

No. SC-CV-08-11

IN THE SUPREME COURT OF THE NAVAJO NATION

Evelyn Acothley, et al.
Petitioners,

v.

The Honorable Carol Perry,
Window Rock District Court,
Respondent,

And

The Navajo Nation,
Real Parties in Interest.

ORDER SCHEDULING CONFERENCE

Before YAZZIE, Chief Justice, and SHIRLEY, Associate Justice.

An original action for a writ of superintending control concerning Window Rock District Court Cause Nos. WR-CR-1029/1030/1031/1032/986/863/867/872/875/899/773/774/775/777/946/949/952/953/917/920/923/926/763/764/765/768/975/803/804/805/806/808/772/776/780/784/792/833/836/839/842/983/964/965/972/974/868/873/929/938/940/944/947/903/909/911/1034/1035/851/840/844/847/849/756/757/758/971/1014/930/932/934/937/816/819/821/823/848/853/586/861/879/883/886/890/897-10.

David R. Jordan, Gallup, New Mexico, for Petitioners; Novaline D. Wilson, Window Rock, Navajo Nation, for Respondent; Alan Balaran, Special Prosecutor, Window Rock, Navajo Nation, for the Real Party in Interest The Navajo Nation, and Harrison Tsosie, Attorney General, Window Rock, Navajo Nation, for Amicus Navajo Department of Justice.

TO: Alan Balaran, Special Prosecutor, The Navajo Nation
Edward Martin, Director, Administrative Office of the Court
Court Administrators of the Navajo Judicial Districts, with the exception of Aneth
Regina Roanhorse, Alamo/Tohajiilee District Courts
Vanessa Mescal, Chinle District Court
Rena Thompson, Crownpoint District Court
Darlene LaFrance, Dilkon District Court
Lavonne K. Yazzie, Kayenta District Court
Ester Jose, Ramah District Court
Ethel S. Laughing, Shiprock District Court
Alice Huskie, Tuba City District Court

Barbara Willetto, Window Rock District Court
Staff Attorneys of the Navajo Judicial Districts, with the exception of Aneth
Daniel Moquin, Alamo/Tohajiilee District Courts
Rodgerick T. Begay, Chinle District Court
Patrick Dooley, Crownpoint District Court
Jordan M. Hale, Dilkon District Court
Malcolm Begay, Kayenta District Court
Martin Avery, Ramah District Court
Derrick Burbank, Shiprock District Court
Tina T. Hathathli, Tuba City District Court
Novaline Wilson, Window Rock District Court

This matter comes before the Court on the May 2, 2011 filing of the *Special Prosecutor's Proposed Plan for Proceedings with the Upcoming Conspiracy Prosecutions of Delegates of the 21st and 22nd Council*. On March 1, 2011, this Court had ordered that “[t]he district courts and the Special Prosecutor SHALL provide a plan for the adjudication of the above joint trials to this Court no later than April 30, 2011, during which time all speedy trial timelines are tolled.” *Acothley et al. v. Perry*, No. SC-CV-08-11, slip op. at 19-20 (Nav. Sup. Ct. March 1, 2011) (emphasis in the original).

While the Special Prosecutor did file his pleadings within the timeframe ordered by the Court, the Court finds that it is not a plan called for by the Court. Recognizing the uniqueness to the Navajo judiciary of processing multiple joint trials in multiple districts, the Court had called for a plan for the adjudication of the criminal conspiracy charges developed by the Special Prosecutor in conjunction with the district courts. However, the Special Prosecutor has informed the Court that there has been little discussion with the district courts because “the Court’s directives have, for the most part, been ignored.” *Proposed Plan* at 1. In addition to the many problems encountered, we are informed that there has been no assistance from the Department of Justice, and “only four courts responded to the Special Prosecutor’s invitation” to discuss the plan. *Proposed Plan* at 5. As a result, the Special Prosecutor was constrained “to draft a plan

that does not take into account the input of a majority of courts; does not contemplate the assistance of the Office of the Attorney General; and is forced to spend an inordinate amount of time with his hat in hand to ensure that he can compensate his staff.” *Proposed Plan* at 2. As a result of the asserted constraints, the Special Prosecutor now proposes to dismiss the criminal cases without prejudice and re-file them as civil cases. *See Proposed Plan* at 7.

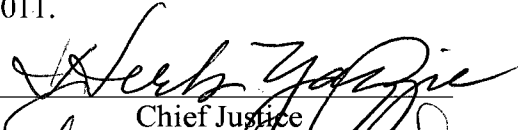
The Navajo Nation through the Special Prosecutor ultimately has exclusive authority as to the exercise of prosecutorial discretion. However, the solution regarding prosecution of these multiple defendants must be workable in the district courts, whose input into such a workable plan is therefore, fundamental. The Court will not allow any change in the Special Prosecutor’s plan to be based simply on the assertion that the courts did not cooperate as ordered in the development of a plan. We believe that a status conference is necessary to provide the officials named herein to provide their necessary input. The Courts are given one more opportunity to explain their situation.

For the above purpose, you are HEREBY ORDERED to attend a conference set pursuant to Rule 15 of the Navajo Rules of Civil Appellate Procedure, to be held on Thursday, May 5, 2011 at 10:00 A.M. at the Navajo Nation Museum Conference Room No. 3. The Special Prosecutor, Staff Attorneys (representing the interests of the District) and Court Administrators of the Navajo Nation Judicial Districts, and Mr. Edward Martin, Director of the Administrative Office of the Courts, are hereby ORDERED to be in attendance.

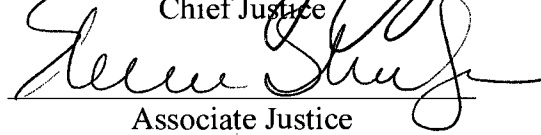
This conference pertains strictly to administrative matters between the courts and the Special Prosecutor, specifically the logistics attendant to a workable prosecutorial plan. Therefore, the participation of defense counsels in the conference is not necessary at this time.

We remind the Special Prosecutor and the district courts that the writ of superintending control is applicable to all Discretionary Fund Cases, and the plan called for in our previous writ must address all criminal conspiracy charges in the above cases.

Dated this 7th day of May, 2011.



Chief Justice



Associate Justice