No. SC-SP-02-19

SUPREME COURT OF THE NAVAJO NATION

In the Matter of Petition of:

Kimberly A. Dutcher

OPINION

Before JAYNE, J., Chief Justice, and SHIRLEY, E. Associate Justice.

Original proceeding concerning bar association matters of exemption under the Navajo Nation Pro Bono Rules.

Eric N. Dahlstrom and Glennas'ba B. Augborne, Tempe, Arizona, for the Petitioner.

OPINION delivered by JAYNE, Chief Justice:

This case concerns a request for reconsideration of the Court's holding that Kimberly A. Dutcher ("Petitioner") engaged in the unauthorized practice of law in the Navajo Nation. The Court denies the Motion To Reconsider.

I

This special proceeding originally began as a letter that this Court accepted as a petition for exemption from pro bono appointments and services for certain Department of Justice ("DOJ") staff under Rule II.B.7 of the Navajo Nation Pro Bono Rules. The Petitioner sent this request by memorandum addressed to the Supreme Court and the Office of Pro Bono Services ("OPBS"). The Court accepted the memorandum as a petition and it was docketed as a special proceeding on October 10, 2019. On November 4, 2019, in an Opinion, the Court denied the petition for exemption of DOJ attorneys and ruled that the Petitioner was unlicensed to practice law in the Navajo Nation and therefore she engaged in the unauthorized practice of law when she

drew conclusions of law exempting herself and other DOJ staff from pro bono appointment and service.

In a motion for reconsideration, the Petitioner challenges only that part of the Opinion on the unauthorized practice of law. The Petitioner argues, first, that the Court erred by taking her memorandum as a special proceeding filing. Next, the Petitioner claims the Court violated her due process rights when the Court made factual and legal conclusions that she engaged in the unauthorized practice of law without providing her prior notice, nor an opportunity to be heard. *Motion To Reconsider November 4, 2019 ("Motion")*, at 6. She also argues that reconsideration is warranted because it is consistent with Navajo common law tenets of *hazhó'ógo* and *áádóó na'nilé'dii éi dooda. Id.* Finally, the Petitioner calls for restoration of harmony between the Office of Attorney General and the Supreme Court. *Id.* at 11. The Petitioner's allegation that disharmony exists is not an issue of the special proceeding, therefore, the Court declines to address the Petitioner's perceived disharmony.

II

The Court notes for purposes of background the position qualifications of the Attorney General and Deputy Attorney General. 2 N.N.C. § 1962(B). The Attorney General and Deputy Attorney General shall be licensed attorneys. *Id.* The Navajo Nation Council (the "Council") enacted the qualifications of the Attorney General and Deputy Attorney General within its sovereign authority. The Council also enacted 7 N.N.C. § 606 and 17 N.N.C. § 377 which prohibit the unauthorized practice of law. Section 606(B) provides that "Persons who are not members in active status and in good standing of the Navajo Nation Bar Association and who provide legal representation or other legal services within the territorial jurisdiction of the Navajo Nation, and who are not duly associated with members in good standing of the Navajo

Nation Bar Association[1] shall be deemed to be conducting the unauthorized practice of law, and shall be subject to civil and/or criminal sanction under Navajo Nation law." Section 377(A) states "The unauthorized practice of law is committed when, without being an active member in good standing of the Navajo Nation Bar Association, a person: 1. Provides legal representation before the Courts of the Navajo Nation, any quasi-judicial, administrative, or legislative body to another person; or 2. Provides legal services within the Navajo Nation or to another person within the Navajo Nation, including but not limited to, the rendering of legal advice to another person, the drafting or completion of legal pleadings for another person, or the legal interpretation of documents for another person." There is an exception to persons in conformity with court rules allowing for practice by association, which does not apply here. In reading all statutes together, we hold that 2 N.N.C. § 1962(B) requires the Attorney General and Deputy Attorney General be licensed attorneys *in the Navajo Nation* and in compliance the unauthorized practice of law provisions, which further requires that they be in active status and in good standing with the Navajo Nation Bar Association.

As further background, we reiterate that the Petitioner was not a member of the Navajo Nation Bar Association on September 9, 2019, the day she signed as the Acting Deputy Attorney General and sent the Memorandum to the Court. Prior to the conclusion of this matter, the Navajo Nation Bar Association (NNBA) filed a Petition for Admission to practice law in the Navajo Nation on behalf of the Petitioner on October 21, 2019, docketed SC-NB-14-19. The Court's Opinion, from which this Motion To Reconsider arises, was signed on November 4, 2019.

[1] Reference to "duly associated" refers to *pro hac vice* association.

III

The first issue presented is whether the Court erred in taking the Petitioner's memorandum as a petition. The initial argument proffered by the Petitioner is that the Court deviated from the requirements of 7 N.N.C. § 601(A) because her counsel could not locate a rule adopted under this provision that sets forth the practice of converting the memorandum into a legal pleading in the form of a petition. *Motion* at 7. She further argues that her memorandum should not have been converted to a pleading by the Supreme Court because it was not intended to be a pleading and it did not comply with Rule 4(a) of the Navajo Rules of Civil Appellate Procedure ("NRCAP"). Finally, the Petitioner asserts that the NRCAP and Navajo case law does not allow the Court Solicitor to convert a memorandum into a legal pleading for consideration by the Court. We address each point separately.

The Court accepted the Petitioner's memorandum as a petition under long standing Navajo case law, as explained in the November 4, 2019 Opinion. The Supreme Court Clerk docketed the memorandum concerning pro bono exemption as a Special Proceeding based on Navajo case law and assigned it a docket number beginning with "SC-SP" to distinguish it from other actions. The Petitioner's failure to locate a rule may stem from an oversight of this type action, nonetheless, the Petitioner's oversight does not constitute this Court's error. Correspondences sent to the Court seeking exemption from pro bono appointment and service have been taken as petitions for more than twenty (20) years. *E.g., In re J. Kevin Hale*, SC-SP-02-1998 (Nav. Sup. Ct. April 21, 1998)(accepting a letter addressed to the Navajo Nation Bar Association forwarded to the Office of Pro Bono Service as a petition for pro bono exemption). In 2019, in *In re Petition of Mary Shirley*, SC-SP-01-19, slip op. at 3 (Nav. Sup. Ct. Sept. 18, 2019), the Court most recently accepted a request for exemption from pro bono appointment and

service as a special proceeding petition. This Court specifically cited this case in the November 4, 2019 Opinion. The Petitioner fails to cite or acknowledge *In re Shirley, supra*, though adverse case law, which is subject to potential sanction. The referral of the correspondence to the OPBS that resulted in a docketed action mirrors *In re Shirley, supra*, and the 1998 case, *In re Hale, supra*.

In further support of her position, the Petitioner argues that she never intended her memorandum to be filed as a pleading with the Court and "...it should not have been converted to a pleading by the Supreme Court because it did not comply with Rule 4(a)" of the NRCAP. *Motion* at *7*. Matters concerning the Navajo Nation Pro Bono Rules are special proceedings. Rule 4(a) concerns formatting, captioning, and filing requirements required for civil appellate and extraordinary writ cases which are not applicable in this matter. This case is a special proceeding, not a civil appellate case nor a request for an extraordinary writ. Therefore, the NRCAP are not applicable in this matter.

Before the Court accepted the Petitioner's memorandum as a petition, and before the Supreme Court Clerk docketed the memorandum as a Petition for a Special Proceeding, the Court Solicitor referred the Petitioner's memorandum to the Clerk of the Supreme Court as the matter was addressed to the Supreme Court. *Motion, Exhibit "B"* The Petitioner contends that "...the Court Solicitor's conversion of the DOJ Memo into a legal pleading in the form of a petition, was inconsistent with the Navajo Rules of Procedure and Navajo case law." The Petitioner claims "the DOJ Memo should have been rejected by the Court Solicitor since the DOJ Memo was not a proper pleading...and therefore, it should not have been unilaterally converted to a pleading by Court staff." *Motion* at 7.

The Court Solicitor lacks the authority to make binding determinations for the Supreme Court. The Court Solicitor relayed the Petitioner's memorandum to the Clerk of the Supreme Court, and provided written notification to the Petitioner. *Motion, Exhibit "B"*. Only the Court can act in its official capacity to provide the relief sought by the Petitioner. Rule II.C.3. The practice of taking requests for exemption from pro bono service and pro bono appointment as special proceeding filing is established in case law. *In re Hale, supra; In re Shirley, supra.* Case law has clearly established the manner in which this case was handled properly. As established before, the Petitioner concluded in her memorandum that "...Attorneys and Tribal Court Advocates employees are to be exempt from pro bono appointment and service pursuant to our Navajo Pro Bono Rules, Rule II.B.7." In this case, the Petitioner acted in the Court's official capacity by declaring pro bono exemptions for DOJ staff, and acted without a license to practice law on the Navajo Nation.

The Petitioner next argues that the Court made its decision on the unauthorized practice of law "without providing her prior notice or an opportunity to be heard." *Motion* at 6. In support, the Petitioner cites due process in the context of Navajo fundamental fairness. In examining fairness, we note the Petitioner received notice from the Court Solicitor that her memorandum would be referred to the Clerk of the Supreme Court based on long standing practice. Moreover, the Clerk of the Supreme Court sent notice to the Petitioner that her memorandum had been docketed as a special proceeding case, SC-SP-02-19. Both notices were sent to the Petitioner on October 10, 2019.

The Petitioner claims her due process rights were violated because she had no prior notice or opportunity to be heard. She, however, never raised the claim of 'lack of due process" when she had the opportunity to do so. The Petitioner had ample time to inquire about and

respond to an acceptance of her memorandum into a petition as a special proceeding case. On October 10, 2019, the Clerk of the Supreme Court informed the Petitioner that her memorandum was docketed by the Court as a special proceeding. From that date forward, the Petitioner never inquired about the acceptance of her memorandum as a special proceeding case. It was only until after the filing of her Petition for Admission, and after entry of the November 4, 2019 Opinion, that the Petitioner raised the issue of due process. The Court provided the Petitioner with two (2) notices and a forum to address the acceptance of her memorandum as a special proceeding. The Court did not err in taking the Petitioner's memorandum as a petition under a special proceeding.

IV

The second issue presented is whether the Court erred in its holding that the Petitioner engaged in the unauthorized practice of law on the Navajo Nation. The issue before the Court was seriously considered in its previous Opinion, and it does so again. The Legislative and Judicial bodies, in their respective roles, have found the unauthorized practice of law unacceptable. The Council enunciated the seriousness of the unauthorized practice of law by enacting civil and criminal sanctions. 7 N.N.C. § 606; 17 N.N.C. § 377. The Court has also found that the unauthorized practice of law undermines the integrity of our legal system. *Perry v. Navajo Nation Labor Commission*, 9 Nav. R. 55, 57 (Nav. Sup. Ct. 2006).

The Petitioner argues that the Court had not adopted procedures nor had all the facts (especially the facts she now offers about her lack of substantive review) before it to determine that the Petitioner engaged in the unauthorized practice of law in the Navajo Nation. We disagree. She urges the Court to reconsider its decision based on "all the facts and existing Navajo Law." *Motion* at 9. The Court had before it the Petitioner's information that she was

unlicensed in the Navajo Nation, the memorandum addressed to the Navajo Supreme Court and the Office of Pro Bono Services. *Memorandum, September 9, 2019.* An examination of the memorandum reveals that the Petitioner identified herself as the Acting Deputy Attorney General, interpreted the Navajo Pro Bono Rules, made legal conclusions on behalf of DOJ staff within her memorandum by concluding, "The following Attorneys and Tribal Court Advocates employees are to be exempt from pro bono appointment and service pursuant to our Navajo Pro Bono Rules, Rule II.B.7."

The Petitioner's assertion that she did not intend to practice law by signing the memorandum does not persuade the Court to reconsider its decision. There is no requirement in 7 N.N.C. § 606 that a finding of no intent will rectify the unauthorized practice of law. The Petitioner admitted that, even though she "did not substantively review the DOJ Memo because I recalled Attorney General McPaul's intent to inform the Supreme Court of current and departed DOJ attorney staff." *Declaration,* at ¶5, she signed the memorandum as the Acting Deputy Attorney General. The Petitioner's use of the title and act of holding herself out as the "Acting Deputy Attorney General" on a memorandum induces people to believe that she is authorized to engage in the practice of law in the Navajo Nation, which at the time, she was not. In *Tafoya v. Navajo Nation Bar Association*, 6 Nav. R. 141 (Nav. Sup. Ct. 1989), the Court reminds us that without a Navajo bar license, an individual cannot hold themselves out as an attorney eligible for legal practice in the Navajo Nation. 9 Nav. R. at 146. Moreover, her inattention to wording in the memorandum, especially when it grants legal status to employees (exemption from the legal requirement to render free legal advice to clients or service), is concerning. It is no less concerning that she also signed the memorandum, but stated, "I never intended to request for an exemption for all DOJ attorneys and advocates under Navajo Pro Bono Rule II.B.7."

Declaration, ¶8. The Petitioner also stated that she never "intended" her memorandum to be a pleading. *Motion* at 7. The Petitioner's actions do not constitute the Court's error.

Next, the Court rejects the Petitioner's assertion that there was no client as she did not knowingly or intentionally appear in a court proceeding. *Motion* at 10. The Petitioner received a Juris Doctor degree on May 10, 2001. *Petition for Admission*, SC-NB-14-19. She became a licensed attorney in the State of Arizona subsequent to that date. *Declaration*, at ¶2. In examining whether there was a client, the Court begins by taking notice of the definition of "practice of law" in the State of Arizona where the Petitioner is licensed as an attorney.

Under the Arizona Revised Statutes Annotated, Rules of the Supreme Court of Arizona, the practice of law is defined as "providing legal advice or services to or for another person by preparing any document in any medium intended to affect or secure legal rights for a specific person or entity." *Rule 31, Regulation of the Practice of Law, A.R.S. Sup.Ct. Rules.* The Petitioner's act of signing the memorandum affected the rights and responsibilities of the DOJ employees, and by signing as an attorney, she proposed a course of action for those employees. Her declaration and signature instructed and advised employees that they were exempt from pro bono appointment and service. The Petitioner created employee reliance on her declaration, especially when she held herself out as the "Acting Deputy Attorney General." Only the Supreme Court has the authority for determining exemptions. Rule II.C.3., Navajo Pro Bono Rules. As stated, *supra*, the Petitioner rendered legal service to the DOJ employees that they are "to be exempt" from pro bono appointment and service. The Petitioner entailed the DOJ employees as clients by signing the memorandum as a licensed attorney outside of this jurisdiction. We determine that Petitioner's act of signing a memorandum with legal conclusions is the practice of law.

Secondly, we determine that Petitioner's actions constitutes the unauthorized practice of law under 7 N.N.C. § 606. The responsibility to determine the standards for practice and to make a basic inquiry into one's eligibility to practice law is upon those persons seeking to practice law. *Tafoya*, 6 Nav. R. at 146. The Court noted in *Tafoya* that "every state in the Union requires a license for practice before their courts, and such a fundamental assumption cannot be wished away or ignored." *Id.* The responsibility is great considering the Court previously held that the possession of a state license does not by itself permit legal practice within the boundaries of the Navajo Nation. *In re Seanez*, 9 Nav. R. 467, 470 (Nav. Sup. Ct. 2011)("*Seanez III*"). The Court, in *Seanez III*, declared that, "It is self-evident that without a Navajo Nation bar license, no individual may hold himself or herself out as an attorney or advocate on the Navajo Nation regarding matters of legal practice on the Navajo Nation." *Id.* A basic inquiry and minimal legal research would have revealed the above, underscoring the importance of licensure in this jurisdiction.

The Deputy Attorney General is a government position with an ultimate duty to the government, the People, as one's sole client. The underlying guiding principle is the public trust by the People. *In re Seanez* ("*Seanez II*"), 9 Nav. R. 433, 437 (Nav. Sup. Ct. 2010). The Court emphasizes the public trust responsibility of the Nation's second highest position in the Department of Justice. As eloquently and succinctly stated below, the Nation demands more from its government attorneys:

> In a government arena where entities frequently disagree on policy, it is the responsibility of government lawyers to focus on the public trust when rendering advice. This duty distinguishes the work of the government lawyer from legal advice given to private clients. While the private practitioner zealously advocates for his client, the government lawyer advocates for the public trust from wholesale support of any governmental client's pursuit of desired policies. The advocacy model of lawyering, in which lawyers might craft merely plausible legal arguments to support their clients' desired actions, inadequately promotes

> the obligation to the public trust. See, e.g., Principles to Guide the Office of Legal Counsel, U.S. Department of Justice, December 21, 2004, at 1. Government lawyers should take their client's goals into account and "assist their accomplishments within the law" without seeking "simply to legitimate the policy preferences of the administration of which it is a part." *Id.* at 5. *Seanez II,* 9 Nav. R. at 438.

The Court rejects the Petitioner's argument that she did not engage in the practice of law because she did not give legal advice to a client. *Motion* at 10. As a government attorney, the Petitioner is responsible for her actions, at all times, to the People, the DOJ employees, and her duty to maintain the public trust. Her contention that no client existed has no support. It is concerning that the Petitioner declares that "no client was misled or even aware of the submission of the memo to the OPBS." *Motion* at 11. The memorandum she signed and sent to the Court contained legal conclusions which affected the pro bono duties and responsibilities of the DOJ employees. Furthermore, the Petitioner by virtue of the position she occupies also represents the Navajo Nation government regarding its legal interests. 17 N.N.C. § 1963(G). The Navajo Nation government and its people are her clients, and to claim otherwise thwarts clear statutory responsibilities and duties.

The Court did not rush to the conclusion that the Petitioner engaged in the unauthorized practice of law. The Court's decision was filled with explanations and consideration of all the facts and law before it. The Petitioner asserts that the Court should reconsider its decision on the unauthorized practice of law based on *hazhó'ógo* and *áádóó na'nilé'dii éí dooda*. *Motion* at 6. *Hazhó'ógo* is a Navajo fundamental tenet "informing us how we must approach each other as individuals." *Navajo Nation v. Rodriguez*, 8 Nav. R. 604, 615 (Nav. Sup. Ct. 2004). *Áádóó na'nilé'dii éí dooda* refers to the inappropriateness, recklessness, carelessness, or indifference to consequences. *Id.* at 615. The Court examined the factual record with care, appropriateness, and without reckless analysis. The Petitioner filed a Petition for Admission to Practice Law on the

Navajo Nation and For Admission to the NNBA on October 21, 2019 which is pending. She was not authorized to practice law on the Navajo Nation on September 9, 2019, the date of the memorandum. She submitted a memorandum to the Supreme Court and the Office of Pro Bono Services drawing conclusions of law that attorneys and tribal court advocates within DOJ "are to be exempt from pro bono appointment and service pursuant to our Navajo Pro Bono rules, Rule II.B.7." In hindsight, the Petitioner adds she did not perform any legal analysis because someone else drafted the memorandum and she just signed with no substantive review. Nonetheless, the legal conclusion and directive to the OPBS was to exempt the attorneys, advocates and herself from certain legal obligations. Hence, the unauthorized practice of law.

The unauthorized practice of law is a serious matter. *Perry, supra.* This type of practice violates what is most sacred, the mind. In traditional thought, one visits an attorney for the same reasons that one visits a medicine man, to resolve *naayéé* (problem, monster, source of disharmony) or to get peace of mind. A medicine man who cannot perform a ceremony is thought to injure the mind of those he promised relief. In much the same way, an attorney practicing law without a license in this jurisdiction may inflict harm upon those who have entrusted him or her with their legal affairs. In this case, the Petitioner was and is trusted with the Nation's legal interests. To repair the relationship with the People, *hazhó'ógo* must flow in each direction. The Petitioner's reluctance to admit her responsibility to adhere to the tenets of Navajo law does not conform to *hazhó'ógó*, approaching each other as individuals. Rather, the Petitioner lays blame on the Court for confronting her unauthorized practice of law on the Navajo Nation.

The Court addresses the Petitioner's proposal that the Court should reconsider its decision based on Navajo fundamental fairness. *Motion* at 6. Her reliance on Navajo concept of

fundamental fairness is admirable. However, in keeping fairness at its pinnacle, the Court ensured due process by strictly examining the record before it, providing a forum, and synthesizing fundamental fairness with Navajo Common Law. *Navajo Nation v. Platero*, 6 Nav. R. 422, 424 (Nav. Sup. Ct. 1991). Fundamental fairness goes hand in hand with accountability.

Diné Fundamental Law emphasizes personal accountability through talking out, self-knowledge, and self-correction. *Rosenfelt & Burrington, P.A. v. Johnson*, 9 Nav. R. 536, 539 (Nav. Sup. Ct. 2011). Personal accountability requires an acknowledgment and responsibility for due diligence. Laying blame plays no part in restoration. Minimizing behavior and blame shifting is not consistent with *k'é* or the position of a *naat'áanii*. Accountability is a sacred undertaking of a *naat'áanii*. As a supervisor with DOJ and an attorney in another jurisdiction, the Petitioner is accountable to the People she serves as a *naat'áanii*. A *naat'áanii* is held in high regard by the People. The Petitioner's failure to disclose that she was not licensed in this jurisdiction is in conflict with *t'áá anii át'éigo Diné bił iíshjání áhojósin*, to speak the truth.

V

In response to the concurring opinion, *infra,* statements raised on inappropriate political pressure and withdrawal of representation by the DOJ are dicta. Dicta is defined as "Expressions in a court's opinion that go beyond the facts before the court and therefore are individual views of the author of the opinion and not binding in subsequent cases as legal precedent." West's Encyclopedia of American Law, edition 2, 2008.

The Court sits as a trier of fact in a special proceeding, an original action. Thus, the Court looks to direction it has given to trial courts that it "will never consider any matters which are not a proper part of the record." *LaMone v. Navajo Nation,* 3 Nav. R. 87, 91 (Nav. Ct. App. 1982).

VI

The Court denies the Petitioner Motion To Reconsider for the Petitioner did not demonstrate grounds for reconsideration. The procedure for accepting correspondences as a special proceeding case is supported by long standing practice and case law. The Petitioner's due process rights were not violated since she was provided notice and a forum, and the unauthorized practice of law did occur.

Dated this 24 day of July, 2020.

Chief Justice

CONCURRING OPINION BY ASSOCIATE JUSTICE SHIRLEY:

While I concur with the conclusion to deny the Petitioner's Motion To Reconsider and the decision to stand by the ruling that the Petitioner engaged in the unauthorized practice of law, I write separately for the following reasons:

First, since April 23, 1990, this Court has required that all members not in positions exempted by the Navajo Pro Bono Rules to accept pro bono appointments as a condition of membership in the Navajo Nation Bar Association. *Boos v. Yazzie*, 6 Nav. R. 211, 216 (Nav. Sup. Ct. 1990)(citing "Order Establishing Mandatory Requirements Regarding Pro Bono Appointments in Navajo Nation," Order SCAP-4-90). Thus, when a practitioner seeks exemption from his or her pro bono obligation, it is a request for exemption of their condition of membership and is therefore treated as a special proceeding by this Court. This Court's long standing practice is supported by case law, as mentioned above. Special proceedings are original actions brought directly to the Supreme Court with specific relief requested by a party. Because of the unique nature of the special proceeding, the Navajo Rules of Civil Appellate Procedure, including the rule for reconsideration, is not applicable, despite the assertion made by the Petitioner. Thus, if the Petitioner disagrees with the Court's ruling, a request for reconsideration by leave of court was most appropriate. Here, the Petitioner simply filed a motion. I would have supported a denial of this request for this reason alone. Nonetheless, at the discretion of this Court, the Petitioner's request was considered. For matter of clarity, I must state that the Navajo Rules of Civil Appellate Procedure, which generally applies to appeals and extraordinary writs, does not apply to special proceedings.

Secondly, turning to the assertion that the Court erred in concluding that the Petitioner engaged in the unauthorized practice of law, I comment as follows: I will not reiterate the points

raised in the preceding opinion but further add to the decision by raising certain *Diné bi beenahaz'áanii* principles and concepts. The November 4, 2019 opinion thoroughly explained the reasoning for the ruling in this matter; however, how the ruling was received by the Petitioner is another matter. As the Court renders decisions, it takes into account the role of *Hashkéédi Naat'áah* (as the disciplinarian) and the duty bestowed on the Judicial Branch to counsel fellow *Diné*. The Navajo Nation Council's Resolution No. CN-69-02 states in its preamble at Whereas Clauses 7 and 8 "that it is entirely appropriate for the government itself to openly observe these fundamental laws in its public functions . . .and . . . during judicial proceeding" and "that all elements of the government must learn, practice and educate the *Diné* on the values and principles of these laws; when the judges adjudicate a disputes using these fundamental laws, they should thoroughly explain so that all could learn." Accordingly, I must state as to the *Diné* person, that no matter what achievements and education one has attained, there is always room for personal growth for that is the Life way. The Petitioner alleges our decision resulted in a discord between the Supreme Court and the Office of the Attorney General. I adamantly disagree. In the *Diné* way, there is no discord in teaching and correcting behavior. Traditionally an elder would say, *shi yazhí, kwe'é yee, kot'é* when pointing out a wrongdoing while at the same time teaching the concepts of *doo ák'e'jidl'iida* áádóó *doo háni jizh'ǫ́ą da* which demands that a person become aware of the mistake, not wallow in self-pity nor easily be hurt when a person tries to deflect blame and avoid personal responsibility. *Rosenfelt & Buffington, P.A. v. Johnson,* 9 Nav. R. 536, 539-540 (Nav. Sup. Ct. 2011)(the concept of *t'óó ák'e'jidlíigo* or the act of avoiding personal responsibility by not acting on what you have been counseled is discussed). Life is full of challenges and things may not always go well; so one is taught early in childhood to overcome these challenges through our *Diné* teachings in order to strengthen one's character, *Nanitin be ázhdiltll'is.* Fundamental

law emphasizes *t'áá hwó ájí t'éigo* (personal accountability) as a foundation for success. To be receptive to criticism and to learn from the counseling and teachings becomes a personal strength in an individual's life. This is the general teaching gifted to all.

I believe that the expectation of *doo ák'e'jidl'íida* is greater when one is a *naat'áanii*, as that is how I view the Petitioner. The Petitioner, as well as others who are in the role of a *naat'áanii*, are held to a higher standard of conduct. A *naat'áanii* is a servant of the people and, by nature of the position, draws both praise and criticism in their public and even private lives. Just as there are Western ethics, *Diné* ethics exists. The distinction is in the emphasis of pointing out a wrong. The goal of the *Diné* is to correct the behavior and to learn from the mistake. Here, the matter of the unauthorized practice of law is serious because of the public trust placed in the position of the Deputy Attorney General. I agree with the preceding opinion, that an unlicensed attorney who practices law is thought to cause harm to the trusting person. A person in the position of the Deputy Attorney General is entrusted with the legal interests of the government and its people. Here, the Petitioner asserts the public nature of this matter has caused significant embarrassment and stress, while falling short of viewing it as an experience learned. To assess one's professional status of being unlicensed in the Navajo Nation by speaking the truth would have prevented the situation, as noted above. Despite the circumstances, how an individual handles and views the experience will either promote personal growth or cause one to continue to avoid accountability. Minimizing the blame and shifting behavior is not consistent with *k'é* or the expectation of a *naat'áanii*. Our teaching emphasizes personal accountability through talking out, self-knowledge, and self-correction. *Rosenfelt*, 9 Nav. R. at 539. This is absent in the Motion To Reconsider filed on behalf of the Petitioner. It takes a lot for a person to assume accountability. A successful *naat'áanii* must be open to mistakes, to the slips and falls, and to rectification as he

or she governs by assuming the failures while accepting the responsibility to do better. That is the essence of personal growth.

Thirdly, within the Motion To Reconsider, the Petitioner voluntarily brings to this Court's attention the licensure of the Attorney General. *Motion To Reconsider*, at 2. The Petitioner states the Solicitor incorrectly identified Attorney General Doreen McPaul as an "inactive" member of the NNBA, causing her to be questioned by Council members about her NNBA status and authority. The Court did not draw this conclusion about the Attorney General. The Court merely stated it received a list of thirty-six persons employed by DOJ, including the name of the Attorney General, "whose change in status to active member of the Navajo Nation Bar Association began on April 2, 2019." The Court addressed that misinformation with the NNBA office and instructed the NNBA to review its membership roster and update the NNBA directory. Because the Petitioner brings this to the forefront in her motion for reconsideration as Court err, it's important to clarify the facts concerning the Attorney General. By judicial notice, the Attorney General assumed her position with the change in presidential administration in January, 2019. The Attorney General was an "inactive" member of the NNBA from the date she assumed her position in January, 2019 to April 2, 2019, when the NNBA approved her reinstatement as an "active" member of the NNBA. Hence, the Attorney General was not an "active" member of the NNBA during that period of time, as required by Navajo law. Half-truths are not the Navajo way and such conduct also reflects on the character of a *naat'áanii*. I must add that the duty to uphold Navajo law is not just on the Judicial Branch. It is for all Navajo leaders to ensure compliance with statutory qualifications of these top legal positions. Compliance starts with the attorneys to disclose to Navajo leadership and to the people whether they are licensed in the Navajo Nation and in compliance with Navajo law as to practice of law, especially during the confirmation process.

Finally, unlike the preceding opinion, I am compelled to address attempts to lobby this Court through what I perceived as inappropriate conduct all within the Court's presence, violating *Diné* ethics of *doo beenahaz'áa da* (prohibited conduct). These attempts were not made by the Petitioner, but occurred only after the Petitioner was informed on November 1, 2019 by order of this Court in SC-NB-14-19 (Petitioner's bar admission case) that no action would be taken on her admission until the issues presented herein have concluded. Several calls and messages were received, including a statement directed at me, imploring the Court to swear in the Petitioner, especially on the day oaths were administered to newly admitted members of the NNBA on November 4, 2019. These actions exemplify *doo beenahaz'áa da.* The Court was not lobbied by these attempts because the decision to temporarily halt the Petitioner's admission (in SC-NB-14-19) was separately made three days earlier, the calls were never returned, and this Court focused on the filings of the original record herein before rendering a decision on November 4, 2019. Furthermore, after this Court issued the November 4, 2019 Opinion, concluding that the Petitioner engaged in the unauthorized practice of law, the Attorney General abruptly withdrew from all cases in which it represented the Judicial Branch of the Navajo Nation citing to a conflict of interest. Prior to the withdrawal, the Attorney General did not prudently name new counsel nor provide for continued representation in pending legal actions despite this Court's clarification for disqualification under 2 N.N.C. § 1964(H) in *Eriacho v. Ramah District Court,* 8 Nav. R. 598 (Nav. Sup. Ct. 2004). By the laws of the Navajo Nation, the Attorney General serves as legal counsel to the Navajo Nation government, including the Judicial Branch of the Navajo Nation. 2 N.N.C. § 1963. A decision to represent the legal interest of an unlicensed attorney over the legal interests of the Judicial Branch of the Navajo Nation is perplexing. These actions serve no purpose other than to undermine judicial independence. This Court previously addressed similar concerns

and confronted such behavior by speaking openly about the forbidden external goings-on in *LaMone v. Navajo Nation,* 3 Nav. R. 87, 91 (Nav. Ct. App. 1982). I am compelled to do the same here in protecting and preserving the independence and integrity of the Court.

I must also add the Court was not influenced by above conduct in this request for reconsideration. The Court reviewed the Petitioner's request for reconsideration solely on the discussion of specific points or matters of law in which it is claimed the Supreme Court erred.

As expressed by the Navajo Nation Council through the provision of civil and criminal sanctions, the unauthorized practice of law undermines the integrity of our legal system. *Perry, supra.* In this case, there was no option to refer the Petitioner's matter to the Disciplinary Committee of the Navajo Nation Bar Association, when the Petitioner is not a member of the NNBA. A referral to the Office of the Prosecutor for criminal prosecution under 17 N.N.C. § 377 was also problematic considering the Petitioner as the Acting Deputy Attorney General exercises supervisory authority over the Office of the Prosecutor. Additionally, this case presents an added wrinkle as the legal counsel hired to defend the Petitioner in this action, has been contracted to serve as the Special Prosecutor for the Navajo Nation; thus, eliminating any means of addressing this issue outside of the Supreme Court. This Court *had* to address the unauthorized practice of law because to look the other way would erode the integrity of our legal system and undermine the laws of the people we serve. Accordingly, this Court is exercising its responsibility of regulating the practice of law within this jurisdiction.

Associate Justice