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

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IN THE MATTER OF

Ronald A. Hodge  
Attorney at Law, Disbarment/Suspension  
Respondent

**Appeal No. 060**

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**OPINION**

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On October 3, 1988, the Honorable Judge Violet E. Hamilton suspended RONALD A. HODGE, an attorney licensed to practice in the Fort Peck Tribal Court. On October 6, 1988, RONALD A. HODGE filed a Request for Formal Hearing pursuant to I CCOJ 504(b) which was received by this Court on October 26, 1988. A I CCOJ 504(c) hearing was held in the Tribal Court Building in Poplar.

CIVIL: VIOLATION OF CANON 16 TO, FAIL TO SHOW RESPECT OR COURTESY TO JUDGE OR JUSTICE, HOWEVER, DISAGREEMENT WITH JUDGE OR JUSTICE AS TO LAW OR APPLICATION THEREOF IS NOT A VIOLATION OF CANON 16 OR SIGNIFICANT VIOLATION OF THE CODE OF ETHICS AS REQUIRED BY I CCOJ 504(a); ATTEMPTED APOLOGY PURGED PERCEIVED VIOLATION OF CANON 16; TRIBAL JUDGES AND JUSTICES ARE TO FOLLOW RULES ADOPTED BY THE COURT FOR DISBARMENT OR SUSPENSION.

Argued: November 4, 1988; Decided: November 4, 1988. RONALD A. HODGE, Esq., Box 1791, Bismarck, N.D. 58502.

The Honorable Violet E. Hamilton, Associate Judge, Wolf Point Tribal Court, Wolf Point, Montana 59201; Not Available.

HELD: THE HONORABLE JUDGE VIOLET E. HAMILTON PERCEIVED A VIOLATION OF CANON 16, HOWEVER, ATTEMPTED APOLOGY PURGED VIOLATION. RESPONDENT'S "SUSPENSION IS LIFTED AND NOTICE IS TO BE GIVEN TO THE NORTH DAKOTA BAR ASSOCIATION DISCIPLINARY BOARD. RESPONDENT'S PETITION FOR WRIT OF HABEAS CORPUS IS DISMISSED AND THE TRIBAL COURT IS RESTRAINED FROM ISSUING ANOTHER ARREST WARRANT FOR RESPONDENT ON THE PENDING DISORDERLY CONDUCT CHARGE. THE TRIBAL COURT SHALL GIVE RESPONDENT A FIVE (5) DAY NOTICE IN THE FORM OF A SUMMONS OR NOTICE TO APPEAR BY CERTIFIED MAIL TAKING INTO ACCOUNT THREE (3) DAYS FOR MAILING TO BISMARCK, N.D. OF HIS TRIAL ON THE

DISORDERLY CONDUCT CHARGE WHICH IS TO BE HELD WITHIN 30 DAYS OF THE DATE OF THIS OPINION.  
JUSTICE MELBOURNE APOLOGIZED TO RESPONDENT FOR THE TREATMENT HE HAS RECEIVED IN THE TRIBAL  
COURT.

On October 3, 1988, the HONORABLE VIOLET E. HAMILTON, Associate Judge (hereinafter Judge Hamilton), suspended RONALD A. HODGE, an attorney licensed to practice before the Fort Peck Tribal Courts (hereinafter Respondent), from practicing in her Court pursuant to I CCOJ 504(a). In a letter dated August 15, 1988, Judge Hamilton informed Chief Judge William McClammy of five (5) reasons she felt Respondent should be disbarred. In a letter dated October 4, 1988, Judge Hamilton informed the Disciplinary Board of the North Dakota Bar Association of her action and attached copies of letters to Respondent and Chief Judge McClammy.

On October 6, 1988, Respondent filed a Request for Formal Hearing pursuant to I CCOJ 504 (b) which was received by this Court on October 26, 1988. Because of this delay, a hearing was immediately scheduled and held on November 5, 1988 at the Tribal Court Building in Poplar, Montana at 1:00 A.M.

At the hearing, Respondent was present and represented himself. Judge Hamilton was unable to attend.

Before the hearing started, Respondent was asked if he had any objection to this matter being heard by two (2) justices. Respondent stated he did not and when requested, stipulated to two (2) justices hearing the matter and rendering a decision herein.

The testimony established that Respondent and Judge Hamilton had a disagreement in a case regarding the applicable law and proper application thereof. Respondent informed this Court he attempted to contact Judge Hamilton and apologize when he discovered Judge Hamilton was going to disbar or suspend him. For whatever reason, Judge Hamilton was unavailable to discuss the matter.

Because this Court had been nearly three weeks in receiving Respondent's Request for a Formal Hearing, this Court determined to act quickly in setting up the hearing. This Court usually gives five (5) day notice to the parties, however, the parties were contacted by telephone and the Court of Appeals' Clerk, Danna Clark, notified Judge Hamilton of the date, time and place of hearing at which oral argument or evidence may be presented in support of the continued suspension of Respondent and/or subsequent disbarment.

Respondent and Judge Hamilton were directed to have any witnesses and/or additional evidence to testify or present at that time.

The issues before the Court were as follows:

WHETHER RONALD A. HODGE, AN ATTORNEY LICENSED TO PRACTICE BEFORE THE FORT PECK TRIBAL COURT, WAS GUILTY OF SIGNIFICANT VIOLATIONS OF THE CODE OF ETHICS OF THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION AND SHOULD BE DISBARRED.

WHETHER RONALD A. HODGE WAS DENIED DUE PROCESS AS A RESULT OF HIS SUSPENSION WHEREIN HE WAS NOT GIVEN AN OPPORTUNITY TO RESPOND TO THE CHARGES AGAINST HIM.

I.

Respondent was suspended under I CCOJ 504(a) by Judge Hamilton. This section reads,

"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 reasonable prior notice of the charges against him and an opportunity to respond to them. The rules shall include significant violations of the Code of Ethics of the Assiniboine and Sioux Tribes of the Fort Peck Reservation as grounds for disbarment."

This Court was advised that this section was recently amended to include 'the language underlined and emphasized above. Therefore, this Court will review de novo pursuant to I **CCOJ** 504 (b) whether Respondent shall be disbarred or suspended under the significant violations standard in I **CCOJ** 504 (a). Title I CCOJ 504 (b) reads as follows:

"Any person who is disbarred or suspended by the Tribal Court to 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 nova whether the applicant shall be disbarred or suspended and its determination shall be final."

This Court will first determine whether Respondent was suspended from practice pursuant to rules adopted by the Court. This Court received testimony in a subsequent suspension hearing from the Honorable Mary E. Gourneau, Associate Judge and the Honorable Thomas R. McNally, Juvenile Judge that the Fort Peck Tribal Court judges had adopted informal and unwritten rules of suspension.

The rules were quite simple in that a judge was to inform the chief judge in writing of any problems they were having with an attorney or lay counselor. The judge would also request that the attorney or lay counselor be disbarred or suspended and give the attorney or lay counselor notice thereof. The chief judge would then act on the request for suspension or disbarment by contacting" the attorney or-lay counselor and discuss the matter.

A judge's disbarment or suspension when approved by Chief Judge McClammy was honored in the entire Fort Peck Tribal Court system.

Respondent contends that he was suspended in violation of his due process rights under the Indian Civil Rights Act and appealed the suspension to this Court. It is obvious from the documents filed herein that Respondent was not suspended according to the informal unwritten rules adopted by the Fort Peck Tribal Court.

Respondent filed his Request for Formal Hearing on or about October 7, 1988 and within 15 days as required by I CCOJ 504 (b). Judge Hamilton prepared and filed a statement of reasons for Respondent's suspension with this Court. As stated above, these reasons were set forth in the letter dated August 15, 1988 to Chief Judge William McClammy. The reasons were as follows:

"1. Mr. Hodge's total disrespect for the Court.

"2. Mr. Hodge's sarcasm (sic) and his belligerency to me.

"3. Verbal threats of intimidation of taking this matter to the Tribal Chairman and Federal Court.

"4. Mr. Hodge's unprofessionalism with regard to talking to a Tribal Judge in the manner he did, and will (sic) his of voice.

"5. Mr. Hodge's disregard for the law, and also contacting the Court Administrator to handle the matter."

At the hearing, Respondent argued he was suspended in violation of his rights under Indian Civil Rights Act. Respondent claimed he received a copy of his suspension on October 5, 1988 and Judge Hamilton had not given him prior notice of the charges against him or an opportunity to respond.

Judge Hamilton was unable to attend because of a family emergency. Because of the family emergency, this Court deemed it appropriate to find that Judge Hamilton could have properly perceived a violation of Canon 16 of the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Indian Reservation (hereinafter Code of Ethics). Canon 16 reads,

"An attorney shall act with respect and courtesy toward the Fort Peck Courts. This requires an attorney to comply with rules established by the Court for courtroom demeanor and procedure."

However, Respondent testified that he had an argument with Judge Hamilton regarding the issuance of a temporary restraining order in a domestic dispute. Judge Hamilton issued a temporary restraining order without notice to the parties or their attorneys. Respondent testified that he informed the Judge she had issued the temporary restraining order without following IV CCOJ 401(a), (b), and (c). Respondent requested a continuance on the temporary restraining order hearing which was denied.

Respondent further testified that he had told Judge Hamilton that tribal judges had a high duty to maintain the position of tribal courts in Indian country and that this was a bad example. Respondent finally testified that he was not disrespectful and has never been disrespectful to any court of judge on this or any Indian reservation. Respondent insisted he did not commit acts of disrespect to Judge Hamilton.

In addition, testimony was given by Roberta Archdale and Mona ThoSias regarding criminal charges filed against Respondent for disorderly conduct which was to have occurred September 30, 1988. Respondent was to have contacted Roberta Archdale and Mona Thomas who were being represented by David Alien Dick, an attorney with LegEl Services in Wolf Point. During communications with Roberta Archdale and Mona Thomas, Respondent was alleged to have acted in violation of the disorderly conduct statute in III CCOJ 413.

Respondent advised this Court as a result of the criminal conduct charge he had been arrested. Respondent was to have been released and advised this Court that he was going to be arrested a second time which prompted his filing a Writ of Habeas Corpus.

This Court determined that it would not address the issue of Respondent's guilt or innocence and will remand this matter to tribal court for a trial within 30 days from the date of this opinion and will only address the issue of whether Respondent had

unauthorized communication with a person represented by counsel in violation of Canon 19 of the Code of Ethics. If Respondent had an unauthorized communication with Roberta Archdale and Mona Thomas, this will go to determine whether there was significant violations of the Code of Ethics as contemplated by I CCOJ 504(a) as amended.

Canon 19 of the Code of Ethics reads,

"When representing a client, an attorney shall not communicate about that representation. With a party the attorney knows to be represented by another attorney in the same proceeding, unless the attorney has the consent of the other attorney."

Respondent testified that he had permission from David AlienDick to contact Roberta Archdale and Mona Thomas. The Court contacted Mr. Dick via telephone and were advised that Respondent was in fact given such permission. Therefore, there was no violation of Canon 19 of the Code of Ethics.

This Court also takes notice of Respondent's testimony that he has practiced on the Fort Peck Indian Reservation for 2 1/2 years as the lawyer judge and an officer of the court.

In conclusion, this Court finds that Judge Hamilton could have perceived a violation of Canon 16, however, Respondent's attempts to talk to her on the phone and apologize purged him of this violation. In addition, this Court finds Judge Hamilton did not suspend Respondent according to the informal unwritten rules of the Fort Peck Tribal Court. Finally, this Court finds that Judge Hamilton's perceived violation of Canon 16 of the Code of Ethics is not the significant violations contemplated by I CCOJ 504(a).

Therefore, Respondent's suspension is hereby lifted and he is permitted to continue his practice in the Fort Peck Tribal Court system. The Respondent's Writ of Habeas Corpus is dismissed and the Tribal Court is directed not to issue any arrest warrant for Respondent on the pending criminal conduct charge. The Tribal Court is hereby directed to see that Respondent is given his trial on the disorderly conduct charge within 30 days of the date of this opinion. Respondent is to be given a five (5) day notice of the trial date in the form of a summons \*or notice to appear by certified mail return receipt requested with three (3) days mailing time to Bismarck, N.D.

## II.

As for whether Respondent was denied due process when he was suspended by Judge Hamilton without an opportunity to respond to the charges, the Court has previously discussed the testimony of two (2) tribal court judges as to informal unwritten rules adopted by the court in suspending or ,disbarring an attorney or lay counselor.

In the instant case, Judge Hamilton was obviously aware of the informal unwritten rules. Judge Hamilton had given notice to Chief Judge William McClammy and Respondent of her reasons for wanting Respondent disbarred. It appeared from Judge Hamilton's letter of August 15, 1988, that she was requesting Chief Judge McClammy to take action and disbar the Respondent for the reasons given therein. For whatever reason, Respondent was not given a hearing by Chief Judge McClammy and was notified by letter dated October 3, 1988 that he was suspended from practicing in Judge Hamilton's court. Respondent was immediately suspended and never given an opportunity to respond to Chief Judge McClammy or Judge Hamilton regarding the charges against him.

Therefore, Respondent was denied due process when he was not given reasonable prior notice of the charges against him and an opportunity to respond to them according to the informal unwritten rules adopted by the court in matters of disbarment or suspension of an attorney or lay counselor. A final note, this Court would advise that the informal unwritten rules adopted by the Court in matters of disbarment or suspension be written giving tribal judges and attorneys and lay counselors practicing within the Fort Peck Tribal Court system notice of the same thereby helping to ^eliminate confusion and future due process violations.

THE HONORABLE JUDGE VIOLET E. HAMILTON PERCEIVED A VIOLATION OF CANON 16, HOWEVER, ATTEMPTED APOLOGY PURGED VIOLATION. RESPONDENT'S SUSPENSION IS LIFTED AND NOTICE IS TO BE GIVEN TO THE NORTH DAKOTA BAR ASSOCIATION DISCIPLINARY BOARD. RESPONDENT'S PETITION FOR WRIT OF HABEAS CORPUS IS DISMISSED AND THE TRIBAL COURT IS RESTRAINED FROM ISSUING ANOTHER ARREST WARRANT FOR RESPONDENT ON THE PENDING DISORDERLY CONDUCT CHARGE. THE TRIBAL COURT SHALL GIVE RESPONDENT A FIVE (5) DAY NOTICE IN THE FORM OF A SUMMONS JOR NOTICE TO APPEAR BY CERTIFIED MAIL TAKING INTO ACCOUNT THREE (3) DAYS FOR MAILING TO BISMARCK, N.D. OF HIS TRIAL ON THE DISORDERLY CONDUCT CHARGE WHICH IS TO BE HELD WITHIN 30 DAYS OF THE DATE OF THIS OPINION. JUSTICE MELBOURNE APOLOGIZED TO RESPONDENT FOR THE TREATMENT HE HAS RECEIVED IN THE TRIBAL COURT.

DATED this 28th day of December, 1988.

**BY THE COURT OF APPEALS:**

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Arnie A. Hove, Chief Justice

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Gary James Melbourne, Associate Justice

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