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

In the matter of MARY L. ZEMYAN, an Attorney
Licensed to Practice before the Fort Peck Tribal Court
System,
Respondent.

Appeal No. 031

THIS MATTER was a proceeding initiated upon a Motion dated March 18, 1987 and filed with the Fort Peck Court of Appeals by Respondent through her attorney Ralph J. Patch respectfully requesting that this Court withdraw its earlier opinion in this matter and schedule a de novo hearing, or in the alternative, dismiss this proceeding in its entirety, reinstate Respondent without any lapse in her good standing to practice, and award Respondent actual damages, costs and attorneys' fees. In a hearing by this Court on February 13, 1987, Respondent was suspended from practicing as an attorney before the Fort Peck Tribal Court System for three (3) months effective immediately. Respondent was granted special permission to prepare or assist in preparing any briefs and to orally argue any scheduled appeal she was handling pro bono to insure against a delay in the administration of justice.

FOR RESPONDENT: RALPH J. PATCH, Attorney, P. O. Box 1079, Wolf Point, Montana 59201.

A hearing was held on the Respondent's March 18, 1987 Motion April 2, 1987. At the April 2, 1987 hearing, a subsequent and final hearing was scheduled for and held on April 10, 1987

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

HELD: RESPONDENT'S PREVIOUS SUSPENSION FROM PRACTICE AS AN ATTORNEY BEFORE THE FORT PECK TRIBAL COURT SYSTEM IS AFFIRMED AND TO CONTINUE FROM A NEW EFFECTIVE DATE OF APRIL 10, 1987. RESPONDENT WILL BE PERMITTED TO RESUME PRACTICE AS AN ATTORNEY AFTER JULY 10, 1987.

On February 13, 1987, Mary L. Zemyan was suspended from practicing as an attorney before the Fort Peck Tribal Court system for three (3) months effective immediately. Respondent was ordered to turn over her scheduled appeal cases to other counsel so the same were not continued. Because of comments by Respondent during the proceedings regarding delays by this court in hearing appeals resulted in delays in the administration of justice and that she was handling several matters pro bono, this Court gave Respondent special permission to prepare or assist in preparing any briefs and to orally argue any scheduled appeal she was handling pro bono to insure against further delays in the administration of justice.

In the Opinion dated February 20, 1987, the Court made several findings in deciding to suspend the Respondent. The most

important findings were the Respondent had little respect for the Tribal Court and that the Respondent engaged in specific activities which were intended to impede, obstruct, and prevent the administration of justice and destroy public confidence in such administration of justice, i.e. preparing or participating in the preparation of the Judges' questionnaire, etc.

On or about March 18, 1987, Respondent filed a Motion requesting that the Court withdraw the earlier opinion in this matter and schedule a de novo hearing or, in the alternative, dismiss this proceeding in its entirety, reinstate Respondent without any lapse in her good standing to practice, and award Respondent actual damages cost and attorney fees. The Respondent raised numerous issues some of which were as follows:

1) Whether the Opinion dated February 20, 1987 was totally silent as to which Rules of Professional Conduct, if any, were violated by Respondent in her past activities.

2) Whether Formal Opinions of the American Bar Association or any caselaw of any state or federal jurisdiction need be cited to lend support to the conclusion that respondent's involvement with the Lawyer-Judge survey did constitute conduct which "tends to impede, obstruct, or prevent the administration of the law or to destroy public confidence in such administration" as that phrase is commonly understood by the professional legal community.

3) Whether the opinion denies respondent her rights (both as an individual and as a professional representative of future clients) to address the Fort Peck Tribal Council under the Indian Civil Rights Act with concerns regarding the administration of justice on the Fort Peck Indian Reservation.

4) Whether respondent was never afforded an opportunity to call witnesses to testify before the Fort Peck Court of Appeals in this matter.

5) Whether the proceedings, when taken as a whole, were so defective as to constitute a denial of due process to the respondent.

I.

In discussing Respondent's first issue, it is clear that the Opinion is silent as to what Rules of Professional Conduct Respondent's activities violated. Because of Respondent's motion, the Court issued an Order to Show Cause. In the Order to Show Cause and Notice of Hearing dated April 2, 1987, the Respondent was put on notice that a hearing would be held to determine whether her conduct tended to impede, obstruct and prevent the administration of justice and to destroy public confidence in such administration of justice and has violated Rule 3.5 of the ABA Rules of Professional Conduct. A copy of the Notice of Hearing was served upon the Adult and Juvenile Judges to provide any information they have which in their opinion bears on the above.

Rule 3.5 reads in full as follows:

Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person except as permitted by law; or
- (c) engage in conduct intended to disrupt a tribunal.

The condition of the Tribal Courts did not justify Respondent's past activities and involvement with the Lawyer—Judge survey. This Court previously found and reaffirms that Respondent's conduct did tend to impede, obstruct or prevent the administration of justice and therefore was conduct intended to disrupt a tribunal in violation of ABA Rule 3.5(c).

At the April 10, 1987 proceeding, Judge Hamilton stated that Respondent's more recent activities included Respondent's disruption and interference with an Involuntary Commitment proceeding and arraignment, moving papers on desks in the Wolf Point Tribal Court office and generally snooping around. In addition, Judge Hamilton indicated Respondent's conduct before her and attitude during proceedings implied a lack of respect for the Tribal Court. Judge Hamilton indicated she did not have any of the above problems with other attorneys and lay advocates.

Judge Gourneau stated that the Respondent had been doing things behind the scenes and going through back doors on certain matters. Judge McClammy testified in support thereof that there was one specific incident where Respondent did go through the back door and had him sign an Order disqualifying Lawyer-Judge Hodge from hearing Fort Peck Housing -vs- Cantrell.

Lawyer-Judge Brown testified that Respondent had questioned his ruling on a matter ex parte. Judge Brown indicated that Respondent was obviously challenging his authority in attempting to get him to change his opinion. Judge Brown testified that he felt she acted inappropriately, however, stated "I had already ruled and would not have considered changing my mind and decision."

All of these activities by Respondent would obviously be inappropriate and tend to disrupt a tribunal in violation of ABA Rule 3.5(c). In addition, Respondent's attitude towards the judges and justices and conduct in tribal court proceedings indicate a lack of respect for their authority. In view of the testimony in previous proceedings and the present proceedings, Respondent engaged in activities intended to disrupt the tribal courts in violation of ABA Rule 3.5(c).

II.

The following will address Respondent's second issue of whether Formal Opinions of the American Bar Association or any caselaw of any state or federal jurisdiction needed to be cited to lend support to the conclusion that respondent's involvement with the Lawyer-Judge survey did constitute conduct which "tends to impede, obstruct, or prevent the administration of the law or to destroy public confidence in such administration" as that phrase is commonly understood by the professional legal community.

The Fort Peck Tribal Court system is unique in that the Tribal Counsel has gone to great lengths to raise the standard of its Tribal Court and correct past abuses. The hiring of Lawyer-Judge Hodge was one step in that direction. The Tribal Judges

were unanimous in their testimony that the system had improved because of the hiring of Lawyer-Judge Hodge. Although there were no formal opinions of the American Bar Association or any caselaw of any state or federal jurisdiction cited to lend support to the conclusion that Respondent's involvement with the Lawyer-Judge survey tended to impede, obstruct, or prevent the administration of the law or destroy public confidence in such administration or that Respondent intended to disrupt the tribal courts in violation of ABA Rule 3.5(c). Clearly the testimony supports such a conclusion in that Respondent could not justify her involvement with the Lawyer-Judge survey or explain what it was designed to accomplish.

III.

The Respondent presented a third issue and that was whether the opinion denies Respondent her rights (both as an individual and as a professional representative of future clients) to address the Fort Peck Tribal Council under the Indian Civil Rights Act with concerns regarding the administration of justice on the Fort Peck Indian Reservation. The opinion did not deny Respondent any of her rights as an individual and as a professional representative of future clients to address the Fort Peck Tribal Council regarding legitimate concerns with the administration of justice on the Fort Peck Indian Reservation.

IV.

The Respondent presented a fourth issue and that was whether she was never afforded an opportunity to call witnesses to testify before the Fort Peck Court of Appeals in this matter. Respondent had every opportunity to cross—examine the judges and other witnesses and call her own. Therefore, Respondent's issue is without merit.

V.

The final issue this Court will address presented by the Respondent is whether the proceedings, when taken as a whole, were so defective as to constitute a denial of due process to the Respondent. Every effort was made by this Court to insure that the proceedings were not defective and that Respondent was not denied due process. Therefore, Respondent's issue is without merit.

VI.

There is a final issue raised by this Court and addressed by Respondent at the April 10, 1987 proceedings. Respondent continued to practice law when specifically prohibited from doing so in circumstances wherein no special permission was granted.

Irregardless of whether this Court's Opinion cited case law to the satisfaction of Respondent or that the Opinion failed to cite the specific ABA Rule of Professional Conduct the Respondent was to have violated, Respondent choose to ignore the order of this Court and practiced law in violation of the same. This was evident from the samples attached to the Affidavit of Lawyer-Judge Brown and statements made by David J. Red Fox to Lawyer-Judge Brown and to this Court regarding Respondent's failure to inform him of her suspension and continued representation of Mr. Red Fox despite the same.

Respondent argued that her conduct was not in violation of the order and her activities were no more than that of a secretary. Based on the obvious, this Court could not disagree more with Respondent's assessment of her activities being no more than that of a secretary. Clearly, Respondent's conduct from the issuance of the first order is indicative of her past and present activities to operate as she desires with disrespect and in defiance of Tribal Court authority.

RESPONDENT'S PREVIOUS SUSPENSION FROM PRACTICE AS AN ATTORNEY BEFORE THE FORT PECK TRIBAL COURT SYSTEM IS AFFIRMED AND TO CONTINUE FROM A NEW EFFECTIVE DATE OF APRIL 10, 1987. RESPONDENT IS GIVEN NO SPECIAL PERMISSION TO HANDLE ANY MATTERS BEFORE THE TRIBAL COURTS DURING THE PERIOD OF HER SUSPENSION.

DONE this _____ day of June, 1987.

BY THE COURT OF APPEALS:

ARNIE A. HOVE, Chief Justice

DANIEL R. SCHAUER, Associate Justice

GARY JAMES MELBOURNE, Associate Justice
