
**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

Mary Cleland,
Appellant,

vs.

Appeal No. 004

Fort Peck Tribal Court,
Chief Judge William McClammy,
Appellee.

Appeal from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana,
Chief Judge William McClammy.

For Appellant Mary Cleland: Mary L. Zemyan, Attorney, of Wolf Point, Montana.

For Appellee Fort Peck Tribal Court through Chief Judge William McClammy: Chief Judge William McClammy appeared
pro se.

Appellant submitted a detailed notice of appeal, which included a summary of facts, legal argument, and citation to legal authority. Appellee submitted the Chief Judges statement of the reasons for denial of Appellant's application to practice as a Lay counselor before the Tribal Court and the Court of Appeals on the Fort peck Indian Reservation, pursuant to Title I, Section 501(c), of the Comprehensive Code of Justice of the Assiniboiné and Sioux Tribes (I CCOJ 501(c)), after the request of the Fort peck Court of Appeals. Oral argument was submitted by Appellant's Attorney Zemyan and by Appellee through Mr. Chief Judge McClammy on August 22, 1986.

OPINION by Julian H. Brown, Chief Justice, joined by Arnie A. Hove, Justice, and Daniel R. Schauer, Justice.

Pursuant to the authority of I CCOJ 501(b), the Chief Judge denied the application of Appellant Lay Counselor Applicant to practice, after she successfully completed one of the bar examinations administered as prescribed by the Tribal Executive Board on May 15, 1985.

Questions presented on appeal were: (1) Did the Chief Judge have sufficient evidence to prove that the Lay Counselor Applicant was in violation of tribal law in her conduct with witnesses, such as violations of the crimes of hindering law enforcement (III CCOJ 408), or perjury (III CCOJ 409) or criminal contempt (III CCOJ 410)? (2) Did the Chief Judge correctly rule that he was unable to cite any Lay Counselor or Attorney for violations of legal ethics, because the Tribal Executive

Board had not approved of and adopted a code of ethics for Lay Counselors and Attorneys?

Regarding the first question of the Chief Judge's concern that Appellant Lay Counselor Applicant may have been unlawfully tampering with witnesses, the Chief Judge's conscientious effort to assure the integrity of testimony submitted into evidence is to be commended. On the basis of the facts before this Court of Appeals, however, we hold that there was insufficient evidence to prove that Appellant Lay Counselor Applicant was in violation of tribal law in her conduct with witnesses.

With respect to the second question of whether there were any standards of legal ethics to which Lay Counselors and Attorneys admitted to practice in the Tribal Court and the Court of Appeals were subject, in the absence of any code of legal ethics having been adopted by the Fort peck Assiniboiné and Sioux Tribes, the short answer is, "Yes."

It is first noteworthy that the Fort Peck Tribal Court System contemplates using licensed attorneys from the bars of state and federal courts as some of the attorneys, Judges, and Justices of the Tribal Court System. See, e.g., I CCOJ 102, 102.1, 103, 104, 301, 308, 501(a), 502, 504. The Court of Appeals takes judicial notice that most geographically near states adopt, with relatively minimal modification, the most recent codification of the code of ethics approved by the American Bar Association. In doing so, those states impose upon their Attorneys standards of professional conduct to which the Attorneys must adhere -- even in Courts outside the jurisdiction of the licensing state, in many instances.

Consequently, Attorneys practicing in the Fort Peck Tribal Court System would arguably be subject to disciplinary action for professional misconduct by their licensing states, if those Attorneys were to engage in professional misconduct in the Tribal Court System.

Query: Does the Fort peck Tribal Court System, as a matter of public policy, wish to adopt a system in which its Attorneys would through their licensing states be subject to disciplinary action for professional misconduct in the Tribal Courts, but in which Lay Counselors would not be subject to disciplinary action for professional misconduct in the Tribal Courts? By extension, does the Fort peck Tribal Court System wish to institutionalize immunity from disciplinary action for unethical clients and Lay Advocates?

To both questions, this Court resoundingly answers, "No!" Until the Fort Peck Assiniboiné and Sioux Tribes adopt their own code of legal ethics for the Fort Peck Tribal Court System, the Fort Peck Court of Appeals incorporates by reference and adopts whatever is the most recently approved code of legal ethics of the American Bar Association as the standard of professional conduct at any given time for Attorneys and Lay Advocates practicing in the Fort Peck Tribal Court System.

Upon the basis of the foregoing, it is

ORDERED that the present standards for admission to practice shall apply to Appellant Lay Counselor Applicant Mary Cleland, PROVIDED, HOWEVER, that she shall be acknowledged as having already met those standards for admission to practice that she had met before the Chief judge ruled that she was not eligible to practice in the Fort Peck Tribal Court System.

Done this ____ day of January, 1987.

BY THE COURT OF APPEALS:

JULIAN H. BROWN, Chief Justice

ARNIE A. HOVE, Justice

DANIEL R. SCHAUER, Justice
