

No. SC-SP-01-19

SUPREME COURT OF THE NAVAJO NATION

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In the Matter of the Petition of:

Mary W. Shirley

OPINION

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

Mary W. Shirley, Esq., Pro se Petitioner, Phoenix, Arizona.

This matter comes before the Supreme Court on a letter that this Court accepted as a petition for exemption from pro bono service and appointment. We clarify the process and obligation of practitioners seeking exemption.

I

Mary W. Shirley (“Petitioner”) is an active member of the Navajo Nation Bar Association, Inc. (“NNBA”). Petitioner is also an employee of the United States Government, through the United States Department of Housing and Urban Development (“HUD”).

On or about May 1, 2019, Petitioner submitted a letter to the NNBA stating that she is employed with HUD and that as an employee of HUD, she is “prohibited from court appointed pro bono legal representation.” A copy of that letter was not submitted to the Office of Pro Bono Service (“OPBS”) by the Petitioner.

On July 24, 2019, the OPBS received a request for appointment of pro bono counsel from the Chinle District Court. After a review of the cover letter, order and supporting documentation, the OPBS provided the name of the next eligible person to the Chinle District Court for appointment. Because Petitioner never submitted her letter to the OPBS prior to these

events, Petitioner was listed on the pro bono list maintained by the OPBS. The OPBS referred Petitioner's name for pro bono appointment and, on July 25, 2019, the Chinle District Court entered an order appointing Petitioner as pro bono counsel.

On or about August 5, 2019, Petitioner contacted the OPBS by telephone requesting to be identified as exempt, stating she previously filed for and obtained an exemption from the NNBA. The OPBS informed Petitioner that an exemption will be indicated in the system and that withdrawal in the district court was in order based on this information, which can be verified by the OPBS if the need arises. Such a resolution was proposed while the OPBS and the NNBA continue to address ongoing pro bono coordination concerns. Petitioner, however, insisted on a letter of exemption to support her withdrawal. Such a letter by the OPBS generally does not issue. Even if such a letter were to issue, it required proof of "[prohibition] by the law applicable to their employment from pro bono representation" as required by Rule II.C.2 of the Navajo Nation Pro Bono Rules, which was not on file with the OPBS.

On August 6, 2019, the OPBS received the May 1, 2019 letter from the Petitioner addressed to the NNBA. In this letter, Petitioner stated that she is exempt from pro bono appointments, citing to Rule II.C.2 of the Navajo Nation Pro Bono Rules, which provides:

2. Persons who are employed by other sovereigns who are prohibited by the law applicable to their employment from pro bono representation;
  - a. Such persons must file with the office of pro bono service appropriate proof of the restrictions on their pro bono service; and

On August 21, 2019, Petitioner eventually submitted, by email, her proof of restriction to the OPBS. In the email addressed to the "Navajo Nation Supreme Court, Pro Bono Service", Petitioner asserts she was exempt from appointment and service, and requested written confirmation. Petitioner stated "I request to remain on the Exempt list for Pro Bono Court Appointment/Service with the Office of Pro Bono Service." A letter from HUD's regional

counsel was attached as the proof of restriction. The letter detailed the need to run conflict checks and obtain approval from the Agency Ethics Official prior to engaging in legal representation.

The totality of the submissions by the Petitioner and her assertions that she is exempt from both pro bono appointment and pro bono service resulted in the filing of the August 21, 2019 email, May 1, 2019 letter, and supporting correspondence as a petition, in accordance with this Court's long standing practice.

## II

The issues presented in this case are: 1) Whether the Petitioner is exempt from pro bono appointment under Navajo Nation Pro Bono Rule II.C.2; and 2) Whether the Petitioner is exempt from pro bono service under Navajo Nation Pro Bono Rule VI.

## III

This is a special proceeding at the Supreme Court from a petitioner who is seeking exemption from pro bono appointment under Rule II.C.2 and pro bono service under Rule VI of the Navajo Nation Pro Bono Rules. We deal with each issue in turn.

We do not address the Petitioner's appointment by the Chinle District Court, as it is properly before that court, and was not raised in the Petition.

## IV

Exemption from pro bono appointment under Rule II.C.2 of the Navajo Nation Pro Bono Rules requires proof of employment prohibition to the OPBS.

We turn first to the pro bono appointment obligations of practitioners under the Navajo Nation Pro Bono Rules (adopted by SCAP-4-90 (April 23, 1990), repealed and replaced by SC-SP-02-94 (March 20, 1996), amended by SC-SP-02-94 (February 4, 1997), amended by SC-NB-

05-2000 (March 16, 2001)). As a general rule, “All regular members of the NNBA and other persons permitted to practice in the Navajo Nation courts are subject to and shall accept pro bono appointments.” Navajo Nation Pro Bono Rule II.A.

Aside from those persons and positions exempt from pro bono appointment, under Rule II.C, there are three classes of persons or positions that are provisionally exempt from pro bono appointment: 1) Officers, Bar Commissioners and members of the Disciplinary, Training, Admissions, Rules, Continuing Legal Education (CLE), and Judicial Evaluation Committees of the NNBA<sup>1</sup>; 2) Persons who are employed by other sovereigns who are prohibited by the law applicable to their employment from pro bono representation; and 3) other persons granted exemption by the Navajo Nation Supreme Court on petition for good cause shown with notice to the NNBA. Persons under Rule II.C.1 are exempt from the first three rotations of the pro bono list. Navajo Nation Pro Bono Rules, at n.1. Persons under Rule II.C.3 are exempt upon petition for good cause shown and order of this Court. As to the matter before the Court, persons under Rule II.C.2 are exempt after demonstrating they are prohibited by law applicable to their employment from pro bono representation. Navajo Nation Pro Bono Rule II.C.2.

The NNBA is not responsible or authorized to declare members exempt. Rule VIII created the OPBS within the Navajo Nation Supreme Court to keep and maintain the pro bono list. Therefore, notification of claimed exemptions should be addressed and sent directly to the OPBS. For purpose of clarification, documents must be submitted to the OPBS, by September of each year (coinciding with filings under Rule VI.B), in order for an exemption to be processed for the upcoming year.

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<sup>1</sup> Amended by SC-NB-05-2000 (March 16, 2001).

The NNBA has a large membership exceeding 630 active and inactive members. NNBA Newsletter, Summer 2019. Members of the NNBA cannot assume that they can do nothing to inform the OPBS of claimed exemptions and still expect to be exempted. Without any written notification of claimed exemptions to the OPBS, the OPBS is unaware of those members in positions, employment and conditions that may justify exemption from pro bono appointment.

Petitioner falls under Rule II.C.2, which requires that persons employed by other sovereigns to submit proof of prohibition to the OPBS. Petitioner failed to do so until after pro bono appointment by the Chinle District Court, and in fact, waited nearly a month after appointment before filing any “proof.”

We do not take issue with the “proof” offered, rather the timing here is the issue. Had Petitioner filed proof with the correct office, Petitioner’s name would have been marked as exempt on the pro bono list. Members are expressly required to file directly with the OPBS. The duty to read and comply with the rules rests solely with the individual member.

## V

Exemption from pro bono service under Rule VI of the Navajo Nation Pro Bono Rules requires a statement and an approved pro bono service plan.

Rule VI.B of the Navajo Nation Pro Bono Rules (amended by SC-SP-02-94, February 4, 1997) provides in relevant part:

- B. All persons claiming exemption under Rule II.C. shall file a statement with the NNBA on or before September 15 of each year which shall either waive their exemption from pro bono service and request to be placed on the list for pro bono appointments, or else submit a proposed plan of pro bono service for the forthcoming year.
  - 1. The pro bono plan shall specify the proposed alternative service and the estimated time to be spent on such service.
  - 2. If the NNBA member had a pro bono service plan in effect for the then current year, the member shall include in the plan a summary of his or her service in the current year.


The Board of Bar Commissioners must review proposed plans and recommend approval or disapproval of these plans to the Navajo Nation Supreme Court by October 31 of each year; and the Navajo Nation Supreme Court must approve or disapprove the plans by December 1 each year. Rule VI.

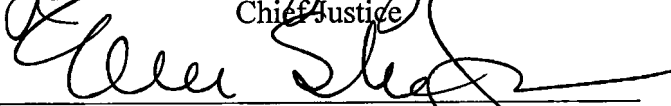
We find no evidence that the Petitioner ever submitted such a service plan. In any event, no such service plan was ever received by this Court. We find no evidence that the Petitioner was ever exempted from pro bono service. The Petitioner is not exempt from pro bono service.

VI

The Court hereby concludes that Petitioner is exempt from pro bono appointment for the remainder of 2019. The Petitioner is not exempt from pro bono service.

Dated this 18<sup>th</sup> day of September, 2019.

  
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Chief Justice

  
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Associate Justice