

SUPREME COURT OF THE NAVAJO NATION

In the Matter of the Amendment of the
Rules for Pro Bono Appointments,

T.J. Holgate and
Lawrence A. Ruzow,
Petitioners.

ORDER

Before YAZZIE, Chief Justice, AUSTIN and CADMAN, Associate Justices.

Petition brought by T.J. Holgate, Esq., and Lawrence A. Ruzow, Esq., Window Rock, Navajo Nation (Arizona).

The Court reviewed 1) the Petitioners' petition to amend the 1990 Pro Bono Rules, and 2) the Petitioners' proposed amendments (Petitioners' Exhibit A), and it finds as follows:

1. On April 23, 1990, the Court entered Order No. SCAP-4-90, *Order Establishing Mandatory Requirements Regarding Pro Bono Appointments in the Navajo Nation* (1990 Pro Bono Rules), which established rules on pro bono appointments in the Navajo Nation;

2. Order No. SCAP-4-90 codified the prior practice of the Navajo Nation courts, which had been appointing Navajo Nation Bar Association (NNBA) members to represent

indigent criminal defendants and certain other parties;

3. On May 20, 1992, then Chief Justice Tom Tso appointed three NNBA members (Petitioners and Alan R. Taradash, Esq.) to head up a Pro Bono Committee to study and make recommendations to the Court on pro bono appointments;

4. The Committee drafted revised Rules for Pro Bono Appointments and circulated it among the NNBA membership. The comments of the membership have been incorporated into the Navajo Nation Pro Bono Rules (1996);

5. All NNBA members have a duty to the Navajo Nation legal system, including those members who cannot accept appointments to represent criminal defendants because of ethical or statutory prohibitions or both; and

6. There are three principal factors in the Navajo Nation Pro Bono Rules which the NNBA membership should be aware of:

A. The Navajo Nation Pro Bono Rules distinguishes between pro bono appointments (appointments to represent indigent criminal defendants and certain other parties) and pro bono service.

B. The Navajo Nation Pro Bono Rules groups the Navajo Nation courts into four areas (Tuba City-

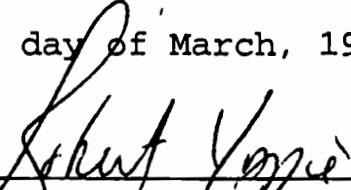
Kayenta, Shiprock-Crownpoint, Window Rock-Chinle, and Ramah-Alamo-Canoncito) and provides that NNBA members eligible for pro bono appointments, all of whom are affiliated with a particular district, shall provide representation in that district, or the district with which the member's home district is grouped.

C. The Navajo Nation Pro Bono Rules creates an "Office of Pro Bono Service" in the Navajo Nation Supreme Court to administer the Rules.

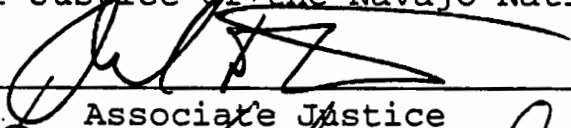
It is ORDERED that Order No. SCAP-4-90 (1990 Pro Bono Rules) is repealed and the attached Navajo Nation Pro Bono Rules (1996) is adopted in its place.

It is further ORDERED that the Navajo Nation Pro Bono Rules (1996) shall become effective upon approval by the Judiciary Committee of the Navajo Nation Council, pursuant to 7 N.T.C. § 601(b) (1985 Supp.).

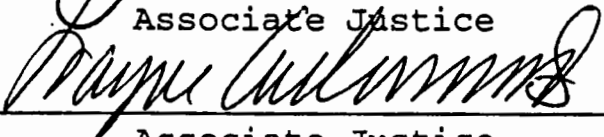
Filed this 20th day of March, 1996.



Chief Justice of the Navajo Nation



Associate Justice



Associate Justice

NAVAJO NATION

PRO BONO RULES

(1996)

Navajo Nation Pro Bono Rules (1996)

Rule I. DEFINITIONS

A. Pro bono appointment means an appointment by a Navajo Nation court to represent a party or an interested person (such as a child in a custody case) at no fee or reduced fee.

B. Pro bono service means uncompensated service to the Navajo Nation courts and is other than a pro bono appointment.

1. The Navajo Nation Supreme Court shall list the areas in which pro bono service can be performed.

C. Pro bono list means the list of Navajo Nation Bar Association (NNBA) members and others eligible for pro bono appointments in the Navajo Nation. For purposes of these rules, there are four (4) lists: (1) the TCKY list: NNBA members in the Tuba City and Kayenta districts; (2) the SRCP List: NNBA Members in the Shiprock and Crownpoint districts; (3) the WRCH List: NNBA members in the Window Rock and Chinle districts; and (4) the RAC list: NNBA members in the Ramah, Alamo and Canoncito district.

1. For pro bono lists purposes, a non-member of the NNBA who is eligible for pro bono appointment pursuant to Rule VII.B. shall be on the list applicable to the court in which the non-member last appeared.

Rule II. GENERAL RULE

A. All regular members of the NNBA and other persons

permitted to practice in the Navajo Nation courts are subject to and shall accept pro bono appointments.

1. Inactive members of the NNBA are eligible for and shall accept pro bono appointments as provided in these rules.

B. The following persons or positions are exempt from pro bono appointments and service:

1. The President and Vice-President of the Navajo Nation;
2. Navajo Nation Council Delegates;
3. Active judges and justices of the Navajo Nation and retired judges and justices who are not engaged in the active practice of law. This rule does not prevent the Chief Justice of the Navajo Nation from recalling retired judges and justices to the bench to help relieve congestion in the courts;
4. Attorney General of the Navajo Nation;
5. Chief Legislative Council of the Navajo Nation;
6. Employees of the Judicial Branch of the Navajo Nation; and
7. All Navajo Nation Prosecutors and Presenting Officers.

C. The following persons or positions are exempt from pro bono appointments, *but not exempt from pro bono service*:

1. Officers, Bar Commissioners and members of the Disciplinary, Training and Admissions Committee of the NNBA;¹
2. Persons who are employed by other sovereigns who are prohibited by the law applicable to their employment from pro bono

¹ Exempt from the first three (3) appointments which would otherwise be made each year. Once the Office of pro bono service has gone through the pro bono list three (3) times, these individuals' names would be restored to the list.

representation;

- a. Such persons must file with the office of pro bono service appropriate proof of the restrictions on their pro bono service; and
3. Other persons granted exemption by the Navajo Nation Supreme Court on petition for good cause shown with notice to the NNBA.

Rule III. PRO BONO APPOINTMENT OF COUNSEL

A. The Navajo Nation courts are authorized to appoint non-exempt NNBA members as counsel in the following types of proceedings:

1. For an indigent defendant in criminal proceedings;
2. For parents in termination of parental rights proceedings;
3. For a child in any proceeding concerning that child; and
4. For any other party in any other proceeding where the interests of justice require.

Rule IV. ELIGIBILITY FOR APPOINTMENT; COMPENSATION OF COUNSEL

A. No pro bono appointment shall be made if the person for whom the appointment is sought has resources which, if used, would enable the person to hire his or her own counsel.

1. A court making an appointment of counsel shall make a diligent inquiry of the resources of the person requesting counsel pursuant to the Navajo Nation Judicial Branch Indigent Policy.

B. When a pro bono appointment is made for a child,

the parents and relatives of the child shall be responsible for payment of compensation of appointed counsel.

C. In determining the compensation to be paid to appointed counsel, the court shall consider the distance traveled and expenses of appointed counsel.

D. The court may direct that compensation to appointed counsel be paid over a period of time; by payroll deduction; in kind or any other method designed to ensure fairness to all concerned.

Rule V. GUARDIANS AD LITEM

A. Courts may appoint NNBA members as guardians ad litem upon a specific finding that a legally trained guardian ad litem is required.

B. Non-NNBA members, including elders, community leaders, social workers and other appropriate persons may be appointed as guardians ad litem pursuant to appropriate rules and procedures established by the Chief Justice or, until such rules and procedures are established, rules adopted by the appointing court.

C. If an NNBA member is appointed as a guardian ad litem, the provisions of Rule IV shall then apply.

Rule VI. PRO BONO SERVICE

A. All persons claiming exemption under Rule II.B from pro bono appointments² shall file a statement with the NNBA on or before September 15 of each year which shall set forth the basis for the claimed exemption and shall either waive their exemption from pro bono service and request to be placed on the list for pro bono appointments, or else submit a proposed plan of pro bono service for the forthcoming year.

² Except Rule II.B. 6.

1. The pro bono plan shall specify the proposed alternative service and the estimated time to be spent on such service.
2. If 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.

B. 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.

C. 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.

Rule VII. PRO BONO REQUIREMENTS FOR INACTIVE NNBA MEMBERS AND CERTAIN NON-NNBA MEMBERS

A. Inactive members of the NNBA are eligible for pro bono appointments *unless* on or before December 1 of each year such members file a statement with the NNBA which states *either* that they are not engaged in the practice of law within the territorial jurisdiction of the Navajo Nation *or*, if they are engaged in the practice of law outside the territorial jurisdiction of the Navajo Nation, that no part of their practice consists of the practice of Navajo law (including representation of the Navajo Nation, but not limited to the giving of opinions on Navajo law).

1. Inactive members of the NNBA who did not file such statements shall be placed on the roll of NNBA members eligible for pro bono appointments pursuant to Rule VIII.B.
2. An inactive member of the NNBA who claims a Rule II.B exemption from pro bono appointments shall follow the procedure set

forth in Rule VI.

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 at the rate of one appointment for each *pro hac vice* admission.

Rule VIII. OFFICE OF PRO BONO SERVICE

A. There is created the Office of Pro Bono Service within the Navajo Nation Supreme Court.

B. The Office of Pro Bono Service shall be responsible for keeping and maintaining the pro bono lists as well as the pro bono plans of members exempt from appointments.

C. The procedure for pro bono appointments shall be as follows:

1. The court administrator of a judicial district contacts the Office of Pro Bono Service and advises the office that the court has decided to appoint counsel.
2. If the court order of appointment includes an *explicit* finding that counsel with some special skill (e.g. Bilingual) is needed and skill needed is set forth in the order, the court administrator shall so advise the office.
3. The Office of Pro Bono Service will then advise the court administrator of the counsel next on the appropriate list for appointment, or if special skill is needed, the counsel next on the appropriate list with that skill.
4. The next eligible person is appointed and the date of appointment is noted on the appropriate list. Counsel is removed from the list of persons eligible for appointment.

5. The order of appointment is finalized by the judge and sent to counsel with a copy of relevant pleadings and documents from the court file.
 - a. If the next court event is less than thirty (30) days from the date of appointment, the court administrator calls appointed counsel and advises counsel of appointment and date of next court event.
6. When matter for which appointment was made is completed, the court administrator notifies the Office of Pro Bono Service and counsel is restored to the appropriate list (at bottom).
7. If the Office of Pro Bono Service receives a request for appointment at a time when no counsel are left on the appropriate list, a new list shall be established with counsel listed in order of date of appointment (earliest date first).
8. No person will be appointed to serve in any proceeding outside his or her districts without the approval of the Chief Justice.
9. No pro bono appointment may be made except in conformity with these rules, nor may any appointment be made except by persons authorized to do so by these rules.

Rule IX. WITHDRAWAL OF COUNSEL--APPLICABLE TO CASES UNDER THESE RULES ONLY

A. Any appointed counsel who, for ethical reasons, believes he or she cannot serve as counsel in a given case shall file a motion to withdraw with the appointing court as soon as possible after the ethical question arises.

B. If a pro bono appointment creates a severe hardship for appointed counsel, appointed counsel may seek to withdraw on that basis.

1. Prior to seeking to withdraw on hardship grounds, an appointed counsel shall seek to associate with another counsel so that the hardship might be reduced or limited.³

C. The Navajo Nation courts shall utilize facsimile transmission, telephonic motion hearings and pretrials, scheduling of cases involving the same counsel on the same day, and other aids to help reduce time and expense on appointed counsel.

Rule X. SUBSTITUTE COUNSEL

A. An appointed counsel may arrange for substitute counsel for a particular phase of a case, consisting of a law partner, associate or other bar member.

B. An appointed counsel may arrange for a firm appearance in a case for flexibility and scheduling purposes so that any member of the firm may appear on the counsel's behalf.

³ For example, counsel with offices many miles from the appointing court might be able to work out an arrangement with a local counsel under which the out of area counsel would do the paperwork and the local counsel would make the court appearances.