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

In the matter of WAYNE WEBSTER,
an Attorney Licensed to Practice before the Fort Peck
Tribal Court System,
Respondent.

Appeal No. 037

THIS MATTER was a proceeding initiated upon an Order to Show Cause and Notice of Hearing dated May 22, 1987 and filed by the Fort Peck Court of Appeals ordering Respondent to show cause why he should not be suspended or disbarred from practice as a Lay Counselor before the Fort Peck Tribal Court system pursuant to Title I, Section 504, of the Comprehensive Code of Justice of the Assiniboiné and Sioux Tribes (hereinafter CCOJ), on the grounds that his conduct has violated Rules 1.3, 1.4(a), 1.5(a), 3.2, 8.4(a), (b), (c), and (d) of the ABA Rules of Professional Conduct or any other applicable rule.

FOR RESPONDENT: WAYNE WEBSTER, Lay Counselor, Brockton, Montana 59213.

On June 2, 1987, a hearing was held on the Fort Peck Court of Appeal's Order to Show Cause and Notice of Hearing dated May 22, 1987. At the hearing, testimony and evidence was presented by witnesses called by the Court and Respondent.

OPINION by Arnie A. Hove, Chief Justice, joined by Daniel R. Schauer, Justice and Gary James Melbourne, Justice.

HELD: RESPONDENT'S CONDUCT HAS VIOLATED RULES 1.3, 1.4(a), 1.5(a), 3.2, 8.4(a), (b), (c), and (d) OF THE ABA RULES OF PROFESSIONAL CONDUCT. RESPONDENT IS DISBARRED FROM PRACTICE AS A LAY COUNSELOR BEFORE THE FORT PECK TRIBAL COURT SYSTEM FOR A PERIOD OF ONE (1) YEAR. RESPONDENT IS ORDERED TO MAKE RESTITUTION TO DEBORAH MACDONALD, VALERIE SIMMONS AND SHARI SWANSON, OBTAIN AN ALCOHOL EVALUATION AND FOLLOW THE RECOMMENDATIONS OR OBTAIN THE RECOMMENDED TREATMENT. NOTICE OF RESPONDENT'S DISBARMENT IS TO BE PUBLISHED TO PROTECT THE PUBLIC FROM FURTHER PROFESSIONAL MISCONDUCT BY RESPONDENT.

This Court received complaints from various sources within the Tribal Court system that the Respondent had taken money from several parties to perform legal work and failed to do the work for which he was retained. The complaints against Respondent were in the form of unsolicited letters to the Tribal Court judges and administrator. These letters were from Valerie Simmons, Deborah A. Tattoo, and Shari Swanson.

The above-referenced letters contained basically the same complaints. The parties hired Respondent to do their divorces and paid him a retainer. The Respondent failed to maintain any contact with his clients, prepare and file the necessary papers to start and finish the divorces or refund their money after the parties terminated Respondent's legal services.

This Court solicited affidavits from the parties who wrote the letters and two affidavits were received. Violet Martell, who is Valerie Simmons' mother and had personal knowledge surrounding the employment of Respondent by her daughter, gave an affidavit as to the truth of the allegations in Valerie Simmons' letter since Valerie Simmons was in the hospital. Deborah (Tattoo) Macdonald also gave an affidavit as to the truth of the allegations in her letter to Judge Brown dated March 20, 1987.

On May 22, 1987, an Order to Show Cause and Notice of Rearing was issued to and served upon Respondent. Respondent was ordered to appear before the Fort Peck Tribal Court of Appeals at 9:00 a.m. on June 2, 1987, in the Courtroom of the Fort Peck Tribal Court in Poplar, Montana, to show cause why he should not be suspended or disbarred from practice as a Lay Counselor before the Fort Peck Tribal Court system pursuant to Title I, Section 504, of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes (I CCOJ 504), on the grounds that his conduct has violated Rules 1.3, 1.4, 1.5(a), 3.2, 8.4(a), (b), Cc) and (d) of the ABA Rules of Professional Conduct or any other applicable ABA rule. This hearing was ordered by the Fort Court of Appeals on its own motion as a result of the two (2) affidavits attached thereto.

The issues to be addressed in this opinion are as follows:

- 1) Whether this Court has jurisdiction to hear this matter.
- 2) Whether the allegations against Respondent are supported by evidence and are violations of Rules 1.3, 1.4(a), 1.5(a), 3.2, 8.4(a), (b), (c) and (d) of the ABA Rules of Professional Conduct or any other applicable rule.
- 3) If Respondent's conduct did violate ABA Rules of Professional Conduct, should Respondent be suspended or disbarred from practice as a Lay Counselor before the Fort Peck Tribal Court system.

I.

Whether this Court has jurisdiction to hear this matter and disbar or suspend the Respondent.

The law granting jurisdiction of this matter to this Court is Title I, Section 504 of the Fort Peck Comprehensive Code of Justice (hereinafter cited as I CCOJ 504). This section reads in full as possible:

Sec. 504. Disbarment.

(a) The Tribal Court or the Court of Appeals may disbar an attorney or lay counselor from practice before the courts, or impose suspension from practice for such time as the Court deems appropriate, pursuant to rules adopted by the Court, provided that the Court shall give such attorney or lay counselor reasonable prior notice of the charges against him and an opportunity to respond to them.

(b) Any person who is disbarred or suspended by the Tribal Court may appeal that determination to the Fort Peck Court of Appeals within 15 days of the disbarment or suspension. The Fort Peck Court of Appeals shall request a statement of the reasons for the

disbarment or suspension from the Chief Judge, and after receiving such statement shall review the record which was before the Tribal Court and may, in its discretion, hear oral argument by the applicant. The Court of Appeals shall determine de novo whether the applicant shall be disbarred or suspended and its determination shall be final.

(c) Any person who is disbarred or suspended by a Justice of the Court of Appeals may appeal that determination to the Fort Peck Court of Appeals within 15 days of the disbarment or suspension. The appeal shall be determined by those Justices of the Court not involved in the initial determination. The Court shall request a statement of the reasons for the disbarment or suspension from the Justice who took the initial action, and after receiving such statement shall review the record which was before the Justice and may, in its discretion, hear oral argument by the applicant. The Court of Appeals shall determine de novo whether the applicant shall be disbarred or suspended and its determination shall be final.

This Court adopted the American Bar Association Rules of Professional Conduct (hereinafter cited as ABA Rule) in Tribes vs. Mary Cleland (1986) AP-004 until the Fort Peck Assiniboine and Sioux Tribes adopt their own code of legal ethics for the Tribal Court system. Therefore, this Court has jurisdiction to hear this matter and determine whether Respondent should be disbarred or suspended and this Court's determination shall be final.

II.

Whether the allegations against Respondent are supported by evidence and are violations of ABA Rules 1.3, 1.4(a), 1.5(a), 3.2, 8.4(a), (b), (c) and (d) of the ABA Rules of Professional Conduct or any other applicable rule.

On June 2, 1987, several of Respondent's former clients and Tribal Court judges testified.

The first witness was Deborah Macdonald, who was one of Respondent's former clients. Deborah Macdonald testified that she was to pay Respondent \$150.00 for her divorce and had paid Respondent \$100.00. Deborah Macdonald claimed that she had contacted Respondent to determine the status of her divorce. Deborah Macdonald testified Respondent on one occasion claimed the papers he was to have filed were lost and on another occasion assured her the papers were filed. Deborah Macdonald further testified that, "I requested a refund from Mr. Webster on March 19, 1987 if he didn't want to do the divorce. He said no no no I want to do it but how do I get to town when I don't have a vehicle." Deborah Macdonald testified that Respondent did no work in her divorce and that she retained the services of an attorney to complete her divorce. Deborah Macdonald requested a refund from Respondent and he refused.

Respondent cross-examined Deborah Macdonald as to the fact he requested \$150.00 to do the divorce. Deborah Macdonald did not deny that she was to pay \$150.00 for Respondent's services to complete her divorce.

The second witness was Valerie Simmons, who was also one of Respondent's former clients. Valerie Simmons testified that she was also to pay Respondent \$150.00 to do her divorce and that she did pay Respondent \$90.00. Valerie Simmons claimed that she had attempted to contact Respondent on numerous occasions to determine the status of her divorce. Valerie Simmons testified Respondent on one occasion claimed that her papers were lost and on another occasion that they had been sent off. Valerie testified that Respondent had contacted her at her sister-in-law's house at Blair which is near Ft. Kipp on the Fort Peck Indian Reservation. At this meeting, Valerie Simmons felt that Respondent was making a pass at her and that he appeared to

have been drinking. Valerie Simmons testified that she had retained Respondent in April of 1986, that she had terminated his services April 3, 1987 with the assistance of Prosecutor Reum and that she had still not been able to obtain a divorce.

Respondent cross-examined Valerie Simmons as to a conflict with a car in the divorce and her meeting the residency requirements before obtaining a divorce in Tribal Court. Respondent also cross-examined Valerie Simmons as to her retaining him after his resignation as Tribal Public Defender in July of 1986 and not until October or November of 1986.

The third witness was Violet Martell, who was Valerie Simmon's mother. Mrs. Martell testified that her daughter had made two (2) payments to Respondent which totaled \$90.00. Mrs. Martell did not remember the amount of the payments, but, she had personally observed one (1) payment. Mrs. Martell testified that she and/or her husband and daughter attempted to contact Respondent approximately 26 times. Mrs. Martell testified that on one occasion Respondent was contacted and assured Mrs. Martell and her daughter that Carol, who is Respondent's wife, was typing the papers. Finally, Mrs. Martell confirmed that Prosecutor Reum assisted Valerie Simmons in terminating Mr. Webster's services.

The fourth witness was Debbie Martell. Debbie Martell heard parts of the conversation between Valerie Simmons and Respondent in which she observed he acted intoxicated. Debbie Martell believed she heard Respondent asking Valerie Simmons for a date.

The fifth witness was Judge McAnnally. Judge McAnnally indicated that he felt Respondent performed his duties to the best of his ability and that Respondent was highly qualified as a lay counselor. While Judge McAnnally indicated that Respondent had done well in the juvenile court, on occasion Respondent was to have been abrupt with Judge McAnnally. In addition, Judge McAnnally indicated that while Respondent was present in juvenile court there was the aroma of alcohol and that more recently, Respondent's practice has slipped.

The sixth witness was Judge McClammy. Judge McClammy informed this Court that Respondent had entered a guilty plea to the charge of Simple Assault on April 27, 1987. Judge McClammy sentenced Respondent to 90 days and ordered him to refrain from drinking. The 90 days were suspended. Judge McClammy also testified that when Respondent had- first appeared in his court he had been drinking and Judge McClammy had warned him not to appear before him when drinking. Judge McClammy did testify that Respondent represented clients to the best of his ability.

The seventh witness was Judge Gourneau. Judge Gourneau testified that when Respondent appeared in her court he smelled of liquor and appeared intoxicated before her at arraignments and when she was the acting juvenile judge. Judge Gourneau feels that Respondent has acted professional, however, she felt that he had done good and bad in his representation of clients before her court. Judge Gourneau testified that she had been informed by a dispatcher Respondent was at the jail "hustling" clients. Finally, Judge Gourneau indicated her daughter Roxanne Gourneau's divorce was not properly completed.

The eighth witness was Judge Violet Hamilton. Judge Hamilton testified that on numerous occasions Respondent would inform her of his client's side of the matter. Judge Hamilton testified that a Zelma Mason had informed the Judge that she had retained Wayne Webster to represent her in an action involving a car company and he had filed nothing in the action. The Judge, Zelma Mason and Respondent had a conference call and it was established Respondent was not representing her. Finally, Judge Hamilton testified that she was present when Respondent was soliciting business before arraignments by asking defendants if he could represent them.

The ninth witness was Lawyer Judge Brown. Lawyer Judge Brown testified that Respondent was presently charged in his court with a criminal offense of Aggravated or Simple Assault against a minor, Patrick McKay.

The tenth and final witness was Lillian Webster. Lillian Webster, who was the mother of Respondent, was called by Respondent. Mrs. Webster testified that she had the same phone number as Respondent and that she did not receive any calls from Violet Martell or Valerie Simmons. When questioned further by this Court regarding her knowledge of Respondent's past and pending criminal charges, she had no knowledge of the same.

The testimony of Respondent's former clients, Deborah Macdonald and Valerie Simmons, establish clear violations of ABA Rule 1.3 which states, "A lawyer shall act with reasonable diligence and promptness in representing a client." Deborah Macdonald testified that Respondent failed to file divorce papers for her after continued assurances that the petition was being prepared and would be filed. Deborah Macdonald testified of receiving excuses from Respondent and eventually hiring an attorney to do her divorce. Valerie Simmons' case is a more extreme violation of this rule in that over a year had past before she obtained any relief and it was necessary to obtain that relief through this Court.

The testimony of Deborah Macdonald and Valerie Simmons also establish violations of ABA Rule 1.4(a) which states, "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." The testimony of both witnesses establish that Respondent neither informed them of the status of their cases or promptly complied with their reasonable requests for information.

The testimony of Deborah Macdonald and Valerie Simmons also establish violations of ABA Rule 1.5(a) which in part states, "A lawyer's fees shall be reasonable...." In both cases, Respondent did not perform any services. Therefore, Respondent's fees were not reasonable and he should have refunded the same.

The testimony of Valerie Simmons establishes a violation of ABA Rule 3.2 which states, "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The previous discussion of Respondent's violation of ABA Rule 1.3 in his representation of Valerie Simmons is sufficient to and does establish a violation of ABA Rule 3.2.

The testimony of Deborah Macdonald, Valerie Simmons Violet Martell, Debbie Martell, Judge McAnnally, Judge McClammy and Judge Gourneau, Judge Hamilton and Judge Brown establish violations of ABA Rule 8.4(a), (b), (c), and (d).

This applicable portions of this rule read in full as follows:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

....

Respondent has violated paragraphs (a), (b), (c), and (d) of ABA Rule 8.4 and is guilty of professional misconduct. In the discussion of Issue No. II, Respondent was found to have violated ABA Rules 1.3, 1.4(a), 1.5(a), and 3.2. Therefore, Respondent has violated Rule 8.4(a) by violating several Rules of Professional Conduct.

Respondent has violated ABA Rule 8.4(b) as evidenced in his recent conviction for a simple assault and his alleged participation in an assault on a minor which is pending before Tribal Court. Respondent's recent conviction for a simple assault and pending charges for the same offense obviously does reflect adversely on Respondent's fitness as a lay counselor. Attorneys and lay counselors are not to be engaging in criminal acts against persons.

Respondent has violated ABA Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in his dealings with Deborah Macdonald, Valerie Simmons and Shari Swanson.

Respondent's handling of Valerie Simmon's divorce can be construed as a clear violation of ABA Rule 8.4(d). As a direct result of Respondent's conduct, there resulted a delay of over a year in Valerie Simmons' divorce and therefore was prejudicial to the administration of justice and her obtaining a divorce.

Therefore, the testimony of the witnesses and evidence of a recent conviction and pending charge, establish Respondent's violations of several ABA Rules. Furthermore, Respondent admitted receiving retainers from Deborah Macdonald and Valerie Simmons and not completing their divorces.

III.

If Respondent's conduct did violate ABA Rules of Professional Conduct, should Respondent be suspended or disbarred from practice as a lay counselor before the Fort Peck Tribal Court system.

The testimony presented to and evidence received by this Court, established that serious and numerous violations of the ABA Rules of Professional Conduct were committed by Respondent. The testimony and evidence also established that Respondent has a drinking problem which is affecting his performance as a lay counselor. Because of the above, this Court determined that it was necessary to protect the public from further professional misconduct by Respondent as well as attempt to rehabilitate him for possible readmission to the Tribal Bar.

THEREFORE, IT IS THE UNANIMOUS DECISION OF THIS COURT TO DISBAR RESPONDENT FROM PRACTICE AS A LAY COUNSELOR BEFORE THE FORT PECK TRIBAL COURT SYSTEM FOR A PERIOD OF ONE (1) YEAR. IT IS ORDERED THAT RESPONDENT SHALL MAKE RESTITUTION TO DEBORAH MACDONALD, VALERIE SIMMONS AND SHARI SWANSON AND THAT RESPONDENT SHALL OBTAIN AN ALCOHOL EVALUATION AND FOLLOW THE RECOMMENDATIONS OR OBTAIN THE RECOMMENDED TREATMENT. IT IS FURTHER ORDERED THAT NOTICE OF RESPONDENT'S DISBARMENT BE PUBLISHED TO PROTECT THE PUBLIC FROM FURTHER PROFESSIONAL MISCONDUCT BY RESPONDENT. RESPONDENT IS PUT ON NOTICE THAT HIS FAILURE TO COMPLY WITH ALL OR ANY PART OF THIS ORDER IS A CONTEMPT OF COURT.

RESPONDENT IS ALSO PUT ON NOTICE THAT AFTER ONE (1) YEAR FROM THIS DATE AND AFTER PROVIDING PROOF OF HIS COMPLIANCE WITH THE ORDERS HEREIN, RESPONDENT SHALL BE ALLOWED TO TAKE THE TRIBAL BAR EXAM AND APPLY FOR READMISSION TO PRACTICE IN THE TRIBAL COURT SYSTEM.

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
