

## **Strengthen the Navajo Bar Exam Proposal:**

There is a dire need to revise the current Navajo Nation Bar Exam. Why? Because of low bar exam pass rate among the tribal court advocates who are unable to pass the Navajo bar exam, we need to revise and model a bar exam that enhances the pass rate of tribal court advocates.

To better identify the need for a bar exam revision, perhaps it would be well to ask those who didn't pass the previous bar exams why they were not successful.

How effective are the Navajo Nation courts? Is it that we just want to adopt the non-Indian culture and their way of life that highly influences the manner in which we administer our Navajo justice? Critical thinking in the Navajo culture is highly valued. However, the Navajos have difficulty with critical thinking because our culture has changed. It is difficult for Navajos to pass the bar exam. Our young people today want to be identified as Navajos and want to learn our culture and language to address real problems of the people. How to best obtain the most practical outcome on problems of Navajo communities using Diné strong sense of our way of knowing. We need to find a way to help them pass the bar exam. Failure to do so may led to losing our uniqueness as a tribal court. Despite all the hardship of life, we always have a way to overcome hardship. That is a part of our cultural teaching.

**The Navajo Nation** bar exams needs to model Navajo bar exams that meet and focus on the needs of our Navajo client community. This requires developing a unique bar exam to reflect Navajo culture and language. What should that model bar exam look like? What should it cover? Nuts and bolts?

### **Create a uniform NNBA exam aimed at:**

- **To know.** What do the bar exam applicants need **to know** for taking the NNBA bar exam in light of the overall practice of the Navajo law.

- **To do.** What the bar exam applicants need **to do** for taking the bar exam.
- **Values.** The values to be realized from the ability **to know and to do** from taking the bar exam. Navajo Nation has the ability to make laws consistent with Diné Bi Beenahaz'áanii and be govern by them.

**A uniform NNBA bar examination shall be adopted. This will be a very unique project placing momentum on the origin/roots and use of Navajo thinking.**

**The revised model NNBA bar exam shall be consistent and relevant to the Fundamental laws of the Diné. The NNBA exam will consist of Navajo and Non-Navajo style of bar essay exam, Navajo style scenario exam, short answer questions, and Diné method of Four Direction problem solving analyses shall include the following:**

**Bar essay exam:**

- **Anglo style law essay exam.** Core Navajo law subjects should be limited to officially selected and adopted by NNBA. (Comment by NNBA bar member: Right now presenters determine the bar outlines and each times the bar exam review sessions are held, the material change. There should be a uniform NNBA bar examination.)
- Core law topics with emphasis on Navajo law will include: Contracts, Torts, Criminal law and procedure, Family law, Property Law, Evidence, Federal Indian Law and Fundamental Law of the Diné. Uniform Navajo bar outlines need to be developed, and acquire the latest NNBA bar outlines, previous bar exam questions with model answers; and make available copies of all past bar exams for purposes of bar preparation. This will greatly benefit tribal court advocates.
- The current NNBA bar exam requires an eight-hour bar examination. Predominately in form of law essay questions that cover 26 bar subjects. The recommendation is to reduce all bar subjects from 26 to 8 or less.

- **Navajo style scenario exam**  
**Diné legal concepts.** This particular part of the Navajo bar exam will be the first of its kind on a bar exam anywhere.

The Navajo Creation stories and teachings will help bar applicants learn and understand the Diné core concepts and apply them in the Diné process of Nitsahakes, Nahata, Iina, Sihasin (“NNIS”), when analyzing legal problems. Navajo cultural principles and concepts as informed by Diné creation stories, and teaching exist in law, education, worldview, philosophy, governance etc.

Here is a list of definitions of cultural concepts from Diné Fundamental Laws with examples readily available to application on the Navajo bar exam:

- **Sa’ah Naaghai Bikeh Hozhoon**
- **Hózhq:** A perfect state of condition where everything is in proper place. For short, balance, peace and harmony helps to clarify the meaning of hozho.
- **Hóchxó:** A state of disharmony
- **Nayéé’:** Anything that causes disharmony
- **K’e:** Kinship unity through hozhojii value, duty and responsibility
- **K’éí (also hak’éí)**
- **Alchi’sila**
- **Naachid:** Assembly of all Navajo clanship to address state of affairs.
- **Nabik’iyati’:** Talking things out.
- **Naat’áanii:** Leader; **naat’áanii:** government
- **Diné Bi Beehaz’áanii Bitse Siléí**
- **Nitsahakis**
- **Nahat’a**
- **lma**
- **Sihasin**

**Note:** Sometime it is difficult to translate Navajo concepts into other non-Diné languages. There are recommended ways by learning through stories, and how concepts are used in difficult situations. For example, the concept of k'e means: Kinship unity through hozhojii value, duty, and responsibility. However, k'e means more. It helps to look at different stories of Creation (including fire, water, air and growth), shoe game, Changing woman, monster slayer and saving little monsters, four direction to understand the essence of what it means. This learning process includes how different concepts are related to one another in different situations, developed scenarios will allow participants identify concepts, and discuss their relationship of how they apply to issues as the FLD concepts and principles in a very meaningful way. For example, analyzing how hózhó and hochxó are related for different reasons. Their connection make things happen.

**We need to give ourselves a chance to apply the concepts above in fact scenarios. We to stop relating to the concepts in a small way.**

#### **Short answer questions**

- **Here, short answer exams will be devirive from major Indian law principles including Fundamental Law of the Diné, Navajo Peacemaking, Sovereignty Immunity Act, Navajo Nation jurisdiction, Navajo Bill of Rights, Indian Child Welfare Act, land, Federal Trust Responsibility, and Treaty of 1868.**

**Note: Not all-major Indian law principle will be listed here. Other important major topics should be reserved for Navajo Nation Bar Association continuing Legal Education taught as Navajo law and/or ethics.**

#### **Measure Performance Test (MPT)**

- **MPT examines fundamental “lawyer thinking” skills that include how to write an exam with “lawyer thinking analysis,” and how to spot issues. How would this work with Navajo Fundamental law? Very important question.**

- **I believe that MPT is already a part of a number of state bar exams.**
- The measurement of performance test should be an essential part of the proposed revised bar exam. This would involve evaluating the ability of applicants handling the legal and factual problems involving a client's case. This proposed performance test would require the applicants to apply what laws they have learned, as a matter of Fundamental laws of the Diné and Non-Navajo laws for the purpose of analyzing the problems hands-on. This test will include writing a legal memorandum, drafting motions, written letter of legal advice, and producing a demand letter to opposing parties. The overall exam should be designed to observe that the law of preference in the Navajo jurisdiction is Navajo law.

### **Diné Four Direction Problem Solving Process**

- I. Need to develop four-direction questions for the bar exams and training will be the first of its kind on a bar exam anywhere.**
- II. What is the role of Diné Bi Beenahaz'áanii in the four direction analysis?**
- III. The Navajo process for analysis using the four-direction (nitsahakes, nahat'a, iina and sihasin) requires learning its elements, purpose, description and application. Peacemaking circles observation can provide learning the Navajo analytical tools for problem solving.**
- IV. Nitsahakes, Nahata, Iina, Sihasin (the elements of four directions) could be explained in a more simple or complicated context. A simple example involved a Chinle junior high student who made plans using the four-direction (i.e. NNIS) to write an essay. The student explains the meaning and application of each elements of the four-direction paradigm in his essay, simply explaining *what is Nitsahakess* as an element of critical thinking, thoughts, observation, and reflection and did the same thing with the other three elements.**

- V. **NNIS process and principles of Diné Bi Beenahaz'áanii can be use to critique any existing laws and policies. This form of critique can lead to evaluation of issues holistically.**

**The Diné fundamental law must guide the questions for the overall exam questions. The revised model NNBA bar exam should be relevant to the day-to-day practice of law in the Navajo Nation. The overall Navajo bar exam generally should remain at a total of 8 hrs.**

**Can Navajo Concept of four-direction be incorporated into Navajo court case decisions?**

### **The Need for Navajo Nation Limited Law License**

Limited law license should be available to those tribal court advocates who choose not to become a full-fledged bar member but seeks to practice law in the Navajo Nation jurisdiction limited to family law.

**Justification and need for Navajo Nation limited law license.** There are many cases filed in the Navajo courts. There is a high volume of family law cases. Lawyers are expensive. Most Navajo clients cannot afford attorneys. The numbers of Tribal court advocates have severely diminished over a decade. Tribal court advocates in private practice from 1960's to 1990's, were able to represent client community at a reasonable and affordable rate. Clients are left without legal representations. These are specific reasons that highly support establishing a limited law license to practice in Navajo family, domestic relations and domestic violence. A separate bar outlines and exam needs to be developed for this purpose. An official bar review outlines should be adopted by NNBA to guide what questions will be on bar exams. The limited law license bar exam should be designed to meet the needs of the people, the communities we serve in light of the unique Navajo culture, and language.

The opportunity to obtain a limited law license to practice in the Navajo Nation jurisdiction is open to those who meet bar membership qualifications pursuant to the NNBA guidelines. Individuals who

successfully pass the NNBA limited law license bar exam shall be deemed as regular bar members. [NNBA bi-laws should be amended to approve Navajo Nation Limited Law License.]

## **Mandatory Navajo Bar Review Training**

To ensure that tribal courts applicants can enhance their chance of passing the Navajo bar exams; a six weeks mandatory Navajo bar prep training is required. Hands-on training and learning from the beginning is very important. One of the main objectives will emphasize how to prepare for a case.

**Mandatory Navajo Bar Review Training.** For the purpose of preparation for the Navajo bar exam, the following Navajo bar review sessions will cover Fundamental laws of the Diné consisting of learning Navajo and Non-Navajo style of bar essay exam, Navajo style scenario exam, short answer questions, and Diné method of Four Direction problem solving analyses.

1. The Fundamental Laws of Diné (FLD) from a selected number of Navajo Creation stories, Navajo law related vocabularies and cultural concepts, Navajo court case decisions and peacemaking process.
2. Selected core of Navajo bar subjects limited to eight (8), officially adopted by the Navajo Nation Bar Association. This will include an official developed bar outlines covering the foregoing core subjects. A separate bar review outlines official adopted by NNBA will guide what questions will on the bar exams.

The goal of the training will place much emphasis on learning how to spot the issues and framing the issues with intense exam taking one after another. The scope of the exam questions must be relevant to the common Navajo law practice.

Very important: Again, for the purpose of mandatory Navajo bar prep training, the latest NNBA bar outlines and all previous bar

exam questions with model answers should be release to the bar applicants. Making available all past Navajo bar exams with model answers will inform tribal court applicants exactly what to expect on the bar exam.

**Recruitment:** There are a number of Navajos interested in taking Navajo bar exam. A need to acquire a list of all NTU law advocate gradates and other interested Navajos. Of the current number of the overall NNBA members, how many are tribal court advocates?

As a part of the bar review training, tribal court advocates trainees will be required to submit bar exam applications from the beginning of their review training.

**Instructors:** Identify NNBA bar members to assist with the mandatory mentorship program and/or teach bar prep. Acquire a list of names of tribal court, lawyers and others to assist with bar review instructions.

**Duration:** will the mandatory bar review sessions be held? 6 weeks. The bar reviews will be held at two possible ideal locations, one in Crownpoint and the other in Window Rock, AZ.

- Draft a propose budget for \$30,000 to cover these training expenses:
  - The cost of attendance, including meals and mileage for participants, Cost of printing of bar review materials, bar exam application fees, all applicants must submitted applications at the beginning of review sessions.
  
- **List of individuals who will consulted with for feedback on the proposed Navajo bar exam revision:**
  - Beth Kaimousitz, UNM Law Professor
  - Kip Bobroth
  - Paul Barber

- Justin Jones
- Jim Zion
- Levon Henry
- Albert Hale
- Joe Hibbard
- B.J.
- Justice Austin
- Tom Tso
- Lawyer-to-Dana Worker
- Carolyn Drouin
- Benson Begay
- Paul Spruhand
- Casey Watchman
- Levon Henry
- Shawn Attakai, Staff Attorney at Crownpoint District Court
- Dr. Henry Fowler, NTU Diné Studies Instructor
- Perry Roy James, NTU Diné Studies Instructor

**Hold a dialogue circle at the upcoming 2019 annual NNBA bar conference to address the issue the low NNBA bar exam pass rate among the Navajo tribal court advocates.**