RESOLUTION OF THE
LAW AND ORDER COMMITTEE OF
THE NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL—Second Year, 2016

AN ACTION

RELATING TO LAW AND ORDER; AMENDING ADMINISTRATIVE HEARING RULES FOR ETHICS CASES

BE IT ENACTED:

Section One. Authority

1. The Navajo Nation Office of Hearings and Appeals is an administrative hearing body. 2 N.N.C. § 1053 *et seq.*

2. Among its authority to conduct various administrative hearings, the Office of Hearings and Appeals has the authority to convene hearings concerning administrative complaints filed by the Navajo Nation Ethics and Rules Office. CJA-03-13, section 5(E); 2 N.N.C. §§ 3766, 3770 and 3774.

3. The Law and Order Committee is a standing committee of the Navajo Nation Council 2 N.N.C. § 600. Among it various statutory duties and responsibilities is the authority of overseeing "all administrative legal tribunals including ... the Office of Hearings and Appeals." 2 N.N.C. § 601(C)(1). The committee also has oversight authority over the Ethics and Rules Office. *Id.*

Section Two. Findings

1. The Administrative Hearing Rules for administrative ethics complaints filed by the Ethics and Rules Office has not been amended or otherwise updated since 2001. See attached Exhibit "B," *ERC-01-029*, rules and resolution of the previous Ethics and Rules Committee.

2. In 2013, the Navajo Nation Office of Hearings and Appeals assumed all administrative hearing functions of the previous Ethics and Rules Committee over ethics complaints filed by the Ethics and Rules Office. CJA-03-13, section 5(E). Administrative hearing responsibilities include the formulation of rules for hearings. 2 N.N.C. § 3766.

3. The Ethics and Rules Office and the Office of Hearings and Appeals were extended the opportunity to provide comments on proposed amendments to the ethics administrative hearings rules. The Office of Hearings and Appeals recommends approval.

Section Three. Rescinding previous Ethics Administrative Hearing Rules

The Navajo Nation hereby rescinds previous Administrative Hearing Rules approved under resolution number ERC-01-029, incorporated herein by this reference. Concerning rules being rescinded, see Exhibit "B." Also, all other previous rules and practices relative to ethics hearings before the Office of Hearings and Appeals are similarly rescinded and/or otherwise shall no longer be applicable.

Section Four. Approving new Ethics Administrative Hearing Rules

The Navajo Nation hereby approves new Administrative Hearing Rules applicable to ethics complaints filed by the Navajo Nation Ethics and Rules Office as provided in Exhibit "A," attached hereof.

Section Five. Effective date

The amendments enacted herein shall be effective upon approval by the Law and Order Committee of the Navajo Nation Council. For cases pending at the time the amendments are approved, the prior rules shall be used in concluding the cases.

Section Six. Maintenance of rules

The Ethics and Rules Office shall maintain copies of rules amended herein. The original bill shall be forwarded to Central Records.

Section Seven. Savings Clause

Should any provision of Administrative Hearing Rules adopted herein be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions of the rules which are not determined invalid shall remain applicable to administrative ethics hearings before the Office of Hearings and Appeals.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Law and Order Committee of the Navajo Nation Council at duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 opposed, this 28th day of July, 2016.

Honorable Edmund Yazzie, Chairperson
Law and Order Committee

Motion: Honorable Otto Tso
Second: Honorable Herman M. Daniels

Exhibit "A"

ETHICS ADMINISTRATIVE HEARING RULES

Office of Hearings and Appeals

Rule 1. AUTHORITY

These administrative hearing rules are adopted pursuant to provisions of the *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.*

Rule 2. ETHICS COMPLAINTS

A. Ethics and Rules Office. Pursuant to the *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.* the Navajo Nation Ethics and Rules Office, or a special prosecutor under applicable provisions of law, is authorized to file ethics complaints for hearings before the Office of Hearings and Appeals. References to the Ethics and Rules Office under these rules shall include duly appointed special prosecutors, unless the context of a rule otherwise indicates.

B. Complaint content. All complaints shall be clear and concise, with adequate facts supporting alleged offenses. Complaints shall state remedies sought.

C. Filing. A complaint shall first be filed with the Office of Hearings and Appeals before it is served upon a Respondent.

Rule 3. INSUFFICIENT COMPLAINTS; DISMISSALS

The Office of Hearings and Appeals, at any time prior to opening statements in a case, shall be authorized to summarily dismiss, without prejudice, complaints due to defects in drafting, insufficient assertion of facts, unsupported statements of law, lack of jurisdiction, lack of notice and due process or for any other reason deemed just and necessary.

Rule 4. NOTICE OF COMPLAINT; DOCUMENTS AND WITNESS LISTING

All complaints, along with documents to be introduced and names and mailing addresses of witnesses to be used, shall be provided the Respondent in the manner prescribed herein.

Rule 5. SUBPOENAS

Parties may request subpoenas be issued for certain documents and/or for the testimony of certain witnesses. Responsibility for costs and serving subpoenas shall rest with the requesting party.

Rule 6. SERVICE OF PROCESS

A. Unless otherwise directed by the Office of Hearings and Appeals, complaints and subpoenas may be personally served by any law enforcement officer, including investigators of the Ethics and Rules Office (for its complaints and subpoenas issued at its request), by certified process servers or by certified mail.

B. A Respondent who is not represented by counsel shall be permitted to serve his or her documents by either delivering or mailing them to the Ethics and Rules Office, unless otherwise directed by the Office of Hearings and Appeals. If a Respondent is represented by counsel, counsel shall ensure service is generally consistent with subsection A herein.

Rule 7. HEARING DATES

Upon written notice to the Office of Hearings and Appeals on proper service of process, the Office of Hearings and Appeals shall set a date, time and location for hearing.

Rule 8. ANSWERS TO COMPLAINTS

The Respondent may file a written answer to a complaint filed against him or her at any time prior to the hearing. Default judgments shall not be permitted under this rule.

Rule 9. MOTIONS

Motions shall be presented prior to commencement of hearing, except those which can be presented during or upon close of hearing.

Rule 10. FAILURE TO APPEAR

A. In the event the Respondent fails to appear for hearing, although properly notified, he or she shall be subject to all penalties and sanctions permitted, including contempt. In such nonappearances, the Office of Hearings and Appeals may proceed with hearing without the Respondent or continue the case to another date and time.

B. Should the Ethics and Rules Office, or its complaining party, fail to appear for hearing, the Office of Hearings and Appeals may impose any permitted sanction. The Office of Hearings and Appeals shall also determine whether the case will be dismissed. Except for a repeated occurrence or occurrences of nonappearance in the same case, dismissals shall be without prejudice under this subsection.

RULE 11. BURDEN OF PROOF

The burden of proof in ethics cases shall rest with the Ethics and Rules Office. The standard shall be clear and convincing evidence.

RULE 12. HEARING PROCEDURE

A. Interpreters. For purposes of translation of language (English to Navajo or Navajo to English), a party, at his or her own expense, may have an interpreter available for hearing. Prior to hearing, the party seeking an interpreter shall be responsible for making all arrangements for the presence and assistance of an interpreter at hearing.

B. Reading of complaints. Complaints shall be read into the record unless the Respondent waives such reading.

C. Opening statements. Opening statements shall be permitted, with the Ethics and Rules Office followed by the Respondent. The Respondent may provide his or her opening statement until after the Ethics and Rules Office rests its case.

D. Witness exclusion. Prior to any sworn testimony, all witnesses, except parties, shall be excluded from the hearing room.

E. Procedure; rules. The Ethics and Rules Office shall first present its case followed by the Respondent. Proceedings shall be fair and informal. Rules of evidence applicable in courts shall not be applicable, except evidence not relevant may be excluded.

F. Oaths. Prior to testimony, witnesses shall be sworn to tell the truth.

G. Cross examination. The parties and their witnesses shall be subject to cross examination.

H. Questions by Hearing Officer. The Hearing Officer shall be permitted to ask questions regarding any testimony. Aside questions addressed to those testifying, questions may be addressed to counsel.

I. Closing arguments. Closing arguments shall be permitted. The Ethics and Rules Office shall first provide its closing argument followed by the Respondent. The Ethics and Rules Office shall be allowed to provide a final limited rebuttal.

Rule 13. DECISIONS; APPEALS

A. All final decisions on the merits of a case shall be in written form and issued within reasonable time. Decisions shall be hand-delivered or provided through certified mail to the parties or counsels of record.

B. Within 10 working days of the issuance of a written final decision by the Office of Hearings and Appeals, a party, regarding such decision, is authorized to file an appeal with the Navajo Supreme Court. It shall be the responsibility of the appealing party to comply with all filing requirements set forth by the Supreme Court, including the filing of a proper notice of appeal, attachment(s) of the appropriate final order of the Office of Hearings and Appeals being appealed, and the payment of filing fees required.

Rule 14. Amendments

The rules herein adopted may be duly amended by the Law and Order Committee of the Navajo Nation Council.

Exhibit "B"

~~ETHICS AND RULES COMMITTEE~~
~~OF THE NAVAJO NATION COUNCIL~~
~~ADMINISTRATIVE HEARING RULES~~

~~**Rule 1. AUTHORITY**~~

~~These administrative hearing rules are adopted pursuant to the authority of the Ethics and Rules Committee to conduct administrative hearings pursuant to the *Ethics in Government Law*, 2 NNC §3741 *et seq.*~~

~~**Rule 3. RECUSAL**~~

~~A. Any member of the Ethics and Rules Committee who is determined to have a conflict of interest in a matter before the Committee shall be subject to recusal upon finding by the Committee. The presiding Chairperson shall rule on such recusals only after the opportunity for discussion by the hearing body except when the recusal of the presiding Chairperson is sought, in which case the vice Chairperson (or another Committee member when necessary) shall preside over the matter.~~

~~B. In the event a quorum of the Committee cannot be obtained (from among the membership of the Committee), either due to voluntary recusal or disqualification, the Presiding Chairperson of a case shall immediately notify the Speaker of the Navajo Nation Council and recommend that the Speaker, for the particular case, appoint the necessary number of members from among the other standing committees of the Navajo Nation Council.~~

1). In the event the Speaker or staff from the Office of the Speaker is the Respondent, the Intergovernmental Relations Committee shall make all necessary appointments pursuant to this subsection.

~~**Rule 4. *EXPARTE* COMMUNICATIONS PROHIBITED**~~

~~No party to a complaint, nor any witness thereof, shall have any oral or written communication with any member of the Committee relative to the complaint to be heard by the Committee. Such communication, if it occurs, shall be reported to the presiding Chairperson and Director of the Ethics and Rules Office in writing so that appropriate measures may be taken, including the disqualification of the member to whom the communication was made. Failure of a Committee member to report an *ex parte* communication shall also be grounds for disqualification of the member for that particular case.~~

~~**Rule 5. ETHICS AND RULES OFFICE REPRESENTATION; RECORDING**~~

~~**A.** The Ethics and Rules Office, through its Director, shall represent the Navajo Nation in all matters brought before the Committee. The Director shall be a licensed member of the Navajo Nation Bar Association. The Director she may delegate his or her role in representing the Ethics and Rules Office to any staff member of the Ethics and Rules Office who is also a licensed member of the Navajo Nation Bar Association; but this delegation shall be supervised by the Director.~~

~~**B.** All hearing proceedings before the Ethics and Rules Committee shall be officially recorded.~~

~~**Rule 6. LEGAL COUNSEL**~~

~~The Committee may seek the assistance of legal counsel during hearings.~~

~~**Rule 7. DECISION TO CONDUCT A HEARING**~~

~~Once a complaint is formally filed, the Ethics and Rules Committee shall set a hearing date.~~

~~**Rule 8. NOTICES OF HEARING; DISCLOSURE OBLIGATIONS OF PARTIES**~~

~~A. Hearing notices shall be provided to all parties by certified mail or personal service by staff of the Ethics and Rules Office no less than twenty (20) calendar days prior to the scheduled hearing date. The notice shall include:~~

~~1. Names of parties and complaint number;~~

~~2. Time, date and place of hearing;~~

~~3. Subject matter of scheduled hearing;~~

~~4. Notice of Respondent's right to counsel at Respondent's own expense;~~

~~5. Statement of penalty for failure to appear;~~

~~6. Names of witnesses to be called by the Complainant;~~

~~7. Copies of documents to be submitted as evidence; and,~~

~~8. A copy of the Administrative Hearing Rules.~~

~~B. No less than five (5) working days before the scheduled hearing, the Respondent shall provide to the Ethics and Rules Office a written list of names of individuals he/she intends to call as witnesses and copies of documents he/she intends to submit as evidence.~~

~~C. Exceptions to timely disclosure requirements of this Rule shall not be permitted, except upon a showing of good cause.~~

~~D. Prior to service on opposing party, all documents intended to be made a part of the record shall be pre-marked as exhibits, with exhibits of the Complaining Party designated by *letters* and those of the Respondent by *numbers*. Parties shall submit (at the Ethics and Rules Office) ten (10) copies of such documents for members of the Committee.~~

~~**Rule 9. SUBPOENA POWERS**~~

~~A. The Committee, as a quasi-judicial body, may issue subpoenas to compel testimony of witnesses and/or to produce documents relevant to a matter before the Committee. Parties are responsible for serving subpoenas issued at their request.~~

~~B. All subpoenas shall be signed by the Chairperson or his/her designated Committee member. Persons failing to obey such subpoenas shall be subject to applicable laws of the Navajo Nation, including contempt and the imposition of criminal sanctions requested by the Committee through the Courts of the Navajo Nation.~~

~~**Rule 10. REPRESENTATION; ENTRY OF APPEARANCE**~~

~~A. A Respondent, at his or her own expense, may be represented by legal counsel who is licensed to practice law within the Navajo Nation.~~

~~B. Should Respondent obtain legal counsel, an Entry of Appearance shall be filed by such counsel.~~

~~**Rule 11. PRELIMINARY MATTERS; CONTINUANCES**~~

~~A. Preliminary issues (*e.g.*, motions, stipulations, *etc.*) shall be presented to the Committee prior to the commencement of hearing proceedings and ruled on by the presiding Chairperson. Any jurisdictional issues shall be addressed at this time.~~

~~B. Upon showing of good cause, and in the interest of justice, continuances may be granted. Where legitimate circumstances warrant, the Committee, on its own motion, may order a continuance.~~

~~C. Hearings shall be deemed continued if the Committee lacks a quorum.~~

~~**Rule 12. CONDUCT OF HEARINGS**~~

~~All hearings shall be conducted in open session; evidence received shall be considered a matter of public information. All hearings shall proceed in the following manner:~~

~~A. The presiding Chairperson shall begin the hearing by reading into the record the complaint number and identifying the parties to the complaint.~~

~~B. The complaint shall be read into the official record.~~

~~C. The presiding Chairperson shall rule on all preliminary matters or issues before the Committee. Rulings may also be made by vote of the Committee, in the discretion of the presiding Chairperson.~~

~~D. Witnesses not testifying shall be excluded from the hearing room at the request of either party.~~

~~E. Parties shall be allowed five (5) minute opening statements, with the Complainant proceeding first followed by the Respondent. Upon request, Respondent shall be permitted to~~

~~make his/her opening statement after the Complainant has completed its presentation of the case. Parties may waive their opening statements.~~

~~F. Complainant shall proceed first with its presentation of the case, followed by the Respondent.~~

~~G. Prior to providing testimony, witnesses shall take an oath to tell the truth under penalty of perjury.~~

~~H. For record purposes, any testimony provided in Navajo shall be immediately translated into English at the direction of the presiding Chairperson.~~

~~I. Direct examination shall be followed by cross examination; redirect shall be permitted, but limited to issues raised by cross examination. No recross of further examination shall be allowed. Upon the completion of questioning of each witness by the parties, Committee members (or its advisor) shall be permitted to ask questions.~~

~~J. The Presiding chairperson may rule on issues of relevancy and redundancy.~~

~~K. The Committee is not bound by formal rules of evidence; evidence offered shall be reliable, relevant and not unduly prejudicial. All documentary evidence submitted by the parties, including any documents provided the Respondent pursuant to notice requirements of these rules, shall be deemed to the a part of the record without further formal submission.~~

~~L. Upon the conclusion of the presentation of cases by both parties, five (5) minute closing arguments shall be permitted, the Complainant being followed by the Respondent.~~

~~M. After completion of closing arguments the Committee shall deliberate in executive session.~~

~~Rule 13. DECISION OF THE COMMITTEE~~

~~Upon conclusion of deliberations, the Committee shall render its decision, which shall be reproduced in written form. Decisions shall be promptly forwarded to Parties. If the Respondent was represented by counsel, the decision shall be forwarded to counsel.~~

~~**Rule 14. DISMISSAL OF COMPLAINTS**~~

~~A. The Committee may dismiss any complaint or any part of a complaint with or without prejudice if the complaint is deemed factually or legally insufficient or if the Committee lacks personal or subject matter jurisdiction. Complaints may also be dismissed based on due process grounds.~~

~~B. In the event a complaint is dismissed, notice of dismissal shall be sent to parties involved within ten (10) working days stating the reasons for the Committee's decision.~~

~~**Rule 15. NONAPPEARANCE**~~

~~A. Should a Complainant fail to appear for hearing, although properly notified, the complaint may be dismissed, or for good cause, a hearing may be rescheduled.~~

~~B. Should the Respondent fail to appear for hearing, the Committee may immediately thereupon enter a final order, which shall include any authorized sanction, based on the complaint filed. The final order shall be reproduced in written form.~~

~~**Rule 16. AMENDMENTS**~~
~~By resolution, the Ethics and Rules Committee of the Navajo Nation Council may amend these Administrative Hearing Rules.~~