

SUPREME COURT OF THE NAVAJO NATION

Thomas A. Biscup,
Petitioner,

v.

Kayenta District Court,
Respondent,

and Concerning:

Spencer Parrish,
Real Party in Interest.

OPINION

Before JAYNE, J., Chief Justice, SHIRLEY, E., Associate Justice, and THOMPSON, C., Associate Justice by Designation.

Original action against the Kayenta District Court concerning pro bono appointment as to Cause Nos. KY-CR-167-2018 and KY-CR-199/200-2019, the Honorable Tina Tsinigine, presiding.

Thomas A. Biscup, Shelby Township, Michigan, Petitioner pro se; Letitia Stover, Kayenta, Navajo Nation, for Respondent.

JAYNE and THOMPSON filed the opinion of the Court. SHIRLEY dissented.

This action concerns an attorney pro hac vice's challenge to a pro bono appointment by the Kayenta District Court under the Navajo Pro Bono Rules.

I

Thomas A. Biscup ("Petitioner") sought pro hac vice admission under the Bylaws of the Navajo Nation Bar Association, Inc. ("Bylaws"). Pro hac vice admission is temporary admission of an out-of-jurisdiction lawyer to practice before a court in a specified case or set of cases.

Black's Law Dictionary 54 (9th ed. 2009). As a lawyer not licensed to practice in the Navajo

Nation (“Nation”), Petitioner began his process for pro hac vice admission with the Navajo Nation Bar Association, Inc. (“NNBA”).

The Court notes for purposes of background that Petitioner submitted the required information and fee to the NNBA on January 17, 2018 for pro hac vice admission. Thereafter, he received a Certificate of Pro Hac Vice (“Certificate”) from the Chair of the Admission Committee (“Committee”) of the NNBA on February 9, 2018 certifying that the Petitioner, “complied with the NNBA Bylaw that governs requirements for *Pro Hac Vice* admission to practice before the Courts of the Navajo Nation.”

As required by the Bylaws, Petitioner associated with Michael Barthelemy (“Barthelemy”), a regular member of the NNBA in good standing. *Bylaws, at A.2.* Barthelemy filed a motion for Petitioner’s pro hac vice admission in Window Rock District Court (“WRDC”) on March 9, 2018. The WRDC did not rule on the Petitioner’s motion for pro hac vice admission.

One (1) year later on March 12, 2019, the Real Party in Interest, Spencer Parrish, (“Parrish”) requested pro bono counsel in the Kayenta District Court (“KDC”) for representation in several criminal charges. After review, KDC ruled that Parrish is indigent and eligible for appointment of counsel. The KDC sent a request to the Office of Pro Bono Services (“OPBS”) to obtain the name of the next eligible counsel on the pro bono list. Based on the NNBA’s list of members and non-members eligible for pro bono appointment, the Petitioner’s name was sent to the KDC by the OPBS within the Navajo Nation Supreme Court, which keeps and maintains the pro bono list.

On April 1, 2019, KDC entered an order appointing Petitioner as pro bono counsel for Parrish.

On April 9, 2019, Petitioner filed a motion to decline appointment or withdraw the pro bono appointment in KDC. He claims without an order of the WRDC granting his pro hac vice admission he would be violating NNBA Rules of Professional Conduct and criminal and civil Navajo Nation (“Nation”) statutes concerning the unauthorized practice of law if he took the KDC pro bono assignment for Parrish. Petitioner claims the WRDC has not ruled on his motion for pro hac vice admission. Petitioner also claims good cause exists to withdraw because he cannot competently handle the criminal matter and the representation will cause him an unreasonable financial burden. KDC denied his withdrawal on April 10, 2019.

On May 2, 2019, the Petitioner filed a Petition For Writ of Prohibition (“Petition”) against KDC, challenging his pro bono appointment to represent Parrish claiming he has not been admitted pro hac vice status by WRDC and, without an order granting his motion for pro hac vice admission, he is not eligible to practice in the Nation’s courts. *Petition*, at 1. The Court granted an alternative writ on May 7, 2019 directing KDC to show cause why the writ should not be made permanent. The matter was set for hearing on May 22, 2019.

On May 15, 2019, KDC responded to the Writ by asserting that the Petitioner received a Certificate from the NNBA, associated with a member of the NNBA in good standing, was referred by the OPBS, and, thus, deemed admitted to practice before the Nation’s courts and eligible for pro bono appointment.

After the hearing, the Court concluded the pro bono appointment by KDC was in accordance with Navajo law. The Court ordered that, “However, under the circumstances of this case, the Kayenta District Court shall vacate its order of pro bono appointment.” It ordered the OPBS to assign new pro bono counsel to Parrish, and ordered the NNBA to cease acceptance of

pro hac vice applications and issuance of pro hac vice certificates. This detailed written decision now follows.

II

The threshold issue is whether there is evidence that the district court clearly lacks jurisdiction sufficient to warrant a permanent Writ.

A secondary issue presented is whether an order granting pro hac vice admission is required before pro hac vice attorneys are eligible for pro bono appointment.

III

The Petitioner filed a Writ against KDC, challenging his pro bono appointment claiming he has not been admitted pro hac vice status by WRDC to practice law within the Nation. The Petitioner contends that a Writ must be granted to prohibit KDC from compelling him to represent Parrish. Based on the Writ presented in the first instance, the Court issued an Alternative Writ to have KDC show cause why the writ should not be made permanent. *N.R.C.A.P. 26(c)*.

The Court has the authority to issue writs pursuant to 7 N.N.C. § 303. Issuing a writ is an extraordinary remedy only granted under rare circumstances. *Yellowhorse, Inc. v. Window Rock Dist. Ct.*, 5 Nav. R. 85, 86 (Nav. Sup. Ct. 1986). The Court has ruled that, “A Writ of Prohibition is a discretionary writ and is appropriately issued where the trial court is proceeding without or in excess of its jurisdiction, or has abused its discretion in exercising its function over matters within its authority to decide, and petitioner has no plain speedy and adequate remedy at law.” *McCabe v. Walters*, 5 Nav. R. 43, 47 (Nav. Sup. Ct. 1985) (citation omitted).

At a minimum, the Petitioner must show that (1) the lower court is about to exercise judicial power; (2) the exercise of such power by the lower court is not authorized by law; and

(3) the exercise of such power will result in injury, loss or damage for which there is no plain, speedy and adequate remedy at law. *Yellowhorse*, at 86.

The first inquiry is whether the Petitioner demonstrated that KDC is proceeding without or in excess of its jurisdiction. The Court follows precedent set for trial courts who proceed without or in excess of its jurisdiction. *Id.*, at 87. KDC demonstrated that pro bono appointment is within its judicial power and authorized by law. *Shaw v. Shiprock Fam. Ct.*, 9 Nav. R. 365, 368 (Nav. Sup. Ct. 2010). Based on KDC's judicial power to appoint pro bono counsel, the Petitioner must show that the KDC decision to assign him as pro bono counsel to represent Parrish in criminal cases was not authorized by law. *Yellowhorse*, at 86. Petitioner claims he has not been admitted pro hac vice status by WRDC and, without an order granting his motion for pro hac vice admission, he is not eligible to practice in the Nation's courts. *Petition*, at 1. Petitioner argues that he may be subject to disciplinary action for unauthorized practice of law if he accepted the pro bono appointment.

The Petitioner challenges his pro bono appointment of Parrish. The Petitioner asserts that he complied with the NNBA prerequisites for pro hac vice admission, but the WRDC has not granted his motion to appear pro hac vice. Therefore, unless and until the WRDC enters an order granting his motion for pro hac vice admission, he does not have the obligation to accept and act on pro bono appointments in KDC. *Petition*, at 2.

The Petitioner agrees he has the obligation to accept and act on pro bono appointments, but only after an order granting him pro hac vice admission is ordered by WRDC, not when the Chair of the Admissions Committee issues a Certificate. The Petitioner raises the issue of when his obligation for pro bono appointment begins. The Petitioner relies on precedent to support his proposition that there must first be a court order approving pro hac vice admission. *Navajo*

Nation v. MacDonald, 6 Nav. R. 222, 224 (Nav. Sup. Ct. 1990)(non-member of the NNBA to seek leave of court and order to appear pro hac vice), *Corporation of the President of the Church of Jesus Christ of Latter-Day Saints v. Window Rock Dist. Ct.* (hereinafter “LDS”), No. SC-CV-42-18 (Nav. Sup. Ct. December 28, 2018)(associate member of the NNBA must seek leave of court and order for applicant to appear pro hac vice). The *LDS* case did not concern pro bono appointments. The Petitioners in *LDS* attempted to have a non-member attorney argue before the Court with no approved association with counsel of record in the underlying case and no entry of appearance in the Court.

In response, KDC asserts that the Petitioner’s request for a permanent writ should be denied because the Petitioner’s argument for a Writ is non-jurisdictional. *Response to Petition for Writ of Prohibition*, at 2. KDC asserts it appointed the Petitioner as pro bono counsel for Parrish based on the OPBS’ referral. KDC received the Petitioner’s name from the OPBS as a pro bono referral and appointed the Petitioner upon that referral. The OPBO obtained Petitioner’s name from the NNBA, which limits its participation to receiving pro hac vice applications, application fees, and issuing pro hac vice certificates. KDC relied on OPBS’ referral of the Petitioner’s name to KDC, not upon a court order authorizing the Petitioner to practice law as a pro hac vice attorney. In fact, KDC was unaware there was a pending motion for Petitioner’s pro hac vice admission in the WRDC. Making matters more complicated, the OPBS did not know about the pending motion for pro hac vice admission in the WRDC had not been acted upon since its filing in March, 2018. The need for the Court to review the process for pro hac vice practice is imminent.

KDC’s reliance on the OPBS’ referral of the Petitioner is not legally sound to overcome the requirement that a pro hac vice applicant shall be admitted to practice in the Nation’s courts.

KDC was unable to show why the writ should not be made permanent because it did not produce a WRDC court order ruling that the Petitioner received pro hac vice admission, as required by *MacDonald and LDS, supra*. When involving jurisdiction, a writ of prohibition “will issue when the lower court clearly has no jurisdiction and the petitioner has no other remedy available.” *Kang v. Chinle Family Court*, No. SC-CV-37-18, slip op. at 4 (Nav. Sup. Ct. September 21, 2018). The Court rules the Petitioner proved the Writ should be made permanent.

Secondly, the Court looks at whether the Petitioner has a plain, speedy, and adequate remedy at law. Under *Yellowhorse, supra*, the Court may analyze KDC’s action which may result in injury, loss, or damage for which there is no plain, speedy and adequate remedy at law for the Petitioner. *Id.*, at 87. The Petitioner claims without an order of the WRDC granting his pro hac vice admission he would be violating NNBA Rules of Professional Conduct and the Nation’s criminal and civil statutes concerning the unauthorized practice of law if he took the pro bono assignment for Parrish. The Petitioner claims the WRDC has not ruled on his motion for admission. The Petitioner also claims good cause exists to withdraw because he cannot competently handle the criminal matter and the representation will cause him an unreasonable financial burden.

The Petitioner is concerned with the unauthorized practice of law should he accept the pro bono assignment to represent Parrish. It is the court that ultimately determines who has committed the unauthorized practice of law. 7 N.N.C. § 253(A)(3). The Petitioner recognizes he is not authorized to practice before the courts of the Nation as there are consequences for the unauthorized practice of law under 7 N.N.C. § 606(B), (C), (E). His basic inquiry into his eligibility to practice is in conformance with law. *Tafoya v. Navajo Nation Bar Association*, 6

Nav. R. 141, 146 (Nav. Sup. Ct. 1989). The Court rules that the Petitioner has no plain, speedy, and adequate remedy of law.

IV

A discussion on pro bono practice is warranted because the Petitioner's filing of the Writ concerns an original action on pro bono appointments. Pro bono appointment is an appointment by a Navajo district court to "represent a party or an interested person at no fee or at a reduced fee." *Navajo Pro Bono Rules ("NPBR") I.A.* On the other hand, pro bono service is uncompensated service to the Navajo Nation courts other than a pro bono appointment. *NPBR I.B.* This case only concerns pro bono appointments, not pro bono service.

The procedures for pro bono appointments are shared between the NNBA, OPBS, and Navajo Nation courts. The NNBA has a role in the pro bono assignment process by maintaining an updated member and non-member list for pro bono appointments. *See NPBR II.A.* From time to time the NNBA sends names of eligible members of the NNBA to the OPBS. The OPBS is an office established within the Supreme Court. *NPBR VIII.A.* The OPBS is responsible for keeping and maintaining the pro bono lists and the pro bono service plans of members exempt from pro bono appointments. *NPBR II.*

As a general rule, all regular NNBA members and certain non-NNBA members permitted "to practice in the Navajo Nation courts are subject to and shall accept pro bono appointments." *NPBR II.A.* Non-members of the NNBA include attorneys who are non-NNBA members permitted to appear in the Navajo Nation courts on a pro hac vice basis. *NPBR VII.B.* Under these rules, pro hac vice attorneys "shall be eligible for pro bono appointment at the rate of one appointment for each pro hac vice admission." *Id.*

The pro hac vice admission procedure is extensive. The Court reviews the Bylaws to capture the duties and procedures of the Admissions Committee in processing pro hac vice applications. The Bylaws “govern pro hac vice admission to practice in Navajo Courts and other Navajo Nation forums.”¹ *See Bylaws, at II*. One of NNBA’s functions is to process pro hac vice applications. The NNBA receives applications for pro hac vice admission and refers the documents to the Admissions Committee of the NNBA. The Committee makes a decision on the application, its Chair issues a pro hac vice certificate, and refers the certificate back to the NNBA office. After receiving the certificate, the NNBA sponsoring member must then seek leave of the court by motion with supporting documentation and obtain permission from the court prior to the pro hac vice attorney’s appearance in court. *LDS*, at 6. Although the NNBA processes pro hac vice applications, it does not have the judicial authority to determine who is allowed to practice in the Nation’s courts. The court is vested with the authority to determine who is allowed to practice before the court. In *LDS*, the Court ruled that pro hac vice appearance requires leave of the court to appear. *Id.*

The NNBA has the responsibility to keep a list of non-members of the NNBA including the attorneys pro hac vice. *NPBR I.C.* The pro hac vice listing provided by the NNBA does not indicate which attorneys intend to appear in Navajo courts. It is unclear whether the NNBA submits a list of attorneys admitted pro hac vice to the OPBS on a regular basis. It is also unclear if the OPBS keeps a referral pro bono appointment list of pro hac vice admitted attorneys.

The Pro Hac Vice licensure rules and procedures are found in the Bylaws. The conditions of appearance for applicants for pro hac vice, in pertinent part, are:

¹ The admission of pro hac vice attorneys *in other Navajo Nation forums* is not before this Court.

A.1 A pro hac vice attorney may enter an appearance no more than 1 time per calendar year in any civil or criminal matter before the court...pro hac vice attorney shall not be allowed to participate in more than three cases, actions or proceedings at the same time.

A.2 Pro hac vice attorney shall associate with a regular member of the NNBA in good standing, upon whom notice shall be served, who shall sign the first motion or pleading in the case, action, or proceeding and who shall continue in the case or proceeding as counsel of record unless another member is substituted.

A.3 (omitted)

A.4. Prior to each case, action, or proceeding in which the pro hac vice attorney intends to appear, the attorney shall submit the following to the NNBA:

- a. A non-refundable fee of \$300.00;
- b. Current documentation of good standing from the bar of any State in which the pro hac vice attorney is admitted.
- c. A signed statement that the pro hac vice attorney will comply with the Navajo Rules of Professional Conduct and the Navajo Pro Bono Rules, and will consent to the jurisdiction of the Navajo Nation Courts and the NNBA Disciplinary Committee with respect to acts and omissions occurring during the pro hac vice attorney's admission under this section.
- d. A signed statement that the pro hac vice attorney has not entered a pro hac vice appearance in any other Navajo Nation case, action, or proceeding during the same calendar year and is currently participating in two or less other Navajo Nation cases, actions, or proceedings.
- e. Upon receiving the materials required in Section 4, the Chair of the Admissions Committee will promptly issue the pro hac vice attorney a certificate showing that he or she has complied with the requirements of this section.

Bylaws, May 15, 2015.

V

The practice of pro hac vice as it relates to the process for pro bono appointments in the Nation has come to the fore front in this matter. The Court conducts a comprehensive review of this process because it answers the inquiry of pro hac vice existence on the Nation.

The Court first reviews the Certificate issued by the Chair of the Committee. The Chair certified the Petitioner "complied with the NNBA Bylaw that governs requirements for *Pro Hac Vice* admission to practice before the Courts of the Navajo Nation." *Petitioner's Ex. B*. On its

face, it is unclear whether this meant that the Petitioner simply complied with the Bylaws or that permission “to practice before the Courts of the Navajo Nation” was authorized, or even intended. However, based on the language in the Bylaws, the Certificate can only be interpreted to mean that the Petitioner complied with the requirements of the pro hac vice section under the *Bylaws, at II.A.4.e*. The NNBA issued a Certificate of Pro Hac Vice to the Petitioner, not a court order.

The NNBA performs statutory administrative functions to verify who is in good standing with the NNBA, but it cannot order who practices in Navajo courts. The Court agrees with the Petitioner that the ultimate determination of who shall practice in the Nation are the courts who have inherent power to issue orders “necessary and proper to the complete exercise of their jurisdiction. 7 N.N.C. § 255. Precedent supports the Petitioner’s argument that pro hac vice admission occurs when the district court enters an order granting pro hac vice admission. However, pro bono appointment obligations under the Navajo Pro Bono Rules is a separate matter.

The NPBR obligate pro hac vice attorneys permitted to appear in Nation tribunals for pro bono appointments in Navajo courts. *NPBR VII.B*. The guidance for pro hac vice attorneys in the NPBR is “non-members of the NNBA who have been permitted to appear in the Nation courts on a pro hac vice basis shall be eligible for pro bono appointment at the rate of one appointment for each pro hac vice admission.” *Id.*

In this matter, KDC did not follow the proper procedure before entering an order appointing the Petitioner to represent Parrish. It did not make diligent inquiry into the Petitioner’s status as a pro hac vice applicant. Case law clearly holds that a pro hac vice applicant cannot practice before the Nation’s tribunals unless and until a court order rules that an

applicant has met the requirements for admission. *MacDonald and LDS, supra*. Although KDC testified that it relied on the OPBS referral and trusted that referral, the OPBS is an administrative office not vested with the authority to issue orders for pro hac vice admission.

The OPBS did not make diligent inquiry into the Petitioner's status as a pro hac vice applicant before it sent the Petitioner's name to KDC. Under the pro bono rules, the OPBS "shall be responsible for keeping and maintaining the pro bono lists as well as the pro bono plans of members exempt from appointments. *NPBR VIII.B*. In keeping and maintaining pro bono lists, the OPBS must be cognizant that pro bono lists includes a non-member of the NNBA who is eligible for pro bono appointment pursuant to Rule II.B (non-members of the NNBA who have been permitted to appear in the Navajo Nation courts on a pro hac vice basis shall be eligible for pro bono appointment...). *NPBR I.C.1, VII.B.*

VI

For the last quarter century, the policies on pro hac vice remains the same. The Supreme Court adopted the pro bono rules in 1990. *Order No. SCAP-4-90*. The Court repealed these rules in 1996 and replaced it with the current rules. *Order No. SC-SP-02-94, March 20, 1996*. These rules were later approved by the Judiciary Committee of the Navajo Nation Council on June 18, 1996. *Resolution No. JCJN-8-96*. The Supreme Court and Judiciary Committee saw benefit and value in pro hac vice attorneys for the Nation. The pro bono rules for pro hac vice attorneys has never been removed as a policy decision.

The Court will not remove the policy of pro hac vice. Rather, the Court recognizes that the process must be evaluated to streamline the process for greater efficiency and reliability. The NNBA, courts and OPBS must act to remedy the problems of pro hac vice admissions and pro bono appointment for pro hac vice attorneys. The Court outlined the procedures for appearance

by an attorney who is not licensed in this jurisdiction. *LDS, supra*. The purpose of the pro hac vice procedures is to allow non-NNBA members to practice in the Nation and participate in pro bono appointments.

The Court emphasizes that pro hac vice attorneys play an important role and sustains a person's right to his or her day in court. The Court recognizes the People have a right to obtain a lawyer of their choosing. Succinctly stated, "We require that everyone coming before our courts have an opportunity to be heard at a meaningful time and in a meaningful way. Nihidine'é ílįigo bıká'e'elyeed. That is the right to one's day in court." *In re Estate of Plummer, Sr.*, 6 Nav. R. 271, 275 (Nav. Sup. Ct. 1990). Dine' bi'neenahazaani provides "for the future development and growth of a thriving Navajo Nation regardless of the many different thinking, planning, life ways, languages, beliefs, and laws that may appear within the Nation." 1 N.N.C. § 202(G). We have to look beyond today and allow others including our children to be able to help Diné families who encounter legal issues. The experience of Navajo court and fundamental laws will be the learning edge of pro hac vice attorneys.

The benefits outweigh criticisms of pro hac vice practice. There is limited ability to practice law on the Nation for pro hac vice attorneys with safeguards in place. A pro hac vice attorney "may enter an appearance no more than 1 time per calendar year in any civil or criminal matter before the court...pro hac vice attorney shall not be allowed to participate in more than three (3) cases, actions or proceedings at the same time." *See Bylaws at II.A.1*. A pro hac vice attorney must associate with a member of the NNBA who vicariously vouches for the applicant's willingness and fortitude to learn local law and comply with matters of local practice, including Navajo law, culture, traditions and history.

The Petitioner sought pro hac vice admission in the WRDC to assist a Navajo family with a housing complaint against a Navajo general contractor and subcontractors in the underlying district court case. *Petition*, at 2, 3. Attorneys appear pro hac vice for many valid reasons. The attorney may be retained for their skills in a particular type of case, or they just moved to a new jurisdiction and plan to apply to the bar but wish to start practice immediately.

On the Nation, the benefit of allowing attorneys pro hac vice increases the pool for pro bono assignments since pro hac vice attorneys “shall be eligible for one (1) pro bono appointment at the rate of one appointment for each pro hac vice admission.” *NPBR VII.B*. With the alarming rate for the need of pro bono legal counsel on the Nation, pro hac vice admitted attorneys provide the cushion for other pro bono legal counsel who are regularly singled out for assignments. Pro bono appointment by pro hac vice attorneys adds to the pool of eligible attorneys who would fulfill appointments for indigent defendants in a criminal case, parents in termination of parental rights, proceedings involving children or any party where the interests of justice require. *NPBR III.A.1-4*.

The Court is faced with a system challenge and recognizes the need to make changes to pro bono appointments as applied to pro hac vice admission. The high number of withdrawals by both NNBA members and non-members for pro bono appointments have burdened all components of the pro bono appointment process. Based on the foregoing, the Court makes the following orders:

The OPBS shall verify the existence of a court order for pro hac vice admission before making a pro bono referral. Further, the OPBS shall put in place a pro bono list for pro bono appointments for pro hac vice attorneys. Upon receipt of a court order admitting pro hac vice for

court appearance, the OPBS shall add the name of the pro hac vice attorney to the list for pro bono appointment in the district in which the admission was made. *NPBR I.C.1.*

The OPBS shall put the Petitioner's name on Window Rock/Chinle (WRCH) pro bono list upon proof of a court order for pro hac vice admission.

Because of confusion on the Certificate, the Court orders that the NNBA shall clearly indicate on all certificates that it is not a court order for Pro Hac Vice Admission but a certificate which verifies a pro hac vice applicant has complied with the Bylaws for pro hac vice application.

Upon receipt of a Certificate, the sponsoring NNBA member shall seek leave of court to obtain applicant's pro hac vice admission prior to pro hac vice attorney's appearance in court. *LDS, supra.* It is ordered that the NNBA sponsoring member shall send to the OPBS a copy of the motion for leave of court to admit a pro hac vice attorney. It is further ordered that the sponsoring member shall send the court order granting pro hac vice admission to the OPBS.


The courts have a role in pro bono appointments to timely respond to motions for leave of court for pro hac vice admission. In the WRDC, the Petitioner's request for leave of court for pro hac vice appearance had not been acted upon. The court, upon the granting of the motion admitting the pro hac vice appearance of the non-member, shall inform the court administrator who must forward an order of admission or appearance to the OPBS. *See NPBR VII.B, VIII.C.*

VII

Pursuant to this Court's discretionary authority, we grant a permanent Writ of Prohibition. The Kayenta District Court failed to show why the writ should not be made permanent.

The Court vacates the May 22, 2019 order to the NNBA which ceased acceptance of pro hac vice applications and certificates.

Dated this 28 day of May, 2021.


Chief Justice

/s/ The Honorable Cynthia Thompson
Associate Justice

CONCURRING IN PART; DISSENTING IN PART BY ASSOCIATE JUSTICE SHIRLEY:

The majority opinion addresses two issues which have already been decided in the previous order issued at the hearing. I concurred with the Court's issuance of the Writ of Prohibition, and the Court's regulation of the practice of law on the Navajo Nation.

This Court issued an Order concluding that the Kayenta District Court acted within the law when it appointed Biscup upon the referral of his name by the Office of Pro Bono Services, providing that the Kayenta court cannot be responsible for knowing that the name provided by the Office of Pro Bono Services is anything other than proper. Accordingly, this Court ordered the pro bono appointment of Biscup be vacated and ordered the Office of Pro Bono Services to refer new counsel for new appointment. The Court further decided that it would conduct a review of pro hac vice admissions. When confronted with the absence of written policies and procedure, this Court was forced to examine the extent of its delegation to the Navajo Nation Bar Association (NNBA) and the continued feasibility of pro hac vice admission. *See*, Transcript. Accordingly, the Court placed a stay on the acceptance of applications by the NNBA and announced that a more detailed decision would be forthcoming.

The majority did not adequately address the feasibility of pro hac vice admissions and its effect on pro bono appointments of pro hac vice attorneys sufficiently to resume pro hac vice admissions. Instead the majority reverses the Court's previous decision and faults the Kayenta court in hindsight, in violation of our concepts of mutual respect, respectful relations demanded by *k'e*, and other fundamental values including comprehensive problem solving.

The Navajo Rules of Pro Bono Appointment requires a close and constant coordination between the District Courts, the Office of Pro Bono Services, and the NNBA. Only if there are specific responsibilities being implemented along with close and consistent coordination between

the responsible offices and entities will this process work. This case demonstrates an example of the breakdown in the process and only heightens the pertinent need for cohesive communication between the responsible offices. More importantly, this case demonstrates the need to address shortcomings in the process that undermines our inimitable jurisprudence and, ultimately, our sovereignty.

Navajo is unique from other jurisdictions because here on Navajo, we are Diné. A society which has its own culture, teachings, way of life, and value system. We are unique in our own way and have traditional laws that guide us since the beginning of time. Like all other ethnic group of people, we have similar challenges and barriers in our lives, notably with regard to modern challenges, some of which may require specialized knowledge as in the practice of law when an individual becomes involved in the legal system. Accordingly, the Navajo Supreme Court maintains control over the practice of law of legal practitioners who represent our Diné people. There are certain requirements that must be met in order to provide legal assistance and this is reflected in the admission requirements of the NNBA. The requirement for competency in Navajo Fundamental Law is foremost in my thoughts. This requirement must also apply to out of state attorneys who are applying for pro hac vice status. It is the duty of this Court to protect the People through the promulgation of rules and standards that address attorney behavior and attorney conduct. It is precisely the lack of regulation of pro hac vice practice that has led to the prohibition of pro hac vice at this time.

The NNBA is the organization charged with the pre-admission of the legal practitioners. However, the specific process through which out of state attorneys who apply for pro hac vice status has been lax and unclear. The current pro hac vice admission process circumvents the most crucial feature of the regular admissions process which requires an understanding of *Diné Bi*

Beenahaz'áanii. Competency in the foundation of Diné Law and our problem-solving approach in the four sacred directions separates our legal system from other jurisdictions. By allowing attorneys to appear under a pro hac vice status, then later openly profess that they lack knowledge of our fundamental law—we do the Nation and the People a disservice. *See, In re Practice of Law by Avalos*, 6 Nav. R. 191, 193 (Nav. Sup. Ct. 1990) (finding that an understanding of Navajo lifestyle and culture is indispensable to the practice of law within the Navajo Nation).

Biscup's situation is an example where a non-member of the NNBA is admitted under the pro hac vice status then later raises the issue of not knowing Navajo law. This alternative method of admission side-steps the requirement and purpose of the bar examination and, most importantly, the requirement of learning Diné Law and attaining knowledge of the custom and traditions of the Navajo people. In order to effectively advocate and represent Navajo individuals, one must identify with the life of the Diné to become familiar with our values and teachings. Biscup was cognizant of his own shortcomings in not knowing our Navajo Criminal Code, court rules, and Diné customs in order to provide a meaningful representation. *See, Biscup's affidavit filed by Biscup in support of his motion to decline appointment or withdraw filed in the lower court.*

As Diné, we are sovereign in our own ways with our cultural teachings. The Navajo Supreme Court in regulating the practice of law is exercising its sovereign responsibility and duty of preserving, protecting, enhancing the Diné Life Way. As a *nataanii*, we are charged to uphold this responsibility. *See* 1 N.N.C. § 203(E)(Explaining that the role of the Judicial Branch is to “uphold the values and principles of *Diné bi beenahaz' aánii* in the practice of peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments”). It is the duty of this Court to determine under what conditions a person can make an appearance in Navajo Courts. To not address the importance of Diné Law, we sidestep the serious responsibility

of regulation of Attorneys. The implementation of the pro bono services by non-members requires more than what is in place – our Navajo people deserve to be represented by competent and vigorous legal counsels in any proceeding in the Navajo Nation courts. Currently, there does not appear to be a benefit either to the People or to the Navajo court system in continuing the pro hac vice system.

For the foregoing reasons, I respectfully dissent, and would eliminate the pro hac vice program.


Associate Justice