



# THE NAVAJO NATION

**DR. JOE SHIRLEY, JR.**  
President

**BEN SHELLEY**  
Vice President

## MEMORANDUM

**TO:** Lawrence T. Morgan, Speaker  
Navajo Nation Council

**FROM:**   
Dr. Joe Shirley, Jr., President  
**THE NAVAJO NATION**

**DATE:** February 12, 2010

**SUBJECT:** RESOLUTION NO. CJA-06-10

Leaving the political reasons Council adopted this resolution aside, this resolution is faulty on legal grounds and would obviously weaken the Navajo Nation in the area it needs the greatest strength. The effect of Resolution No. CJA-06-10 would be to divide the legal advice and representation of governmental entities between the Office of the Attorney General and the Office of Legislative Counsel. Doing so fails to take into consideration the legal interests of the entire Navajo Nation, and would create problems in conflicts of interest and law.

One purpose of these amendments is to expand the authority of the Office of Legislative Counsel to empower it to represent the Council and any Legislative Branch entity in litigation. This change would create inconsistencies in litigation, which would cause damage to the sovereignty of the Nation and to the development of Navajo law. If both the Attorney General and the Chief Legislative Counsel are authorized to engage in litigation, there would be two Chief Legal Officers of the Navajo Nation, each with the ability to sue, defend, and settle suits. If the two Chief Legal Officers disagree, or if the Attorney General is simply not consulted before the Chief Legislative Counsel acts in litigation, the Nation's sovereignty would be greatly undermined by inconsistent positions asserted before state and federal courts. Further, the development of Navajo law before the Navajo courts could be similarly compromised. One could not overstate the importance of having a *single* decision maker who has the overall best interest of the Navajo Nation in mind for litigation, specifically litigation strategy and litigation coordination.

The Navajo Nation needs one lawyer charged with prosecuting and defending all legal actions of the Nation. This ensures uniformity and consistency. In addition, the Attorney General represents the entire Navajo Nation and takes into consideration the needs of all three branches and the 110 chapters. The Office of Legislative Counsel represents only the

Legislative Branch which is much narrower in focus and does not take into consideration the needs of the entire Navajo Nation.

The Office of Legislative Counsel Plan of Operation at 2 N.N.C. § 964(A)(2), requires that Office to avoid duplication of work with the Attorney General and to avoid conflicting legal advice and opinion. These amendments contradict this section of the Code and, instead, ensure that there would be conflicting legal advice and opinions, and possibly duplication of work. The authorities, duties and responsibilities of the Office of Legislative Counsel are to provide legislative guidance, which is substantially different than litigation. The Office of Legislative Council is not designed to handle litigation.

Finally, the change of representation of the Board of Election Supervisors from the Attorney General to the Legislative Counsel creates a potential for a direct conflict within the Office of Legislative Counsel, especially if it advises and represents both individual delegates and the Board of Election Supervisors, as suggested by the amendments. Delegates may file grievances against the Board for alleged violations of the Election Code if such delegates are disqualified as candidates, if an election results in the loss of their Council seat, or if Navajo citizens file recall petitions against them. Under the proposed amendments, complaints against delegates and actions by the Board of Election Supervisors against Council delegates would be addressed only through the Office of Legislative Counsel. There is nothing in the proposed amendments to deal with this clear conflict.

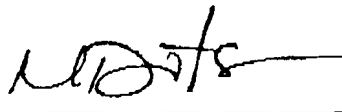
For the reasons stated herein, I hereby veto Resolution No. CJA-06-10.

xc: Honorable Members of the Navajo Nation Council

RESOLUTION NO: CJA-06-10

TITLE: RELATING TO GOVERNMENT SERVICES AND INTERGOVERNMENTAL RELATIONS; ENACTING THE OFFICE OF LEGISLATIVE COUNSEL AMENDMENTS ACT OF 2010; AMENDING TITLE 1 AND 2 OF THE NAVAJO NATION CODE, 1 N.N.C. § 555, 2 N.N.C. §§ 185, 691, 694, 873, 877, 908, 934, AND 1964

DELIVERED TO PRESIDENT'S OFFICE: 2/03/10 3:32 P.M.  
Date Time

Received By:  2/3/10  
Name Date

Veto Power Waived as of 5:00 P.M. 02/12/2010  
Date

Prepared by Office of Legislative Services

## 21st Navajo Nation Council - Third Year

Mr. Speaker

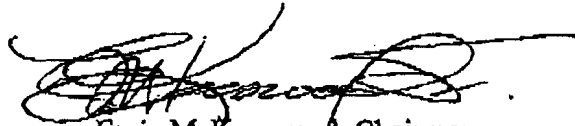
The GOVERNMENT SERVICE COMMITTEE to whom has been assigned

### NAVAJO LEGISLATIVE BILL # 0010-10

**RELATING TO GOVERNMENT SERVICES AND INTERGOVERNMENTAL RELATIONS; ENACTING THE OFFICE OF LEGISLATIVE COUNSEL AMENDMENTS ACT OF 2010; AMENDING TITLES 1 AND 2 OF THE NAVAJO NATION CODE, 1 N.N.C. §§ 185, 691,694,873,877, 908, 934, AND 1964**

Has had it under consideration and reports the same with the following recommendation that it **PASS** with no amendments.

And therefore referred to **INTERGOVERNMENTAL RELATIONS COMMITTEE** respectfully submitted

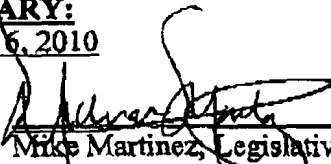


Ervin M. Keeswood, Chairman  
GOVERNMENT SERVICES COMMITTEE

**GSC SUMMARY:**

Date: January 6, 2010

Adopted :

  
Mike Martinez, Legislative Advisor

Main Motion: Charles Damon 2<sup>nd</sup> Leonard Teller

Vote 4 - 1

**21st Navajo Nation Council**

Fourth Year 2010

Mr. Speaker,

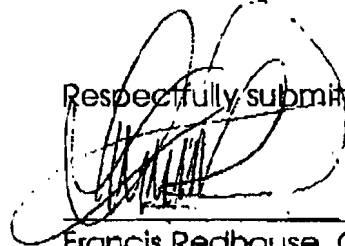
The **ETHIC AND RULES COMMITTEE**, to whom has been assigned

**NAVAJO LEGISLATIVE BILL 0010-10**

Has had it under consideration and reports the same with a **DO PASS with NO AMENDMENTS :**

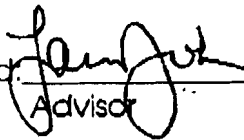
And therefore referred to the **21<sup>ST</sup> NAVAJO NATION COUNCIL.**

Respectfully submitted,



Francis Redhouse, Chairperson

Adopted: \_\_\_\_\_

  
Advisor

Not Adopted: \_\_\_\_\_

Advisor

Date: **January 08, 2010**

The vote was 7 in favor and 0 opposed

Excused:

Absent:

Advisors:

**INTERGOVERNMENTAL RELATIONS COMMITTEE REPORT**  
21<sup>ST</sup> Navajo Nation Council – Fourth Year, 2010

INTRODUCED BY

Katherine Benally

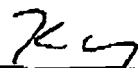
**LEGISLATION NO. 0010-10**

**An Act Relating to Government Services and Intergovernmental Relations;  
Enacting the Office of Legislative Counsel Amendments Act of 2010; Amending  
Titles 1 and 2 of the Navajo Nation Code, 1 N.N.C. § 555, 2 N.N.C. §§ 185, 691, 694,  
873, 877, 908, 934, and 1964**

1. On January 7, 2010, the Intergovernmental Relations Committee conducted a special meeting, at which time it reviewed the above referenced proposed resolution.
2. The Intergovernmental Relations Committee **APPROVES** this proposed resolution and refers it to **ETHICS & RULES COMMITTEE**.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor and 5 opposed, this 7th day of January, 2010.

  
\_\_\_\_\_  
Kee Allen Begay, Jr., Chairman Pro Tem  
Intergovernmental Relations Committee

Motion: Andy Ayze  
Second: Larry Noble

CJA-06-10

**RESOLUTION OF THE  
NAVAJO NATION COUNCIL**

**21<sup>st</sup> NAVAJO NATION COUNCIL - Fourth Year, 2010**

**AN ACT**

**RELATING TO GOVERNMENT SERVICES AND INTERGOVERNMENTAL RELATIONS;  
ENACTING THE OFFICE OF LEGISLATIVE COUNSEL AMENDMENTS ACT OF  
2010; AMENDING TITLE 1 AND 2 OF THE NAVAJO NATION CODE, 1 N.N.C.  
§ 555, 2 N.N.C. §§ 185, 691, 694, 873, 877, 908, 934, AND 1964**

**BE IT ENACTED:**

**Section One, Enactment of the office of Legislative Counsel  
Amendments Act of 2010.**

The Navajo Nation Council hereby enacts the Office of  
Legislative Counsel Amendments Act of 2010.

**Section Two. Findings.**

A. The Navajo Nation hereby finds that the Office of  
Legislative Counsel was established in 1989 to provide the  
Navajo Nation Council and other Legislative Branch entities with  
legal advice and legislative assistance, independent from the  
Office of the Attorney General.

B. The Navajo Nation further finds that Office of  
Legislative Counsel has since 1989 demonstrated its capacity to  
provide legal representation to the Navajo Nation Council and  
other Legislative Branch entities.

C. The Navajo Nation finds that the Office of Legislative  
Counsel should be provided additional authority to address the  
need for provision of legal services to the Navajo Nation  
Council, standing committees, commissions and boards of the  
Navajo Nation Council, offices and programs of the Legislative  
Branch, independent of the Department of Justice.

D. The Navajo Nation determines that these amendments are  
in the best interests of the Navajo Nation and Navajo People.

CJA-06-10

**Section three. Amendments of Title 1 of the Navajo Nation Code**

The Navajo Nation Council hereby amends Title 1 of the Navajo Nation Code, 1 N.N.C. §§ 555, as follows:

**NAVAJO NATION CODE ANNOTATED  
TITLE 1. GENERAL PROVISIONS  
CHAPTER 5. NAVAJO NATION  
SUBCHAPTER 2. SOVEREIGN IMMUNITY ACT**

§ 555. Procedure with respect to actions authorized by this subchapter

A. Any person or party desiring to institute suit against the Navajo Nation or any officer, employee or agent of the Navajo Nation as authorized by this Subchapter shall, as a jurisdictional condition precedent provide notice to the President of the Navajo Nation, the Chief Legislative Counsel, and of the Attorney General of the Navajo Nation, as provided herein.

1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the President of the Navajo Nation, the Chief Legislative Counsel, and of the Attorney General of the Navajo Nation, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of both notices as evidenced upon such receipts, and filed together with such notices with the court in which such action is subsequently to be commenced. The President of the Navajo Nation, the Chief Legislative Counsel, and the Attorney General of the Navajo Nation shall, ensure the availability, during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.

\*\*\*\*

C. Any person or party filing a complaint against the Navajo Nation or any officer, employee or agent of the Navajo Nation shall serve by registered mail, return receipt requested, a copy of this complaint together with summons duly issued, upon the President of the Navajo Nation, the Chief Legislative



CJA-06-10

Counsel, and the Attorney General of the Navajo Nation. Service of summons and complaint against any officer, employee, or agent of the Navajo Nation shall be made by any means authorized under the rules of the courts of the Navajo Nation, provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the President of the Navajo Nation, Chief Legislative Counsel, and the Attorney General of the Navajo Nation.

D. In any action in which any claim is asserted against the Navajo Nation or any public entity thereof, upon written demand of the Navajo Nation Department of Justice, or the Office of Legislative Counsel, made at or before the time of answering, served upon the opposing party and filed with the court where the action is pending, the place of trial of such action shall be changed to Window Rock, Navajo Nation (Arizona).

#### **Section Four. Amendment of Title 2 of the Navajo Nation Code**

The Navajo Nation Council hereby amends Title 2 of the Navajo Nation Code, as follows:

**NAVAJO NATION CODE ANNOTATED  
TITLE 2. NAVAJO NATION GOVERNMENT  
CHAPTER 3. LEGISLATIVE BRANCH  
SUBCHAPTER 3. NAVAJO NATION COUNCIL COMMITTEES-GENERALLY**

§ 185. Powers

\*\*\*\*

F. Subpoenas and orders may be enforced by the courts of the Navajo Nation by means of civil enforcement of committee action. A committee, by the ~~Attorney General~~, Office of Legislative Counsel, may apply to the District Court of the Window Rock Judicial District for an order to enforce any committee subpoena.

NAVAJO NATION CODE ANNOTATED  
TITLE 2. NAVAJO NATION GOVERNMENT  
CHAPTER 3. LEGISLATIVE BRANCH  
SUBCHAPTER 11. BOARDS AND COMMISSIONS  
ARTICLE 3. NAVAJO BOARD OF ELECTION SUPERVISORS

§ 873. Powers and duties

A. General. The Board shall have all powers necessary and proper to carry out the purposes set forth in the Election Code.

B. Enumerated Powers. The Board is hereby authorized and directed:

\*\*\*\*

15. To maintain such staff and consultants ~~including legal counsel~~ as may be provided for in the annual Navajo Nation budget of the Board.

\*\*\*\*

19. To bring action as deemed necessary and proper for the enforcement of the Election Code through the ~~Attorney General~~ Office of Legislative Counsel and report violations/offenses to the Ethics and Rules Committee where necessary.

§877. Director, staff; power and duties

\*\*\*\*

B. Powers and Duties of staff. The staff shall have all powers delegated by the Board and Election Administration Office Director and necessary and proper in carrying out the purposes of the Election Code as authorized by the Board. The duties include the following:

\*\*\*\*

14. Assist the board in functions as follows:

CJA-06-10

\*\*\*\*

k. Enforce the Election Code by reporting violations of the Election Code to the ~~Attorney General~~ or Office of Legislative Counsel and Ethics Office.

\*\*\*\*

NAVAJO NATION CODE ANNOTATED  
TITLE 2. NAVAJO NATION GOVERNMENT  
CHAPTER 3. LEGISLATIVE BRANCH  
SUBCHAPTER 11. BOARDS AND COMMISSIONS  
ARTICLES 5. BLACK MESA REVIEW BOARD

§ 908 Administration

\*\*\*\*

D. All notices required to be sent pursuant to this Plan of Operation shall, in addition to being sent to the Board members, the claimant or his/her representative and PWCC, also be sent to the secretaries of the Kayenta Chapter, Forest Lake Chapter, Black Mesa Chapter, Shonto Chapter, Chilchimbeto Chapter, the Office of the Speaker, the Office of Legislative Counsel, the Attorney General, and the Office of the President of the Navajo Nation.

NAVAJO NATION CODE ANNOTATED  
TITLE 2. NAVAJO NATION GOVERNMENT  
CHAPTER 3. LEGISLATIVE BRANCH  
SUBCHAPTER 11. BOARDS AND COMMISSIONS  
ARTICLE 7. NAVAJO NATION INSURANCE COMMISSION

§ 961. Purpose

The purpose of the Office of Legislative counsel is to provide legal advice, legal representation and legislative services to the Navajo Nation Council, standing committees, commissions, and boards of the Navajo Nation Council, offices and programs of the Legislative Branch of the Navajo Nation, independent of the Department of Justice.

CJA-06-10

\*\*\*\*

## § 964. Authorities, duties and responsibilities

A. General authorities, duties and responsibilities of the Office of Legislative Counsel shall include:

1. Report and be responsible to the Navajo Nation Council and to the Intergovernmental Relations Committee of the Navajo Nation Council.

2. Coordinate with the Department of Justice and other attorneys providing legal services to the Navajo Nation the work of the Legislative Counsel to avoid duplication of work and conflicting legal advice and opinion.

3. Develop an annual work plan and budget for the office for consideration by the Navajo Nation Council during the regular annual budget process.

4. To advise the Navajo Nation Council on legislative matters pending before the Navajo Nation Council.

5. To advise standing committees, commissions, and boards of the Navajo Nation Council on legislative matters pending before the respective committees, commissions or boards.

6. To assist members of the Navajo Nation Council in preparing proposed resolutions for consideration by Chapters, committees, commissions, boards or the Navajo Nation Council.

7. To provide legal representation to the Navajo Nation Council, standing committees, commissions and boards of the Navajo Nation Council, offices and programs of the Legislative Branch, independent of the Department of Justice, through Office of Legislative Counsel and outside counsel contracted by the Office of Legislative Counsel, to represent the legal interests of the Legislative Branch of the Navajo Nation.

8. Perform all duties and responsibilities in accordance with the highest standards of legal ethics.

## CJA-06-10

## B. Codification of Navajo Nation Laws, Rules and Regulations:

1. The Legislative Counsel shall periodically review all legislation of the Navajo Nation Council and standing Committees of the Navajo Nation Council to determine codification within the Navajo Nation Code.

2. The Legislative Counsel shall periodically prepare and publish new, revised and updated ~~hard-bound~~ versions of the Navajo Nation Code, in hard-bound and electronic formats.

3. The Legislative Counsel shall periodically review and evaluate the Navajo Nation Code and recommend appropriate ~~actions~~ legislation to repeal, supersede, clarify and generally update provisions of the Navajo Nation Code for consideration by the appropriate standing committees of the Navajo Nation Council.

C. Opinions of the Chief Legislative Counsel

1. Any Legislative Branch entity of the Navajo Nation government, or any elected official of the Legislative Branch may request the Chief Legislative Counsel to issue an opinion concerning any question of law relating to their respective Legislative Branch entity or offices. No adverse action may be taken by the Navajo Nation government against any official or employee of the Legislative Branch for conduct taken in reasonable reliance upon the advice given in such an opinion.

2. The Chief Legislative Counsel shall, at least annually, publish the official Opinions of the Chief Legislative Counsel. The Chief Legislative Counsel shall provide copies of all such opinions to the President, the Speaker, the Chief Justice, and each delegate of the Navajo Nation Council.

NAVAJO NATION CODE ANNOTATED  
TITLE 2. NAVAJO NATION GOVERNMENT  
CHAPTER 5. EXECUTIVE BRANCH  
SUBCHAPTER 39. DEPARTMENT OF JUSTICE  
ARTICLE 1. GENERALLY

§ 1964. Attorney General; Chief Legal Officer

## CJA-06-10

A. the Attorney General is the Chief Legal Officer of the Navajo Nation and, unless otherwise provided by Navajo Nation law, shall have charge of the Department of Justice and of all legal matters in which the Navajo Nation government has an interest.

B. The Attorney General shall render legal services to the Navajo Nation government, including its Chapters, branches, and entities, subject to available resources, as may be required.

C. Except as otherwise provide by Navajo Nation law, no division, program, enterprise, or other entity of the Navajo Nation government shall retain or employ legal counsel except as may be approved by the Attorney General. The Executive and Judicial branches shall not retain or employ legal counsel for external litigation except as may be approved by the Attorney General. The Office of Legislative Counsel may retain or employ legal counsel for provision of legal services to the Navajo Nation Council, standing committees, commissions and boards of the Navajo Nation Council, offices and programs of the Legislative Branch, to represent the interests of the Legislative Branch independent of the Department of Justice. Navajo Nation Chapters may employ their own counsel, subject to available funds, under the terms and conditions approved by the Chapter membership.

D. The Attorney General shall adopt reasonable rules and regulations to allow for the hiring of independent and additional outside counsel as needed, as provided in this subpart.

E. The Attorney General may retain private counsel to handle any particular matter or types of matters as he deems appropriate, subject to the availability of funds appropriated for such purposes. Such counsel may be retained to represent the Navajo Nation government in distant forums, to provide specialized legal expertise not available from within the Department of Justice, and to respond to exceptional demand for legal services.

CJA-06-10

F. Except as otherwise provided by Navajo Nation law, the Attorney General shall defend and initiate all actions, including appeals, in which the Navajo Nation is a party, including any action brought in the name of Navajo Nation government officials for conduct arising out of their official duties, and may compromise or settle any action or claim by or against the Navajo Nation government. Before concluding any such compromise or settlement which involves a particular Executive or Judicial Branch branch, division, department or program, the Attorney General shall consult with such branch, division, department, or program. The Attorney General shall not compromise or settle any matter to which the Navajo Nation Council, standing committees, commissions, and boards of the Navajo Nation Council, offices and programs of the Legislative Branch, are parties unless compromise or settlement is duly approved by the particular Legislative Branch parties.

Where no branch or division is named, or otherwise particularly involved, the Attorney General shall consult with the President and the Speaker of the Navajo Nation Council prior to concluding any such compromise or settlement.

G. All communications between elected tribal officials, officers, employees, or agents of the Navajo Nation government and its attorneys shall be protected by the attorney-client privilege and shall not be admissible to discoverable in any judicial or administrative proceeding. No waiver of the attorney-client privilege shall be effective against the Navajo Nation government without the express approval of the Attorney General, or the Chief Legislative Counsel for matters in which the Navajo Nation Council, standing committees, commissions and boards of the Navajo Nation Council, offices and programs of the Legislative Branch, are parties. The Attorney General, or Chief Legislative Counsel, in matters affecting Legislative Branch parties, is authorized to waive the attorney-client privilege when such waiver will advance the overall legal interests of the Navajo Nation government.

H. If the Attorney General determines that he/she is disqualified from providing legal representation or legal services on behalf of any entity of the Navajo Nation government in relation to any matter, the Attorney General shall give

CJA-06-10

written notification to the entity affected. If the entity has received such notification from the Attorney General, the entity is authorized to make expenditures, subject to available appropriations, to employ attorneys to provide the representation or services.

I. The Attorney General, or the Chief Legislative Counsel, in matters involving Legislative Branch parties or interests, in his or her discretion is authorized to represent an officer or employee of the Navajo Nation against whom a civil action is brought in his or her individual capacity until such time as it is established as a matter of law that the alleged activity or events which form the basis of the complaint were not performed, or not directed to be performed, within the scope of course of the officer's or employee's duty or employment.

#### **Section Six. Effective Date**

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

#### **Section Seven. Codification**

The provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

#### **Section Eight. Savings Clause**

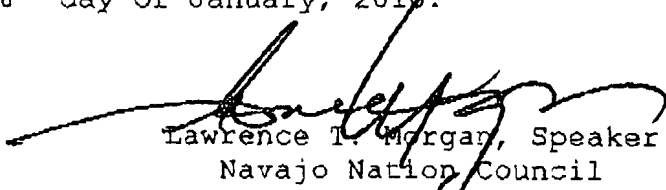
Should any provisions of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, or any other court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.



CJA-06-10

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 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 67 in favor and 6 opposed, this 28<sup>th</sup> day of January, 2010.

  
Lawrence T. Morgan, Speaker  
Navajo Nation Council  
03 Feb 10  
Date

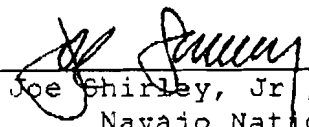
Motion: Lawrence Platero  
Second: Roy Dempsey

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
Dr. Joe Shirley, Jr., President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of **FEB 13 2010** 2010 for the reason(s) expressed in the attached letter to the Speaker.

  
\_\_\_\_\_  
Dr. Joe Shirley, Jr., President  
Navajo Nation