

NATIONAL TRIBAL JUDICIAL CENTER
THE NATIONAL JUDICIAL COLLEGE

Navajo Peacemaking Process

by

The Hon. Robert Yazzie & James W. Zion

Learning Objectives

This session is designed so at the end of the day you will be able to:

1. Describe the structure of peacemaking within the Navajo Nation judicial system.
2. Summarize Navajo peacemaking process.
3. Give examples of how Navajos have used peacemaking to “transform conflict” in domestic relations, civil cases, and criminal offense cases.

Structure of Peacemaking

Peacemaking began as court-annexed mediation and arbitration, but is evolving.

There are seven judicial districts in the Navajo Nation, and one district has three circuit courts. Each district has a peacemaker liaison. They are members of the court staff but peacemakers are not. They are “officers of the court” so they cannot be sued for their activities and so they can be under court authority.

The peacemaker liaison’s duties include receiving cases from judges to set up peacemaking sessions; taking “walk-ins” of people who want to use peacemaking; appointing specific peacemakers to cases; holding in-house training for peacemakers; arranging for court or other space for peacemaking sessions; sending out notices to parties; and generally supporting the peacemaking function.

A 2001 resolution of the Navajo Nation Council established *Hozhooji Naat’aanii* or the Navajo Nation Peacemaking Division of the court system. It is a separate, statutory, program that was established to promote peacemaking, and its responsibility and authority is to:

- Make certain that the procedures of the program conform to Navajo traditions.
- Maintain lists of peacemakers and give them technical support.

- Authorize peacemakers to enter into funding agreements with the Judicial Branch for mileage and training.
- Perform other functions and duties, within Navajo Nation law, to promote peacemaking.

The Navajo Nation Local Governance Act of 1998 provides that the Navajo Nation's 110 chapters (local governments) can administer peacemaking programs on their own. To date no chapter has assumed that role. There are approximately 250 peacemakers in the Navajo Nation.

Peacemakers are community leaders, most often appointed by chapters (judges in each judicial district can appoint peacemakers if a chapter does not act). Chapters can elect peacemakers in a chapter meeting, but we see that many will simply appoint peacemakers by consensus or the decision of chapter leaders.

Peacemakers are traditional community leaders chosen by consensus for their wisdom, spiritual qualities, teaching ability, planning skills, etc. They can be "removed" by consensus, when people refuse to listen to them any more. It is difficult to put those qualities in a court rule as a modern *naat'aanii* (the name of traditional community leaders). To be a peacemaker, that person must:

- Live in the community that selects the peacemaker.
- Have the respect of that community.
- Show an ability to work with people and a reputation for integrity, honesty, humanity, and an ability to solve problems.
- "Any person," including non-Indians, can be a peacemaker so long as they satisfy those qualifications and are chosen by a chapter.

Peacemakers have these general powers under the rules (Note: Many of these powers and functions have evolved outside the rules):

- Mediate disputes by attempting to get people to agree on the nature and effect of problems affecting them and to agree on what should be done to resolve those problems;
- Use traditional Navajo religious and other ways of "mediation and community problem-solving;"
- Instruct and lecture individuals on the traditional Navajo teachings that apply to their problem or conduct;

- Compel individuals involved in a dispute, or who are affected by it or connected with it in any way, to meet to discuss the problem and participate in peacemaking efforts;
- Use any reasonable means to obtain a peaceful, cooperative and voluntary resolution of a dispute, without the use of any force or violation of rights secured by the Navajo Nation Bill of Rights.

Big question: Does your bill of rights or the Indian Civil Rights Act apply to processes such as this? If so, how? If not, why not?

Is there a better way of structuring a process like this? Should it be in the court system or not? Should it be a private organization, such as a nonprofit? How can the people who operate traditional systems organize? What happens if someone like a peacemaker abuses a participant?

Process

Aside from the kinds of cases set out in the rules, peacemaking is now authorized by statute for domestic abuse and criminal cases. Navajo Nation drug courts have used peacemaking. Questions:

- Can, or should, traditional procedures be used in domestic violence or abuse cases? What is the difference between domestic “violence” and domestic “abuse”?
- Can, or should, traditional procedures be used in criminal cases in general? Is that being done elsewhere?
- Can or should traditional procedures be used in child sexual abuse, rape or similar serious offenses?
- How can peacemaking be used in drug or wellness courts?
- Assuming that there may be situations where face-to-face contact between people with a serious problem should not be done, are there alternative methods of handling such a situation? How was that done traditionally? Are there any due process problems with something like “shuttle diplomacy” or relatives negotiating for individuals?

Cases go into peacemaking through two routes: A judge can send a case into peacemaking in civil and criminal cases. Individuals can initiate peacemaking on their own by seeing a peacemaker liaison. The fee is \$60 to pay the peacemaker. What are the problems of each?

What kinds of cases do the rules say can go into peacemaking?

- “Persons who are injured, hurt or aggrieved by the actions of another.”

- Disputes in chapters that are a crime against the public peace or which affect the chapter.
- Navajo Nation Council delegate disputes.
- Non-Indian petitions where the non-Indians agree to abide by the process.

Peacemaking can be held in any place (and it should be in the chapter of the parties), but it is often held in a courtroom or court office. What are the advantages to using the court facility for peacemaking? What are the disadvantages?

When a judge sends a case into peacemaking, or someone requests it, the peacemaker liaison picks a peacemaker and sends that person notice by first class mail. The peacemaker is then to “informally advise the parties, witnesses and participants” of the peacemaking. In practice, the peacemaker liaison does that by mail.

Peacemakers can get a subpoena to require people to attend sessions. Is that proper for a traditional process? How do you get people to attend hearings that affect them? If people do not attend, can decisions be made for them?

Anyone can get a protective order from the court to end peacemaking for:

- Harassment by a peacemaker or harassment by another that the peacemaker does not handle;
- Invasions of personal privacy to an unreasonable extent;
- Peacemaker conduct that is degrading, inhuman, dangerous, assaultive or otherwise a violation of basic human rights;
- Unethical conduct.

The peacemaking process itself is not spelled out by the rules, but in general, these procedures are used:

- Prayer can be used to get the participants to commit to the process. Many peacemakers chose an elder relative of the parties to say the prayer.
- People “discuss facts” and “express feelings” in a “venting” process.
- The peacemaker gives instruction and guidance to the parties based on his or her personal wisdom and training, Navajo creation and journey narratives, traditional stories, or other learning.

- The participants discuss means to end the dispute.
- The parties reach a consensus on what should be done.
- The peacemaker makes a report of the agreement, helps draft an agreement, or there can be an informal “handshake deal.”

Not all peacemaking agreements are reduced to writing. Should they be? What do peacemaker reports look like? To what extent should a peacemaking agreement conform to the law, for example, an agreed divorce? A domestic abuse restraining order?

Should the judge be able to review, reject, or modify an agreement in peacemaking? To what extent should what is agreed to in peacemaking be substantially the same as a court might order? Does an agreement have to be the same as what might be given under the law?

How should peacemaking agreements and judgments be enforced? Should breaches of agreements or judgments always go back to peacemaking? Should the court use contempt to enforce them? Should the court order specific performance of agreements? Of “handshake deals”?

Are peacemaking agreements entitled to full faith and credit or comity recognition in federal and State courts?

Examples

How does peacemaking work in these kinds of cases?:

- Domestic relations, such as divorce or child custody
- Civil causes of action, such as damage actions
- Criminal offenses
- Domestic abuse cases

Conclusion

Peacemaking functions within the structure of an Indian court system that was founded on a western model. Some people assume that traditional and western procedures are so dissimilar (note the discussion of the differences before) that they cannot work together. Is that true? Or is peacemaking flexible, plastic, and in keeping with the idea that people should solve their own problems?

How can the structure and procedures reviewed here be improved? What works with them? What doesn't?

Is it impossible, as some have said, for non-Indian communities or even other Indian communities to use peacemaking, because it is so specific to Navajo belief? What, if any, common human values are involved in the process that makes it possible to replicate Navajo peacemaking? If that is done, how should it be done?

Does peacemaking make sense? Are you prepared to make the leap of faith that you can resolve disputes without power, force, lawyers, prosecutors, police, judges, jailers, etc.? If not, what is your remaining doubt? If so, why do you make the leap of faith?

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TEXT OF THE OCTOBER 23, 2001 AMENDMENT
TO THE NAVAJO NATION JUDICIAL CODE (TITLE 7):
ENABLING LEGISLATION FOR THE
NAVAJO NATION PEACEMAKING DIVISION

Navajo Nation Council Resolution No. CO-76-01,
“Amending Title 7, Chapter 3 of the Navajo Nation Code
By Incorporating Enabling Legislation for the
Navajo Nation Peacemaking Division.”

Subchapter 10. Navajo Nation Peacemaking Division (*Hozhooji Naat'aanii*).

Sec. 409. Establishment

It is hereby recognized and affirmed that there is a Navajo Nation Peacemaking Division (*Hozhooji Naat'aanii*) within the Judicial Branch of the Navajo Nation. The Peacemaking Division shall be the central point of peacemaking information and coordination with the Navajo Nation Judicial Branch.

Sec. 410 Purposes

The purposes of the Navajo Nation Peacemaking Division include to promote a non-adversarial forum for solving disputes where the parties to the dispute voluntarily agree or are referred to peacemaking; to promote peacemaking counseling services to clients of the Navajo Nation courts; to promote peacemaking support and assistance to Navajo Nation Courts when requested to make recommendations on sentencing; to provide education and training on Navajo culture, traditions and other Navajo accepted beliefs to individuals, organizations, and communities; to provide support and technical assistance to peacemakers; to promote the research, development, and learning of Navajo culture, traditions, and other Navajo accepted beliefs in support of judicial and community programs; and provide problem solving assistance to peacemakers, judges, court staff, and others concerning the peacemaking process. Peacemaking is intended to promote healing and reestablish harmony among those persons participating in peacemaking.

Sec. 411 Responsibility and Authority

The Navajo Nation Peacemaking Division shall have the authority and power to undertake the following functions and duties:

- A. To conform the procedures of *Hozhooji Naat'aanii* to traditional Navajo *Hozhooji* concepts, including *K'e*, clanship, and other principles of Navajo culture, traditions, and other Navajo accepted beliefs, establish standards, and procedures for that process, and otherwise develop standards, principles, and procedures for the development of *Hozhooji Naat'aanii* in accordance with

Navajo culture, traditions, and other Navajo accepted beliefs and the laws of the Navajo Nation.

B. To maintain a list of peacemakers and provide technical support to peacemakers to facilitate the conduct of peacemaking.

C. To periodically evaluate the techniques of peacemakers and the peacemaking process.

D. To authorize peacemakers to enter into funding agreements with the Judicial Branch for mileage and training.

E. To perform such other functions and duties that are in accordance with Navajo Nation law and purposes of the Navajo Nation Peacemaking Division and that will promote the practice of peacemaking.

Sec. 412 Personnel

The Navajo Nation Peacemaking Division shall be administered by a Peacemaking Division Coordinator. All personnel, including the coordinator, shall be subject to Navajo Nation Judicial Branch personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

Sec. 413 Legislative Oversight

The Navajo Nation Peacemaking Division shall operate under the legislative oversight of the Judiciary Committee of the Navajo Nation Council pursuant to the powers granted that Committee in 2 N.N.C. Sec. 571 *et seq.* The Navajo Nation Peacemaking Division shall operate pursuant to a Plan Of [*sic*] Operation approved by the Judiciary Committee of the Navajo Nation Council.

Sec. 414 Amendments

This Subchapter may be amended from time to time by the Navajo Nation Council upon recommendation of the Judiciary Committee of the Navajo Nation Council.

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