RESOLUTION OF THE
LAW AND ORDER COMMITTEE
23RD NAVAJO NATION COUNCIL - FOURTH YEAR, 2018

AN ACTION

RELATING TO LAW AND ORDER; AMENDING ETHICS ADMINISTRATIVE HEARING RULES FOR PURPOSES OF CLARIFICATION; AUTHORIZING INVESTIGATORY SUBPOENAS

BE IT ENACTED:

Section One. Authority

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

B. 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. Navajo Nation law provides, "[i]n addition to all powers and authority to carry out the purposes set forth [in its plan of operation], the Office of Hearings and Appeals shall have the following specific powers and authority to ... [e]xercise all powers and authority necessary or reasonable to carry out the purposes of applicable Navajo laws and regulations." 2 N.N.C. §§ 1054 and 1054(C). Consistent with this necessary and proper clause, the Office of Hearings and Appeals has the authority to "[i]ssue subpoenas, procedural orders, and other orders necessary to the hearing procedures ..." 2 N.N.C. § 1054(D)(2). It may also "cause depositions to be taken." 2 N.N.C. § 1054(D)(4).

C. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600A. Among its 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

A. The Administrative Hearing Rules for administrative ethics cases were last amended July 28, 2016, though resolution LOCJY-06-16.

B. Under Navajo Nation law, the authority of the Office of Hearings and Appeals to issue subpoenas is recognized. However, the rules must be clarified as to subpoenas requested and issued prior to the filing of formal complaints.

C. Navajo Nation law does not limit subpoenas to Navajo Nation entities. Navajo Nation law also does not limit subpoenas to private entities located within the Navajo Nation, such as banks. The Navajo Nation *Ethics in Government Law* mandates accountability in government by employees and officials of the Navajo Nation. This mandate includes financial accountability, as well as adherence to particular standards of conduct. 2 N.N.C. § 3742(A). To ensure compliance with these mandates, it is accepted and understood that subpoenas may be issued to public and private entities on or outside the Navajo Nation, including financial institutions such as banks.

Section Three. Amending Ethics Administrative Hearing Rules

The Navajo Nation hereby amends ethics Administrative Hearing Rules as follows:

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5. SUBPOENAS

A. Parties may request the Office of Hearings and Appeals that 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.

B. Prior to the filing of a formal complaint with the Office of Hearings and Appeals, the Ethics and Rules Office, through its

presenting officer or director, may request the issuance of investigatory subpoenas for compelling interviews of individuals or for the production of documents, and any other tangible items. Upon showing of good cause, the Office of Hearings and Appeals shall issue such investigatory subpoenas.

Section Four. Effective date

The amendments enacted herein shall be effective upon approval by the Law and Order Committee of the Navajo Nation Council.

Section Five. Savings Clause

Should any provision of Administrative Hearing Rules amended and 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 effective.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Law and Order Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 2 in favor and 1 oppose, this 13th day of August 2018.

Raymond Smith, Jr., Vice Chairperson
Law and Order Committee
of the 23rd Navajo Nation Council

Motion: Honorable Otto Tso
Second: Honorable Edmund Yazzie

LAW AND ORDER COMMITTEE
Regular Meeting
August 13, 2018

ROLL CALL
VOTE TALLY SHEET:

Legislation No. 0262-18: An Action Relating to Law and Order; Amending Ethics Administrative Hearing Rules for Purposes of Clarification; Authorizing Investigatory Subpoenas – *Sponsor: Honorable Edmund Yazzie*

Main Motion: Otto Tso **Second:** Edmund Yazzie **Vote:** 2-0-1

ROLL CALL VOTE TALLY:
YEAS: Otto Tso/Edmund Yazzie
NAYS:
NOT VOTING: Raymond Smith, Jr.
EXCUSE: Kee A. Begay, Jr./Herman M. Daniels

Raymond Smith, Jr., Vice Chairperson
Law and Order Committee

Laureen Spencer, Legislative Advisor
Law and Order Committee