

## RULES OF PROCEDURE

### DISCIPLINARY COMMITTEE

#### 1. STANDARDS OF PRACTICE:

The Courts of Appeals of the Navajo Nation held IN THE MATTER OF DANIEL DESCHINNY IN CONTEMPT OF COURT, 1 Nav. R. 66, 1972 that practitioners before the courts are bound by the Ethical standards set forth in the Codes of Ethics of the American Bar Associations. Non-members of the Navajo Bar Association who desire to file a complaint may be furnished copies of the Codes of Ethics in accordance with Rule 7(b)(2) herein. Members shall be furnished a copy upon admittance to the Navajo Nation Bar Association.

#### 2. DISCIPLINARY COMMITTEE:

The disciplinary committee (hereinafter committee) shall consist of seven (7) members, including the chairperson. All committee members shall be appointed according to the Articles of Association of the Navajo Bar Association. The committee shall have the following powers and duties:

- a. Upon the complaint of any person, to consider and investigate the professional conduct of any member of the Navajo Bar Association.
- b. To conduct formal or informal hearings into charges of misconduct, to hear motions for reinstatement, to make findings of fact and conclusions of law, to discipline members, and to reinstate suspended members of the Navajo Bar Association.
- c. To adopt rules of procedure and to amend those rules from time to time.
- d. To obligate the funds of the Navajo Bar Association to cover the expenses of making a record of hearings and accomplishing service by certified mail, and to pay other incidental expenses which may arise in the courts of carrying out the duties of the committee.
- e. To apply to the <sup>Supreme Court of the Navajo Nation</sup> ~~Court of Appeals of the Navajo Judicial District~~ for enforcement of its decisions and for subpoena of persons or documents.

#### 3. JURISDICTION:

- a. Any member of the Navajo Nation Bar Association whether regularly or specially admitted to practice is subject to investigation of charges of misconduct

and to discipline for proven misconduct.

- b. Nothing herein contained shall be construed to deny any court such powers as are necessary for that court to maintain control over proceedings conducted before it, nor to prohibit other bar association from regulating the conduct of their members.

#### 4. DOCUMENTS

- a. Filing. A document is filed only when that document is received in the office of the chairperson between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, legal holidays excepted. Until further notice, the address of the office of the chairperson is:

JAMES JAY MASON, ESQ.  
CHAIRMAN, DISCIPLINARY COMMITTEE  
101 WEST HILL SUITE B  
GALLUP, NEW MEXICO 87301

- b. Service.

1. A copy of any document filed in a proceeding before the committee must be promptly served by the filing party on all other parties to the proceeding. Service shall be accomplished by mailing by certified mail. In the case of a member of the Navajo Bar Association service shall be had at the address listed on the current roll of members of the Association. In the case of non-members, service shall be had at the address supplied to the chairperson by the non-members. A person who fails to furnish an address shall not be entitled to notice in connection with any proceedings before the Committee.

2. A copy of any document filed in a proceeding before the Committee must be promptly served by the filing party. In all cases where a party is represented by counsel, such counsel will be regarded as fully controlling the case on behalf of the client, and service of any document relating to the proceeding shall be made upon such counsel.

- c. Computation of time for filing and service. In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so

computed is to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or non-business day, in which event the period runs until the end of the next day which is not Saturday, Sunday, legal holiday, or other non-business day. When the time prescribed or allowed is seven (7) days or less, the intermediate Saturdays, Sundays, legal holidays and other non-business days shall be excluded in the computation.

d. Extension of time:

1. The time for filing or serving any document may be extended by the chairperson upon good cause shown except the time for filing a notice of appeal shall not be extended.
2. A request for an extension of time must be filed within the time allowed for the filing or serving of the document.

5. CONFIDENTIALITY:

The proceedings of the Committee shall be confidential and any hearing shall be conducted in closed chambers unless the respondent requests the chairperson in writing at least ten (10) days before the hearing that all proceedings be made public. The request shall be granted if the hearing panel finds there is no substantial danger of disruption of the orderly course of the proceedings and if the complainant's reasonable right to privacy would not be compromised. Complainants shall always be advised of the disposition of their complaints.

6. COMPLAINTS:

Each complaint shall state clearly what ~~counts~~ and disciplinary rule(s) are alleged to have been violated with a brief description of the fact supporting each alleged violation.

7. INITIATION OF PROCEEDINGS:

- a. All complaints shall be submitted to the chairperson of the Committee who shall establish a permanent file thereon. All documents accepted into evidence shall remain a part of the permanent file unless the hearing panel agrees to accept a true copy in place of the original document.

b. The chairperson may:

1. Reject a complaint that is frivolous, that is, complaints of conduct unrelated to a member's professional responsibility.
  2. Once only, return the complaint to the complainant so that the complaint may be conformed to the requirements of Rule 6 of these Rules.
  3. Appoint a hearing panel composed of two members of the Committee and the chairperson to take further action. If for any reason a hearing panel cannot be appointed from members of the Committee, the chairperson may appoint members of the Navajo Bar Association to the hearing panel. The chairperson may designate another to act as chairperson.
- c. Upon receipt of any complaint, the chairperson shall serve notice upon the respondent by sending, by certified mail, him or her a copy of the complaint and a copy of any preliminary action taken. The respondent shall file an answer within thirty (30) days of service of the complaint. The answer shall consist of a brief statement reflecting the respondent's denials and admissions.

8. HEARING PANEL:

- a. Decisions of the hearing panel shall be unanimous unless specified otherwise in these rules.
- b. A hearing panel may dismiss with prejudice a complaint which is resubmitted according to Rule 7(b)(2) and which on its face fails to comply with Rule 6.

9. INFORMAL PROCEEDINGS:

Upon receipt of a complaint, the hearing panel shall conduct such inquiry as it deems appropriate, subject to the following:

- a. Scope of Inquiry: The panel is not limited in the scope of its inquiry to the particular allegations of the complaint, but may extend its inquiry into the surrounding circumstances.
- b. Counsel. Either party may retain counsel at her or his own expense. Counsel must be a member of the Navajo Nation Bar Association and must not be a present member of the committee or the Board of Bar Commissioners or an officer of the Navajo Nation Bar Association.

- c. Proof. The burden of proof shall be on the complaining party. The degree of proof required shall be a preponderance of the admissible evidence except that a decision to suspend or disbar a member must be supported by evidence which is clear and convincing. X
- d. Evidence. Rulings upon evidence will be made by the chairperson. Parties may submit evidence which is documentary or testimonial in nature.
- e. Appearance. At the discretion of the panel, the parties may appear before the panel and question each other. The hearing panel may question the parties.
- f. Record. The record shall consist of the admitted evidence, and, if testimony is allowed, a transcript of the proceedings.
- g. Decision. Within a reasonable time of the closing of the record, the hearing panel shall issue a decision which on consideration of the record as a whole is supported by sufficient substantial evidence to support findings of fact and conclusions of law as to whether the code of professional responsibility has been violated, thus subjecting the member to discipline for professional misconduct. X
- h. Penalties. Upon a finding of misconduct, the hearing panel, on behalf of the Committee, may:
1. Privately issue a written reprimand to the violator, with a copy to the complainant; X
  2. Issue a written reprimand to be published by posting at the Navajo District Courts for a period of time not to exceed six (6) months;
  3. Suspend the violator from practice in any of the Navajo District Courts for a period of time not to exceed two (2) years, provided that any such must be supported by evidence which is clear and convincing action.
  4. Permanently disbar the violator from the practice of law in any of the Navajo District Courts, provided that any such action must be supported by evidence which is clear and convincing.
  5. Assess costs of the proceedings against the

violator to be paid into the treasury of the Navajo Bar Association upon terms set by the hearing panel. Willful refusal to abide by those terms may result in suspension.

10. FORMAL PROCEEDING:

At any stage after filing of a complaint in conformity with Rule 6, the hearing panel may, upon its own motion or upon motion of any party, set the matter for formal hearing. Formal hearings are governed by Rule 9 with the following additions:

- a. Formal discovery. Either party may apply to the chairperson for reasonable discovery proceedings. Formal discovery will be permitted only upon the advance written consent of the chairperson under the conditions and subject to the limitations prescribed by the chairperson. Except in extraordinary circumstances all discovery will be completed no later than ten (10) days before the hearing date.
- b. Compulsory discovery. At least ten (10) days before the hearing date, each party shall file with the chairperson a list of witnesses to be called to testify, together with a short statement summarizing the witness' expected testimony. A copy shall be served upon the opposing party. Failure to comply with this rule will result in exclusion of the testimony or other form of evidence offered by that witness.
- c. Witnesses. All witnesses shall be sworn in by the chairperson. Parties shall have the right to confront and cross examine witnesses and may call parties as witnesses. Non-party witnesses shall be excluded from the hearing except while testifying.

11. ABATEMENT OF INVESTIGATION:

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise or restitution, shall in itself, justify abatement of an investigation into the conduct of a member of the Navajo Bar Association. The Committee may continue the investigation on its own motion. However, a member under investigation may resign from the Navajo Bar Association without admitting guilt on condition that he never again practice law within the jurisdiction of the Navajo Reservation. If a member resigns according to this rule, the chairperson shall so inform the Admissions Committee of the Navajo Bar Association and the Navajo Nation District Courts.

**12. PETITIONS FOR REINSTATEMENT:**

At the conclusion of the term of suspension, a suspended member may petition the chairperson for reinstatement. A hearing panel shall be appointed pursuant to Rule 7(b)(3) to hear the petition. The member show by clear and convincing evidence that he or she possesses the qualifications for readmission which should not be less than those required for original admission.

**13. APPEAL:**

Any party who is aggrieved by a final decision of the Committee or its chairperson may appeal such decision by filing a notice of appeal with the Board of Bar Commissioners of the Navajo Bar Association within ten (10) days of the issuance of the decision. All such appeals shall be filed in conformity with such rules and procedures as the Board may adopt from time to time to govern such appeals. A final decision may result from action taken pursuant to Rule 7(b)(1), Rule 8(b), Rule 9(h), and Rule 10. Interlocutory appeals shall not be allowed.