

American Indian Law Review

Volume 24 | Number 2

1-1-2001

The Navajo Nation's Peacemaker Division: An Integrated, Community-Based Dispute Resolution Forum

Howard L. Brown Esq.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/air>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Howard L. Brown Esq., *The Navajo Nation's Peacemaker Division: An Integrated, Community-Based Dispute Resolution Forum*, 24 AM. INDIAN L. REV. 297 (2001), <https://digitalcommons.law.ou.edu/air/vol24/iss2/2>

This Article is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

THE NAVAJO NATION'S PEACEMAKER DIVISION: AN INTEGRATED, COMMUNITY-BASED DISPUTE RESOLUTION FORUM

Howard L. Brown, Esq.*

Introduction

For hundreds of years, the *Dine'*, or Navajo people, have used a community-based dispute resolution ceremony to resolve conflicts.¹ The ceremony integrates the wisdom, skills and perspectives of a variety of participants in order to reach noncoercive settlements that return the disputants and the community at large to a state of harmony. Because the contemporary Navajo Peacemaker Division relies on a customary dispute resolution method, experts argue that the Division is better considered a forum for "traditional" dispute resolution than "alternative" dispute resolution.² Although the Navajo Nation Judicial Branch includes a well-developed court system based on the Anglo-American model, Navajo judges, legislators and citizens assert that traditional dispute resolution mechanisms more fully comport with Navajo customs and thus are more effective in resolving the conflicts that arise among Navajo people and within the Navajo Nation.³

*Associate, Mangum, Wall, Stoops & Warden, P.L.L.C., Flagstaff, Ariz. J.D., 1997, Boston College Law School; B.A., 1992, University of Arizona. The author served as a judicial law clerk for the Supreme Court of the Navajo Nation during the summer of 1996 and in December 1999. He wishes to thank a number of people and organizations without whom this article could not have been written: James W. Zion, Solicitor of the Courts of the Navajo Nation; the Honorable Robert Yazzie, Chief Justice of the Supreme Court of the Navajo Nation; the Honorable Raymond D. Austin, Associate Justice of the Supreme Court of the Navajo Nation; everyone at the Judicial Branch of the Navajo Nation for their hospitality, instruction and guidance; the Boston College Law School Public Interest Law Foundation and the Boston College Law School Holocaust and Human Rights Project for financial grants that made the 1996 clerkship possible.

1. See *Navajo Nation v. Platero*, 19 Indian L. Rep. 6049, 6050 (Navajo 1991) (stating that "[s]ince time immemorial the Navajo people have applied their customs and traditions in dispute resolution"); James W. Zion, *The Navajo Peacemaker Court: Deference to the Old and Accommodation to the New*, 11 AM. INDIAN L. REV. 89, 89 (1983) [hereinafter Zion, *Deference to the Old*]. The Indian Law Reporter, published by the American Indian Lawyer Training Program, Inc., is a looseleaf service that reports decisions of federal, state, and tribal courts and decisions of the Department of the Interior Board of Indian Appeals.

2. See James W. Zion & Robert Yazzie, *Indigenous Law in North America in the Wake of Conquest*, 20 B.C. INT'L & COMP. L. REV. 55, 71 (1997) [hereinafter Zion & Yazzie, *Indigenous Law*] (noting that "[t]o Indians, their legal traditions are the first or original methods of dispute resolution"); Zion, *Deference to the Old*, *supra* note 1, at 89-90.

3. See Chief Justice Tom Tso, *The Process of Decision Making in Tribal Courts*, 31 ARIZ. L. REV. 225, 227-28 (1989) (describing the Navajo court system); Daniel L. Lowery, Note, *Developing a Tribal Common Law Jurisprudence: The Navajo Experience, 1969-1992*, 18 AM.

In order to understand the Peacemaker Division and the role it plays in resolving disputes, some familiarity with the Navajo Nation and the Navajo Nation Judicial Branch is necessary. The Navajo Nation is a sovereign Indian nation, with reserved territories of over 25,000 square miles in Arizona, New Mexico and Utah.⁴ It has a population in excess of 220,000 people.⁵ The Nation's government has three independent and separate branches, including the judicial branch.⁶ The judicial branch consists of a district court (with seven judicial districts located throughout the Navajo Nation, and including a family court division) and a supreme court (located in the Navajo Nation's capital, Window Rock).⁷ The district courts assert original jurisdiction to adjudicate disputes involving persons who reside within the Navajo Nation or who have caused an action or Navajo Nation crime to occur within the Navajo Nation.⁸ Navajo common law and statutory law are the laws of preference, although judges may apply federal and state law if a matter is not addressed by Navajo law.⁹

Navajo Common Law

Navajo common law, or traditional law, "reflects the customs, usages and traditions of the Navajo People, formed by Navajo values in action."¹⁰

INDIAN L. REV. 379, 383-86 (1993).

4. See Robert Yazzie, "Hozho Nahasdlii" — *We Are Now in Good Relations: Navajo Restorative Justice*, 9 ST. THOMAS L. REV. 117, 118 (1996).

5. See *id.*; see also Means v. District Court of the Chinle Judicial District, 26 Ind. L. Rep. 6083, 6084 (Navajo 1999).

6. See JUDICIAL BRANCH OF THE NAVAJO NATION 3 (n.d.) ("Navajo Courts") (brochure published by Navajo Nation Judicial Branch, Window Rock, Navajo Nation, Arizona).

7. See *id.*

8. See NAVAJO NATION CODE tit. 7, § 253 (Equity 1995). The Navajo Nation Code, previously known as the Navajo Tribal Code, is in its fifth edition. The Code contains 25 titles covering a wide variety of topics. For example, Title 2 addresses Navajo Nation Government, Title 4 covers Environment, Title 5A is the Navajo Uniform Commercial Code and Title 24 deals with Taxation. The Navajo Nation Code is published by Lamb Studio, 240 East 25th Street, New York, New York 10010.

9. See *id.* § 204; Navajo Nation v. Platero, 19 Indian L. Rep. 6049, 6050 (Navajo 1991) (stating that Navajo common law is the "law of preference" in the Navajo Nation); *In re Estate of Belone*, 5 Navajo Rptr. 161, 165 (Navajo 1987) (stating that "Navajo customs and traditions have the force of law"). The Navajo Reporter contains the official reports of decisions of the Supreme Court and the district courts of the Navajo Nation. Navajo court decisions may also be found in the Navajo Law Reporter, an unofficial reporter published by T&B Publishing, P.O. Box 1707, Window Rock, Navajo Nation, Arizona 86515, as well as in the Indian Law Reporter, *supra* note 1.

10. Philmer Bluehouse & James W. Zion, *Hozhoji Naat'aanii: The Navajo Justice and Harmony Ceremony*, 10 MEDIATION Q. 327, 328 (1993); see Gloria Valencia-Weber, *Tribal Courts: Custom and Innovative Law*, 24 N.M. L. REV. 225, 245 n.59 (1994). Some people assert that the term "traditional law" more accurately reflects the body of law referenced herein. For purposes of this article, the term "common law" is used. Professor Valencia-Weber notes:

Navajo judges fashion accepted customs and practices into a contemporary, working common law in a similar manner as do judges in other cultures and legal systems.¹¹ For example, in a 1996 supreme court decision, the justices analyzed due process in "light of the customs and traditions, or common law, of the Navajo people."¹² The court stated:

The Navajo principle of *k'e* is important to understanding Navajo due process. *K'e* frames the Navajo perception of moral right, and therefore this court's interpretation of due process rights. *K'e* contemplates one's unique, reciprocal relationships to the community and the universe. It promotes respect, solidarity, compassion and cooperation so that people may live in *hozho*, or harmony. *K'e* stresses the duties and obligations of individuals relative to their community.¹³

The court concluded, "In Navajo law, *k'e* would be the mutual understanding and normative practice that defines a person's legitimate claim to fair procedures."¹⁴

The Navajo judiciary's application of Navajo common law is significant for a number of reasons.¹⁵ First, in using familiar cultural norms to resolve disputes, the courts are a more familiar and less hostile forum for individual Navajo people to use. Thus, individuals implicitly are encouraged to utilize their court system, which in turn strengthens the legitimacy of the Nation's judicial branch and the sovereignty of the Nation's government.¹⁶ Second, the contemporary use and application of Navajo common law helps to preserve Navajo traditions and cultural norms.¹⁷ In 1892, the U.S. Secretary of the

Tradition, custom and usage are not synonymous, though they are often used interchangeably. "It is possible for a tradition not to be a custom or a usage, and many customs and usages are not traditional. Some traditions may be a custom." Custom is more than opinion; it is a common belief which results in practice or regularity.

Id. at 245 n.59 (quoting James W. Zion, *Harmony Among the People: Torts and Indian Courts*, 45 MONT. L. REV. 265, 275 (1984)).

11. See Valencia-Weber, *supra* note 10, at 244.

12. *Atcity v. District Court*, 24 Indian L. Rep. 6013, 6014 (Navajo 1996).

13. *Id.*

14. *Id.* For a description of *k'e*, *hozho*, and other Navajo justice concepts, see generally Robert Yazzie, "Life Comes From It": *Navajo Justice Concepts*, 24 N.M. L. REV. 175 (1994) [hereinafter *Navajo Justice Concepts*].

15. See Tso, *supra* note 3, at 230; Zion, *Deference to the Old*, *supra* note 1, at 89; Lowery, *supra* note 3, at 381.

16. See Valencia-Weber, *supra* note 10, at 237-38, 240-41 (describing the legitimacy of tribal courts); Janet Reno, *A Federal Commitment to Tribal Justice Systems*, 79 JUDICATURE 113, 113-14 (1995) (stating that "[c]entral to tribal sovereignty is the capacity for self-governance through tribal justice mechanisms" and "[a]s Congress has found, tribal justice systems are 'important forums for ensuring public health and safety and the political integrity of tribal government'") (quoting in part the Indian Tribal Justice Act, 25 U.S.C. § 3601(5) (1994)).

17. See Indian Tribal Justice Act, 25 U.S.C. § 3601(7) (1994) (stating that "traditional tribal

Interior established Anglo-American style courts for the Navajo people.¹⁸ The federally appointed Navajo judges of these so-called CFR courts¹⁹ were not intended to apply traditional Navajo principles.²⁰ To the contrary, CFR courts were designed to assimilate Navajos into the dominant Anglo-American culture by outlawing Navajo customs.²¹ In 1959, the Navajo Nation Tribal Council abolished the CFR courts and established the Navajo tribal courts "to keep the states from exerting jurisdiction over the Navajo Nation."²² Today, Navajo Nation judges expressly refer to Navajo common law when resolving disputes, thus preserving traditional knowledge and customs for future generations of Navajo people.²³

The third reason that the Navajo courts' application of Navajo common law is significant is because the courts' actions serve as a model for dispute resolution advocates considering alternatives to the adversarial, Anglo-American model of settling conflicts.²⁴ As former Chief Judge J. Clifford Wallace of the U.S. Court of Appeals for the Ninth Circuit wrote, "[F]ederal courts would do well to look to traditional tribal courts [that] employ a time-honored system of dispute resolution that predates and predicts modern successes with mediation."²⁵

justice practices are essential to the maintenance of the culture and identity of Indian tribes"); Zion, *Deference to the Old*, *supra* note 1, at 89; Lowery, *supra* note 3, at 381.

18. See Zion, *Deference to the Old*, *supra* note 1, at 89; Lisa Driscoll, *Tribal Courts — New Mexico's Third Judiciary: Part 3 — Navajo Nation*, N.M. B. BULL., Mar. 18, 1993, at 1, 3.

19. The courts were known as CFR courts because their procedures were set forth in the Code of Federal Regulations, Title 25. See Driscoll, *supra* note 18, at 3.

20. See Russel Lawrence Barsh, *Navajo Tribal Courts, Property and Probate Law, 1940-1972*, 6 LAW & ANTHROPOLOGY 169, 176 (1991); Associate Justice Raymond D. Austin, *Incorporating Tribal Customs and Traditions Into Tribal Court Decisions 3-4* (n.d.) (unpublished manuscript, prepared for the Federal Bar Association's 1992 Indian Law Conference in Albuquerque, New Mexico). Justice Austin notes that although the CFR court judges were not supposed to apply Navajo common law, many did so and disguised their actions in English legal terminology. *Id.*

21. See Driscoll, *supra* note 18, at 3 (quoting Navajo Nation Chief Justice Robert Yazzie as stating, "The intent of the CFR courts was to destroy the traditional Navajo legal system and destroy both Navajo values and the Navajo way of life"). Driscoll continues, "Yazzie cites the prohibition of traditional Navajo marriage and divorce proceedings as examples of the CFR courts' efforts to 'civilize' Navajos, 'i.e., to think, speak and act like Anglos.'" *Id.*

22. *Id.* (quoting Chief Justice Robert Yazzie).

23. See, e.g., *Atcity v. District Court*, 24 Indian L. Rep. 6013, 6014 (Navajo 1996); *Navajo Nation v. Platero*, 19 Indian L. Rep. 6049, 6050 (Navajo 1991); *In re Estate of Belone*, 5 Navajo Rptr. 161, 165 (Navajo 1987).

24. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 82-84 (describing an educational visit to the Navajo Nation Judicial Branch by members of the Parliament of Namibia); J. Clifford Wallace, *A New Era of Federal-Tribal Court Cooperation*, 79 JUDICATURE 150, 152 (1995) (stating that "traditional tribal courts may also serve as models of alternative dispute resolution" and that it is instructive to consider "tribal conceptions of justice" such as those of the Navajo people).

25. Wallace, *supra* note 24, at 152.

The Peacemaker Division and Hozhooji Naat'aanii

In the early 1980s, the Navajo Common Law Project was formed as an ongoing effort to learn about, collect and use Navajo wisdom, methods and customs in resolving disputes.²⁶ Project researchers soon learned of a long-standing method of dispute resolution in which respected members of the community assist disputants and other interested parties to reach noncoercive, consensual agreements to conflicts.²⁷ Project participants passed what they learned to the Navajo Nation Judicial Conference, which was eager to adopt a customary method of dispute resolution as an alternative to the Anglo-American, adversarial model of achieving justice. In 1982, the Judicial Conference created the Peacemaker Court, now known as the Peacemaker Division, to implement customary methods of resolving disputes.²⁸

The Peacemaker Division institutionalizes the custom of *hozhooji naat'aanii*, or peacemaking. Peacemaking consists of a justice ceremony in which disputants and community members gather to "talk things out" with the assistance of a respected community leader, or *naat'aanii* (peacemaker), to reach a consensual settlement.²⁹ *Hozhooji naat'aanii* aims to reach solutions through consensus and to solve problems through restorative justice.³⁰ Wrongdoing and conflict among members of the Navajo community are "regarded as . . . symptom[s] of things being out of place, or in

26. See Zion, *Deference to the Old*, *supra* note 1, at 92-93; Lowery, *supra* note 3, at 382.

27. See Zion, *Deference to the Old*, *supra* note 1, at 94-95; Lowery, *supra* note 3, at 383. Researchers learned about this custom by talking with experts within the Navajo community and the judiciary. See Zion, *Deference to the Old*, *supra* note 1, at 94-95.

28. See Zion, *Deference to the Old*, *supra* note 1, at 97-99; Bluehouse & Zion, *supra* note 10, at 328; Lowery, *supra* note 3, at 384. The Conference adopted the Peacemaker Court Rules, which establish and describe the Peacemaker Court, explain the responsibilities of peacemakers, judges, court clerks and disputants, and outline peacemaking procedures. The Rules are published in a formal, legalese version and in a plain language version that is easily accessible to persons not trained in law or the legal lexicon. Both versions are equally authentic and binding. See JAMES W. ZION & NELSON J. MCCABE, NAVAJO PEACEMAKER COURT MANUAL 7, 110, Rule 7.2 (1982) [hereinafter NAVAJO PEACEMAKER COURT MANUAL]. The rules may be found in the *Navajo Nation Practice Book*, published by T&B Publishing, P.O. Box 1707, Window Rock, Navajo Nation, Arizona 86515, and in the *Navajo Peacemaker Court Manual*, which is currently out of print. The latter also contains separate guides for use by district court judges, Navajo chapters (local government bodies), peacemakers, and clerks of court. At the time of writing this article, the Navajo National Council was considering adopting a plan of operation for the Peacemaker Division and amending Title 7 of the Navajo Nation Code to incorporate the plan of operation into the Navajo Nation Judicial Code. Much of the proposed plan of operation echoes the Peacemaker Court Rules.

29. See James W. Zion, Briefing Paper, Enforcement of Decisions in Navajo Peacemaking 1 (n.d.) (unpublished manuscript) [hereinafter Briefing Paper].

30. See *id.*

dissonance.³¹ Thus, the object of peacemaking is not to punish, but to return individuals and the community to a state of *hozho*, or harmony.³²

Peacemaking assumes the superiority of an integrated approach to resolving disputes. That is, the Peacemaking process integrates and utilizes the wisdom, skills and perspectives of a variety of people, including the disputants, the disputants' relatives and friends, the *naat'aanii*, local government bodies known as chapters, judges, clerks of court, other interested parties, and in some rare circumstances, lawyers.³³ The integrated approach to dispute resolution is consistent with Navajo principles of harmony, community and clan relationships, as well as a Navajo sense of solidarity, or oneness of "self with family, community, nature, and the cosmos — all reality."³⁴

Hozhooji naat'aanii may be used to resolve and address a variety of issues including, but not limited to, marital strife, disputes among spouses, parents and children, neighborhood conflicts stemming from nuisance or animal trespass, misconduct related to alcohol or drug abuse, transactional disputes and other conduct causing disunity to the community.³⁵

Disputes may come to the Peacemaker Division in one of two ways. District court judges may transfer cases to a *naat'aanii* when doing so is in the interest of justice.³⁶ Alternatively, disputants themselves may seek the assistance of a peacemaker by submitting a request to their local district court clerk of court.³⁷ In such cases, the clerk immediately presents the request to

31. Jennifer Lin, *Navajo Peacemaking Courts* 5 (n.d.) (unpublished manuscript) (citing *Bluehouse & Zion*, *supra* note 10, at 331).

32. *See id.* (citing *Bluehouse & Zion*, *supra* note 10, at 331).

33. *See generally* NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28. Although lawyers may not participate in the actual peacemaking session, lawyers who are otherwise permitted to practice before Navajo courts may assist clients in completing paper work, drafting and reviewing agreements and petitioning the district court for judgments and protective orders. *See id.* at 102, Rule 1.6. Only members of the Navajo Nation Bar Association (NNBA) may practice in Navajo courts. To become a member of the NNBA, an applicant must be of proper moral character and fitness, pass the Navajo Nation bar exam and attend a one day course on Navajo culture. There are over 400 members of the NNBA. The membership includes attorneys (law school graduates) and lay advocates (non-law school graduates who have some legal training). Non-members of the bar may practice before Navajo courts on an infrequent basis upon request and sponsorship by a member of the bar.

34. *See* Yazzie, *Navajo Justice Concepts*, *supra* note 14, at 180-85.

35. *See* NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 101, Rule 1.4.

36. *See id.* at 109, Rule 6.1.

37. *See id.* at 104, Rule 3. Chief Justice Robert Yazzie notes that most peacemaking cases are heard on a "walk-in" basis. Chief Justice Robert Yazzie, *The Healing and Community Justice Policy of the Judicial Branch of the Navajo Nation* (visited Feb. 14, 2000) <<<http://gurukul.ucc.american.edu/justice/navajosp.htm>>> (remarks at Northern Arizona University, May 1, 1998).

Although requests for peacemaking must be in writing, the process is designed to be simple and informal. Clerks of court are required to assist all parties in completing their requests. *See* NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 105, Rule 3.4. The clerks bear responsibility for completing additional paperwork and for acting "as an information and

a judge, who may meet with the disputants before granting or denying the request.³⁸ If the request is granted, as is generally the case, the judge may appoint a *naat'aanii* to conduct the peacemaking.³⁹

The judge may select the *naat'aanii* from a list compiled and certified at meetings of local chapters and maintained by the court clerk.⁴⁰ Otherwise, the court may appoint the *naat'aanii* "from qualified persons known to it or any person recommended as being qualified as a [p]eacemaker."⁴¹ The Navajo Peacemaker Court Manual states that:

Any person who has the respect of the community of his or her residence, an ability to work with chapter members, and a reputation for integrity, honesty, humanity and an ability to resolve local problems shall be eligible to be appointed as a [p]eacemaker. Members of the Navajo Tribal Council, Chapter governments, Native American Church chapters, medicine men or members of any other organization or group which has the respect of the individuals who will come before the Peacemaker Court may be appointed [as] [p]eacemakers.⁴²

Alternatively, disputants may agree among themselves to retain a particular individual to serve as the peacemaker for their dispute.⁴³ In such cases, the peacemaker may be any individual that the disputants select unanimously.⁴⁴

The *naat'aanii* is considered to be an officer of the court and thus enjoys multiple privileges and bears many responsibilities.⁴⁵ The peacemaker is authorized to "use traditional and customary Navajo methods and other accepted nonjudgmental methods to mediate disputes and obtain the resolution of problems through agreement."⁴⁶ In addition to fulfilling the role of mediator, the peacemaker may be authorized by the disputants to arbitrate the conflict.⁴⁷ The *naat'aanii* may "instruct or lecture individuals on the

assistance resource" for the applicants. Zion, *Deference to the Old*, *supra* note 1, at 103.

38. See NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 106, Rule 3.5.

39. See *id.*

40. See *id.* at 102, Rule 2.1(b).

41. *Id.* at 102-03, Rule 2.1(c).

42. *Id.* at 102, Rule 2.1(a).

43. See *id.* at 103, Rule 2.1(d).

44. See *id.* The various methods and criteria for selecting *naat'aanii* are an "enshrinement of the Navajo tradition of selecting peace leaders." See Zion, *Deference to the Old*, *supra* note 1, at 102.

45. See NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 103-04, Rules 2.2-2.5.

46. *Id.* at 103, Rule 2.3; see *id.* at 103, Rule 2.2(b).

47. See *id.* at 103, Rule 2.3. The terms "mediation" and "arbitration" are used figuratively to contrast two styles of peacemaking. "Mediation" suggests a peacemaking process in which the peacemaker assists the parties in reaching an agreement but has no power to impose a settlement. "Arbitration" suggests a peacemaking process in which the parties submit a dispute to a peacemaker who is empowered to impose a final determination on the issues presented. Experts

traditional Navajo teachings relevant to their problem" as a means of resolving the dispute.⁴⁸ Additionally, the peacemaker has the power of subpoena to compel persons involved in the dispute to participate in its resolution.⁴⁹

A district court judge retains supervisory authority over the peacemaker and the peacemaking sessions.⁵⁰ In addition to ensuring that qualified peacemakers are selected and that the proceedings run smoothly and fairly, the supervising judge may issue protective orders ending the peacemaking process on grounds including misconduct by the peacemaker.⁵¹ As officers of the court, peacemakers are bound by the Navajo Nation Code of Judicial Conduct and are subject to dismissal for violations of ethical standards.⁵²

The Peacemaker Division Rules do not mandate a particular technique or style of dispute resolution beyond those guidelines described above.⁵³ However, the primacy of tradition and custom provides a framework for the peacemaking ceremony, and, thus, most proceedings follow a similar pattern. The *naat'aanii* opens the proceedings with a prayer to summon the assistance of the supernatural, focus the minds of the participants and create an atmosphere of *hozho*, or harmony.⁵⁴ The participants then have an opportunity to "talk things out," express their positions and listen to one another.⁵⁵ Often, parties sit in a circle or around a table facing one another.⁵⁶ Relatives and other interested parties have an important role to play. A sister scolds her brother for the strife that he has caused their

point out that *hozhoji naat'aanii* is neither mediation nor arbitration in the truest sense of those words. "It is dangerous to use English terms [such as mediation and arbitration] to describe what Navajos actually do." Bluehouse & Zion, *supra* note 10, at 335. "[M]ediation and arbitration do not accurately reflect how Navajos feel about their justice ceremony," which emphasizes the restoration of harmony with others and the community. *Id.*

48. See NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 103, Rule 2.2(c).

49. See *id.* at 103, Rule 2.2(d).

50. See *id.* at 101, Rule 1.3.

51. See *id.* at 107, Rule 4.1.

52. See *id.* at 108-09, Rule 5.1-5.3. The Navajo Nation Code of Judicial Conduct, which is based on traditional Navajo values as well as many of the principles set forth in the American Bar Association's Model Code of Judicial Conduct, was adopted on November 1, 1991. See Tom Tso, *Moral Principles, Traditions, and Fairness in the Navajo Nation Code of Judicial Conduct*, 76 JUDICATURE 15, 15 (1992). Also, the Peacemaker Rules state, "Peacemakers shall not participate in any matter in which they have a personal or financial interest or close relation to a party, and they shall conduct themselves with honesty, integrity and in harmony with traditional and customary Navajo ways." NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 108-09, Rule 5.1.

53. See Zion, *Deference to the Old*, *supra* note 1, at 103.

54. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 78; Bluehouse & Zion, *supra* note 10, at 332-33. Many of the descriptions of the peacemaking ceremony are from the author's personal observations.

55. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 78; Lowery, *supra* note 3, at 385 n.20 (citing Richard Sitts, *Navajo Peacemaking Makes a Comeback*, INDEPENDENT (Gallup, N.M.), July 27, 1991, at 1).

56. See Lowery, *supra* note 3, at 385 n.20 (citing Sitts, *supra* note 55, at 1).

family;⁵⁷ relatives explain to a wayward husband his duties to family and community;⁵⁸ grandparents reveal knowledge of a son's paternity.⁵⁹ A 1993 newspaper article reported on a case in which a husband allegedly battered his wife during an alcohol-related domestic dispute:

[The wife] opted to take the case to a peacemaker court instead of regular tribal court. Eight friends and relatives of her husband showed up . . . for the hearing and told [the husband] how much they respected him and explained his duties, in the Navajo tradition, to his family and to the community. Since the hearing, [the wife] said, her husband has acted differently because he "knows people think of him as a special person."⁶⁰

The *naat'aanii* listens carefully, helps to guide the conversation and attempts to lead the disputants to *hozho*.⁶¹ He or she may point out the true causes of the dispute and the disputants' disharmony.⁶² The peacemaker may explain to the parties how they violated Navajo values. He or she often relates the dispute to the Navajo creation story, in which the Hero Twins engaged in a lengthy odyssey of trial, assistance-seeking and education before they slew the world's *nayee*, or monsters.⁶³

Importantly, the *naat'aanii* is not, in a strict sense, "neutral." Rather, he or she offers a point of view that is grounded in Navajo values.⁶⁴ Through the following example, Peacemaker Division experts Philmer Bluehouse and James W. Zion illustrate the peacemaker's role in offering a Navajo point of view. "[I]f there is a land dispute, this story may be told by the peacemaker to guide the parties:

Before humans assumed their present form, the Holy People had their own problems to address. During that time, Lightning

57. *See id.*

58. *See* Bill Donovan, *Peacemakers Do Justice to Navajos*, ARIZ. REPUBLIC, Apr. 5, 1993, at A1.

59. *See* Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 78.

60. Donovan, *supra* note 58, at A1. Because of the sociological power dynamics inherent in domestic abuse cases, the use of peacemaking or ADR in such matters may seem inappropriate to many people. The Navajo Nation Code establishes certain specific conditions for the use of peacemaking in domestic abuse cases. *See* 9 NAVAJO NATION CODE § 1652 (Equity 1995). For example, "[o]nly peacemakers who have received specialized training in their primary language on the causes, symptoms, and dynamics of domestic abuse shall be qualified to hear domestic abuse cases." *See id.* § 1652(C). For an excellent examination of the applicability of peacemaking in the context of domestic violence cases, *see* Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1 (1999).

61. *See* Bluehouse & Zion, *supra* note 10, at 332.

62. *See* Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 79; Bluehouse & Zion, *supra* note 10, at 334.

63. *See* Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 79.

64. *See id.* at 78; Bluehouse & Zion, *supra* note 10, at 334.

and Horned Toad had a dispute. Horned Toad was walking on some land, when suddenly Lightning confronted Horned Toad and asserted that he, Lightning, owned the land and Horned Toad must leave immediately. Horned Toad replied, "My brother, I don't understand why you should have possession of this land, and I certainly don't lay claim to it." He continued along. Again, Lightning asserted his claim, and he threw a bolt of lightning as a warning. Horned Toad said, "I am very humble, and I can't hurt you as you can hurt others with your bolt of lightning. Could we talk about this tomorrow? I'll be waiting to talk with you on top of the refuse left there by Brother Water." Lightning agreed.

The following day, Horned Toad arrived, wearing his armor. Lightning announced his arrival and asserted his power by throwing more lightning bolts at Horned Toad.

Horned Toad sat atop a pile of driftwood, which was left behind after a storm. From atop that pile, he discussed the matter with Lightning. Horned Toad said, "You are very powerful; you can certainly strike me down with a bolt of lightning." "I certainly can," said Lightning. "That's not what we are here about," said Horned Toad. "We are here to discuss the land ownership issue, and we must talk." "There is nothing to discuss; the land is mine!" Lightning got angry and threw another bolt of lightning, which hit Horned Toad. "Brother, you did not hurt me," he said. The bolt bounced off Horned Toad's armor. "Brother," he said, "this armor was given to me by the same source as your bolts of lightning. Why is it we are arguing over the land, which was also loaned to us?"⁶⁵

The story "takes land complainants back to the true 'owner,' and it is a forceful traditional precedent to take the parties to common ground."⁶⁶ It also reminds people of the importance of "talking things out" and the natural power and "armor" that comes through peaceful, consensual forms of resolving disputes.⁶⁷

After all of the participants have the opportunity to speak, the peacemaker engages them in *hozhojigo*, a process of developing a plan to settle the dispute.⁶⁸ The process, as with all other parts of *hozhojii naat'aanii*, should be noncoercive and consensual.⁶⁹ Further, *hozhojigo* should be aimed at restoring harmony and creating a new, ongoing relationship among the

65. Bluehouse & Zion, *supra* note 10, at 333.

66. *Id.*

67. See Lin, *supra* note 31, at 7.

68. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 78-79; Bluehouse & Zion, *supra* note 10, at 335.

69. See Bluehouse & Zion, *supra* note 10, at 334, 335.

participants and the community, which, according to Navajo justice concepts, is entitled to "the return of its members to a state of harmony."⁷⁰

Once the parties reach an agreement, they may opt to enter it as a court judgment.⁷¹ According to the Peacemaker Court Rules, a judgment may be entered if the court has proper jurisdiction, the judgment contains the agreement as reached through the peacemaking procedure and all necessary parties have actual knowledge of the judgment and agree to it.⁷² Once entered, the judgment may be enforced as any other judgment of the court.⁷³ However, in actual practice most agreements reached through the peacemaking ceremony are not entered as court judgments.⁷⁴ Instead, parties often follow the traditional practices of executing simple oral or written agreements memorializing the peacemaking settlement.⁷⁵ In all cases, the peacemaker must report the results of the peacemaking ceremony to the supervising district court judge.⁷⁶

Conclusion

With over 250 certified peacemakers throughout the Navajo Nation,⁷⁷ *hozhooji naat'aanii* is a well-utilized and successful exercise of traditional dispute resolution. During the years between 1986 and 1990, one Navajo judge alone referred over fifty cases to the Peacemaker Division.⁷⁸ Peacemaking successfully reached agreement in all but two of those cases.⁷⁹ In the first three months of 1992, twenty-four disputes were handled by peacemakers.⁸⁰ By comparison, in the first three months of 1993, nearly one hundred disputes were submitted to the Peacemaking Division.⁸¹ The

70. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 79; Bluehouse & Zion, *supra* note 10, at 334.

71. See NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 107-08, Rule 4.3-4.6. If the parties do not reach an agreement through the peacemaking process, they may resort to the Anglo-American style Navajo court system. See Lowery, *supra* note 3, at 385.

72. See NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 107-08, Rule 4.3(a)-(c).

73. See *id.* at 108, Rule 4.6.

74. See Zion, Briefing Paper, *supra* note 29, at 2.

75. See *id.* at 3-4. James W. Zion, the Solicitor of the Courts of the Navajo Nation, points out that oral and written agreements are enforceable in court through specific performance. See *id.* at 6-7.

76. See NAVAJO PEACEMAKER COURT MANUAL, *supra* note 28, at 104, Rule 2.5.

77. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 80; Zion, Briefing Paper, *supra* note 29, at 2.

78. See Michael D. Lieder, *Navajo Dispute Resolution and Promissory Obligations: Continuity and Change in the Largest Native American Nation*, 18 AM. INDIAN L. REV. 1, 36 (1993).

79. See *id.*

80. See Driscoll, *supra* note 18, at 7.

81. See *id.*

growing use and acceptance of *hozhooji naat'aanii* heralds its acceptance in the community as a legitimate forum for resolving a myriad of disputes.

The non-Navajo world can learn a great deal from the Peacemaker Division.⁸² Official delegations from countries such as Canada, Australia, New Zealand, Namibia and South Africa have visited the Navajo Nation with hopes of learning about and incorporating traditional models of dispute resolution into their own justice systems.⁸³ As the Navajo judiciary continues to use and develop traditional dispute resolution mechanisms, other Indian nations and non-Indian societies should take the opportunity to observe, learn from and practice the wisdom manifested in *hozhooji naat'aanii*.

82. See Wallace, *supra* note 24, at 152; see also Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 82-84; Bluehouse & Zion, *supra* note 10, at 336.

83. See Zion & Yazzie, *Indigenous Law*, *supra* note 2, at 82; Bluehouse & Zion, *supra* note 10, at 336.