

**IN THE DISTRICT COURT OF THE NAVAJO NATION  
JUDICIAL DISTRICT OF CROWNPOINT, NEW MEXICO**

NAVAJO NATION

Plaintiff,

No. CP-CR-11-014/015/016

v.

**ORDER OF DISMISSAL WITH  
PREJUDICE**

BEN SHELLY,

Defendant.

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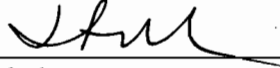
THIS MATTER came before the Court upon the filing of the Declaration of the Navajo Nation Special Prosecutor. The Court, being informed in the premises, hereby FINDS:

Special Prosecutor has motioned to dismiss the above-referenced cases with prejudice under his prosecutorial discretion pursuant to Nav. R. Cr. P. 32(a), which states that “the court *shall* enter an order dismissing a case if the prosecutor files for dismissal of the complaint” (emphasis added.) and 2 N.N.C. § 1974(B) which authorizes the Special Prosecutor to “[i]nvestigate, prosecute and dispose of all cases within his or her jurisdiction, acting independently and upon his or her own authority within the guidance of law and professional ethics in the performance of his or her duties.”

On January 20, 2011 this Court issued a substantive order addressing in detail its concerns regarding the motion for dismissal. In that Order, the Court noted that both Navajo Prosecutor and the judges of the District Courts have a fundamental duty under Diné Traditional Law that “All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the People and the government; the People's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of Dine bi beenahaz'áanii.” 1 N.N.C. § 203. Because this Court was concerned with the enforcement of any stipulated agreement between the Prosecutor and Defendant if these cases were dismissed with prejudice, and because the instant cases deal with allegations that the *Peoples'* money has been misappropriated, and because this Court and this judge has a duty to act in the best interest of the Navajo People and to instill in them trust and confidence in their judicial system, it asked for a Declaration from the Special Prosecutor that by invoking his discretion to dismiss these cases with prejudice, that he was doing so in the best interest of the Navajo people, notwithstanding this Court's concerns. The Special Prosecutor has done so.

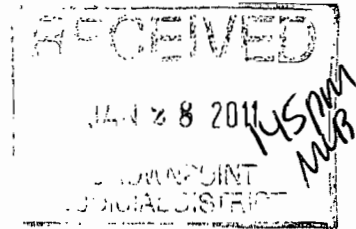
Based on the foregoing, **IT IS THEREFORE ORDERED** that the above-referenced cases are hereby **DISMISSED WITH PREJUDICE**.

**SO ORDERED** this 02<sup>nd</sup> day of February, 2011.



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Irene Toledo  
DISTRICT COURT JUDGE



Alan L. Balaran, Special Prosecutor  
 Samuel D. Gollis, Esq.  
 OFFICE OF THE NAVAJO NATION SPECIAL PROSECUTOR  
 c/o Navajo Nation Department of Justice  
 P. O. Box 2010  
 Window Rock, Arizona 86515-2010  
 Telephone: (928) 871-6202  
 Facsimile: (202) 986-8477

Counsel for Plaintiff Navajo Nation

IN THE DISTRICT COURT OF THE NAVAJO NATION  
 JUDICIAL DISTRICT OF CROWNPOINT, NAVAJO NATION, NEW MEXICO

THE NAVAJO NATION,	)	
	)	
Plaintiff,	)	Nos. CP-CR-11-014
	)	CP-CR-11-015
v.	)	CP-CR-11-016
	)	
BEN SHELLY,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF THE NAVAJO NATION SPECIAL PROSECUTOR**

Pursuant to the Court's Order of January 20, 2011, Alan L. Balaran, Special Prosecutor, Office of the Navajo Nation Special Prosecutor, hereby declares to the Court:

1. On January 11, 2011, I filed with the Court a Motion for Dismissal of Criminal Complaints ("Motion"), seeking an order dismissing the Criminal Complaints filed in the above-numbered cases with prejudice.

2. I filed the Motion pursuant to the terms of a private, contractual settlement agreement entered into between the Office of the Navajo Nation Special Prosecutor and Defendant. The settlement agreement provides for the dismissal with prejudice of all charges against the Defendant in exchange for Defendant's agreement to repay through payroll

deductions the sum of Eight Thousand Two Hundred Fifty and No/100 Dollars (\$8,250.00) that the Defendant allegedly misappropriated from the Navajo Nation Discretionary Funds Program, as well as, in his official capacity as President of the Navajo Nation, to work cooperatively with me to reform comprehensively all laws, regulations, rules, and policies governing the future use of the Navajo Nation Discretionary Funds Program and to actively lobby the Twenty-Second Navajo Nation Council for the enactment of the reforms agreed to by the Defendant and me.

3. By entering into the settlement with Defendant and filing the Motion, I believe that I am acting in the best interests of the Navajo People, having considered the effect of my actions upon the trust and confidence of the Navajo People.

4. I understand that the Court is concerned that the enforceability of the settlement agreement between the Defendant and me by a Navajo Nation District Court after dismissal of the above-numbered cases with prejudice is not necessarily guaranteed.

DATED this 25 day of January, 2011.

Respectfully submitted,

OFFICE OF THE NAVAJO NATION  
SPECIAL PROSECUTOR

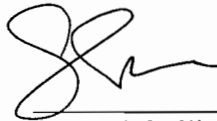
By: 

Alan L. Balaran, Special Prosecutor

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of January, 2011, I served a copy of the foregoing pleading by first class mail, postage prepaid, and by facsimile upon the following counsel of record:

Samuel Pete, Esq.  
Law Office of Samuel Pete  
P. O. Box 1910  
Shiprock, New Mexico 87420-1910  
Facsimile: (505) 368-4349



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Samuel Gollis