meeting held on May 8, 2026
- Had a special guest, discussion with whom took up the majority of the May meeting, Mr. Jordan Hale, Esq., Court Solicitor to the Navajo Nation Supreme Court
- Discussed at length the various pathways the Committee can expect to need to work through in going from drafting changes to Rules to having them fully adopted by the Supreme Court, using the Rules of Garnishment Proceedings as an illustration of recent Rules adopted by the Supreme Court
- Discussion was very helpful in gaining perspective on how, after internal NNBA review is completed under IX.C., further review of proposed rules can be made before the Supreme Court enters an order adopting the changes
- Discussed follow-up from Disciplinary Committee Chair to the Rules Committee Chair's memo (approved by the Rules Committee)

- Idea of joint meeting with Disciplinary Committee to discuss proposed changes to Rules of Professional Conduct

Next Rules Committee Meetings:

The next scheduled Rules Committee meetings will be held on Teams on the following dates:

- June 26th 2026
- July 24th 2026

Achievements of the Rules Committee:

- Committee has maximum five members, all of whose appointments have been confirmed by the Board of Bar Commissioners
- Committee adopted internal Rules of Procedure for Rules Committee in its April 2026 meeting
- Committee has met seven times since September 2025 and is continuing to aim for monthly meetings
- Had first–ever meeting with the new Court Solicitor to the Navajo Supreme Court, Mr. Jordan Hale, Esq.
- Committee is continuing to make effective use of KiteWorks, a DropBox–style site that Member Bradley Burns’ law firm allows the Committee to utilize for free
- Committee is working to schedule a joint meeting with the Disciplinary Committee to discuss potential changes to the Navajo Rules of Professional Conduct (to reflect the modern Model Rules of Professional Conduct)
- The Committee has continued its robust discussions regarding the triage approach to addressing the various rules–sets and which rules to focus on first

Rules Being Worked on by the Rules Committee Presently

- The Navajo Rules of Extradition Procedure
 - Primary member working on these Rules: Chairman Kevin C Barnett, Esq.
 - These Rules are required by statute (CJY–29–13);
 - The enabling legislation was enacted in July 2013;
 - The Committee is unaware of any draft Navajo Rules of Extradition Procedure being worked on by any entity other than the Committee itself
 - 17 N.N.C. § 1958 clarifies that the Rules are promulgated by the President of the Navajo Nation (given that the President is the one who signs Extradition Warrants rather than Judges) and the Supreme Court, with the concurrence of the Law and Order Committee

- These rules would govern the “procedure for the Office of the Prosecutor, the President of the Navajo Nation, the Office of Navajo Public Defender, the Navajo Division of Public Safety, and the Navajo Nation Courts to follow in processing requests for extradition . . .” 17 N.N.C. § 1958
- Navajo Rules of Civil Procedure
 - Primary member working on these Rules: Member Bradley Burns, Esq.
 - Beyond the obvious correction of extant typos, some of the proposed changes would generally modernize the Rules of Civil Procedure
- Navajo Rules of Evidence
 - Primary members working on these Rules: Vice–Chairwoman Alexandra R. Trousdale, Esq. and Member Loya M. Honágháanii Henderson, Esq.
 - No hearsay exceptions are defined in the Navajo Rules of Evidence, which are “patterned upon the Federal Rules of Evidence.” *Manygoats v. Cameron Trading Post*, 8 Nav. R. 3, 12 (Nav. Sup. Ct. 2000)
 - There are also numerous typos (e.g., “tier of fact” rather than “trier of fact”)
 - Beyond that, some of the terminology is written in a passive voice that is awkward to read
 - Proposed changes will likely include cleaning up the drafting, defining the hearsay exceptions, and modernizing the stylization of the rules by category similar to the Federal Rules of Evidence (e.g., 201 for Judicial Notice, 801 *et seq.* for hearsay rules, etc.)
- Navajo Rules of Criminal Procedure
 - Primary members working on these Rules: Vice–Chairwoman Alexandra R. Trousdale, Esq. and Member Loya M. Honágháanii Henderson, Esq.
 - The Rules of Criminal Procedure have significant issues with statutes that conflict with various rules (e.g., Nav. R. Cr. P. 57 still says that a probationer whose probation is revoked serves 1.5 times the original sentence while the statute was updated in 2000 via CJA–08–00 to say that the original sentence (with no additional time added) is the punishment
 - These Rules have significant amounts of case law affecting them; this case law should be incorporated to allow a practitioner to follow all Supreme Court case law by following the updated rules (e.g., Rule 15(e) has special timelines under *Wood v. Window Rock District Court*, 9 Nav. R. 265, 270 (Nav. Sup. Ct. 2009)
 - The Rules governing sentencing also need to be updated as the Supreme Court explained in *Baker v. Greyeyes*, 9 Nav. R. 576, 580, n. 4 (Nav. Sup. Ct. 2012)²
 - Beyond these key structural changes, typos need to also be addressed, and modern grammar is also needed

² *Baker* footnote 4: “We note there is no uniformity in the actual sentencing among judicial district courts. Inconsistent practice is partly due to the dated rules of criminal procedure that do not reflect statutory changes or Supreme Court rulings. Court rules are in urgent need of revisions to ensure fair and just sentencing.” (Emphasis added).

- Navajo Rules of Appellate Procedure
 - Primary member(s) working on these Rules: none presently assigned, potentially Chairman Kevin C Barnett, Esq.
 - These rules mainly need to be revised to reflect that they *solely* govern *criminal* appeals (including petitions for stay of sentence)
 - A great deal of the rules in the Rules of Appellate Procedure (not to be confused with the Rules of *Civil* Appellate Procedure) are irrelevant because they are superseded by the Civil Appellate Procedure rules
 - For example, *habeas corpus* is governed by the Rules of Civil Appellate Procedure, which should be updated to include N.R.A.P. 14 (Habeas Corpus)
 - Additionally, forcible entry and detainer appeals are also governed by the Civil Appellate Procedure Rules, so N.R.A.P. 3 is patently irrelevant and needs to be removed
 - What would be added in place of these removed rules would be further clarification of the process of criminal appeals that reflect case law holdings since the N.R.A.P. were adopted in 1978. *See, e.g., John v. Navajo Nation [John II]*, 9 Nav. R. 505 (Nav. Sup. Ct. 2011).
- Navajo Rules of Probate Procedure
 - Primary member working on these Rules: none presently assigned but likely Secretary Brandy Toelupe, Esq. or Member Loya M. Honághánii Henderson, Esq. or both
 - One frequent suggestion for a top priority that the Rules Committee should have is the Rules of Probate Procedure, which, like many other Rules, were adopted in 1978 and have never been updated since
- Rules of Professional Conduct
 - Primary member working on these rules: Secretary Brandy Toelupe, Esq.
 - These Rules are under the purview of the Disciplinary Committee³, but the Rules Committee is working to modernize these Rules to reflect the modern Model Rules of Professional Conduct
 - The Rules Committee hopes to work with the Disciplinary Committee to propose updates to these Rules to the Supreme Court
- Suggested areas for new Rules that the Rules Committee has received (non-exhaustive list):
 - Rules for Civil Traffic Proceedings;
 - Rules for Name-Change Proceedings;
 - A.B.B.A. Rules (i.e., Delinquency, Dependency, Child in Need of Supervision, etc.)

³ Pursuant to Bylaw IX.B., the Rules of Professional Conduct are the only Rules not under the purview of the Rules Committee, but rather the Disciplinary Committee.

Rules Committee Chairman’s Suggestions to Bar Membership:

The Chairman offers two suggestions to the Bar Membership based on the past year of the Rules Committee’s activities.

First, the Chairman is of the view that a new Bar Committee should be created—the Pro Bono Service Committee. This Committee would exist for the purpose of assisting the Supreme Court in “list[ing] the areas in which pro bono service can be performed.” Nav. Pro Bono Rule I.B.1.; *see In re Petition of James*, No. SC–SP–01–20, slip op. at 1–2 (Nav. Sup. Ct. March 2, 2020)⁴.

Each year, members who are not exempt from pro bono service—*see, e.g.*, Nav. Pro Bono R. II.C.—must submit “a proposed plan of pro bono service for the forthcoming year,” which shall specify, *inter alia*, “the proposed alternative service and the estimated time to be spent on such service” and “[i]f the NNBA member had a pro bono service plan in effect for the then current year, the member shall include in the plan a summary of his or her service in the current year.” Nav. Pro. Bono R. VI.B.; *see generally, In re Petition of Shirley*, No. SC–SP–01–19, slip op. at 5–6 (Nav. Sup. Ct. Sept. 18, 2019) (discussing Nav. Pro Bono Rule VI.B.).

Thereafter, by “October 31 of each year, the Board of Bar Commissioners of the NNBA shall review these plans and submit the plans together with the NNBA’s recommendations for approval or disapproval to the Navajo Nation Supreme Court.” Nav. Pro Bono R. VI.C. Then, by “December 1 of each year, the Navajo Nation Supreme Court shall approve or disapprove the plans and then send out appropriate notice to the NNBA members and the Office of Pro Bono Service.” Nav. Pro Bono R. VI.D.

The purpose of the Pro Bono Service Committee, then, would be to identify, on a regular basis, areas in which those members who are not exempt from pro bono service (whether or not they are exempt from pro bono appointments) can perform pro bono service to comply with the Pro Bono Rules. *See* Nav. Pro Bono Rule I.B.1.

Second, the Chairman believes that the NNBA Bylaws should be amended to uniformly clarify the internal process by which proposed rules changes that have been approved by the Rules Committee and the Board of Bar Commissioners (following the public comment period described in IX.C.) are submitted for consideration by the Supreme Court. Presently, as a matter of historical practice, the Disciplinary Committee Chairman can directly petition the Supreme Court to amend the Navajo Rules of Professional Conduct (and only those Rules). NNBA Bylaws IX.B.

Part IX.C. of the Bylaws is unclear as to who, after the internal review by the Committee and the Board of Bar Commissioners, petitions the Supreme Court for adoption of the Rules. This part of

⁴ “At this time the Supreme Court of the Navajo Nation has not developed a list of the areas in which pro bono service can be performed, as required under NNBA Pro Bono Rule I.B.1. The Court hereby concludes that the Petitioner has shown she is exempt from pro bono appointment and because a list of areas of pro bono service has not yet been developed at this time, the Petitioner is exempt from pro bono service for the calendar year 2020 only.”

the bylaws should be amended to clarify whether the Rules Committee Chairman or someone else from the NNBA is the petitioning party.

Of course, this would just alter the processes internal to the NNBA as to how to propose changes to Rules to the Supreme Court. There are additional requirements beyond those articulated in the Bylaws that the Supreme Court must follow to amend Court rules. *See* 7 N.N.C. 601(A). This potential change to the Bylaws would not be intended to alter any requirements by statute (nor could it) but would only govern how proposed changes are procedurally handled within the NNBA before those changes are proposed outside of the NNBA (i.e., to non–NNBA entities such as the Supreme Court, the Attorney General, and the Chief Legislative Counsel, etc.). None of the internal review within the NNBA would be altered; the only change would be clarifying who petitions for adoption of the proposed changes—Rules Committee Chair or a NNBA Officer (such as the Bar President) or a Bar Commissioner.

Closing Thoughts:

The Chairman hopes that this report is informative to the Bar Membership as to the present work being undertaken by the Rules Committee to modernize the various rules governing practice on the Navajo Nation. The Rules Committee hopes that the Bar Membership will actively engage in offering comments—of any sort—to proposed rules changes so that, through the appropriate processes and channels, rules that likely every member has recognized “are in urgent need of revisions” can actually be revised to reflect Supreme Court holdings, changes in statute, and modern realities of legal practice. *Baker v. Greyeyes*, 9 Nav. R. 576, 580, n. 4 (Nav. Sup. Ct. 2012). Revising these outdated rules requires involvement from as many stakeholders as possible, especially members of the Bar.

/s/ Kevin C Barnett, Esq.

Chairman of the Rules Committee of the Navajo Nation Bar Association, Inc.