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

IN THE MATTER OF
CLAYTON REUM, LAY COUNSELOR
SUSPENSION

Appeal No. 061

Respondent.

On October 25, 1988, the Honorable Violet E. Hamilton, Associate Judge, suspended Clayton Reum, a lay advocate, from practice in her court. On November 8, 1988, Clayton Reum filed a request for hearing pursuant to I CCOJ 504(b). At the November 22, 1988 hearing, Clayton Reum was represented by Mary Zemyan, Attorney at Law, of Wolf Point, Montana 59201.

Hearing: 11/16/88

Continued To: 11/22/88

Argued: 11/22/88

Decided: 11/22/88

CIVIL: TRIBAL COURT JUDGES MUST SUSPEND ATTORNEYS AND LAY COUNSELORS PURSUANT TO WRITTEN OR UNWRITTEN RULES ADOPTED BY THE TRIBAL COURT UNDER I CCOJ 504 (a); ATTORNEYS AND LAY COUNSELORS HAVE A DUTY NOT TO KNOWINGLY PRESENT FALSE EVIDENCE OR MAKE FALSE ALLEGATIONS IN A TRIBAL COURT; AND ATTORNEYS AND LAY COUNSELORS BEHAVIOR IN TRIBAL COURT MUST BE PROFESSIONAL DEALING WITH ALL TRIBAL JUDGES AND PROSECUTORS.

HELD: THE SUSPENSION OF RESPONDENT TO PRACTICE IN THE FORT PECK TRIBAL COURTS IS HEREBY LIFTED. RESPONDENT IS TO RESOLVE MATTERS WITH JUDGE HAMILTON AND AT ALL TIMES MAINTAIN A PROFESSIONAL ATTITUDE WITH COURT OFFICIALS AND BEFORE THE COURT. BECAUSE RESPONDENT'S SUSPENSION WAS NOT DONE IN COMPLIANCE WITH THE RULES ADOPTED BY THE TRIBAL COURT, JUSTICE MELBOURNE APOLOGIZED FOR ANY INCONVENIENCE TO RESPONDENT DURING HIS SUSPENSION.

FACTS:

On October 25, 1988 the Honorable Violet E. Hamilton filed a Notice of Suspension and Request for Formal Hearing suspending Mr. Clayton Reum, lay advocate from practice in her court for an indefinite period of time.

The reasons given in the Notice of Suspension were as follows:

"1. For untrue allegations in the matter of Anna Pipe, as to a relationship between myself and parties;

"2. For allegations made in the case, Tribes vs. Wayne Weeks (sic), that I am personal friends to parties in that case and that I would (sic) unfair, etc.

"3. For being intimidating to me, by threatening me and disrupting my court.

"4. For other numerous matters in which will be brought up at formal hearing."

Judge Hamilton requested a formal hearing before an order issued permitting him to practice again.

On November 8, 1988, Clayton Reum through his attorney, Mary L. Zemyan, filed a Request for Hearing. The issues raised in the request were as follows:

"1. Does an Associate Judge, acting on her own motion, have the authority under Title I, Section 504(a) to suspend a lay advocate from practice in "her court" as has been claimed in the Notice of Suspension?

"2. If the answer to the above questions is in the affirmative, was said suspension justified based on the record which was before Judge Hamilton?"

The Request for Hearing was based on I CCOJ 504(b).

On November 14, 1988, an Order Setting I CCOJ 504 Hearing was issued setting the hearing of Clayton Reum's suspension for November 16, 1988 at 1:00 pm. Judge Hamilton and Mr. Reum were directed to have any additional statements and/or evidence by way of witnesses ready to present and testify.

On November 14, 1988, Respondent filed a Motion to Lift Suspension giving the following reasons:

"1. Said Notice of Suspension was issued without giving Clayton Reum prior notice and an opportunity to respond to the charges. Said notice violated Clayton Reum's rights under Title I, Section 504(a) of the Fort Peck Comprehensive Code of Justice and under the Indian Civil Rights Act, 25 U.S.C.A. Section 1302(8).

"2. Said Notice of Suspension failed to cite any significant violations of the Code of Ethics for Fort Peck Attorneys and Lay Counsel, which was adopted by the Fort Peck Tribal Executive Board on August 10, 1987 (Res. 2982—87—8). Said notice thus violated Clayton Reum's rights under Title I, Section 504(a) of the Fort Peck Comprehensive Code of Justice (as amended by said resolution) and under the Indian Civil Rights Act, 25 U.S.C.A. Section 1302 (8) ."

Because of the hearing, this order was not addressed.

At the hearing November 16, Judge Hamilton was unable to attend because of a family emergency. Two (2) judges, Juvenile Judge Tom McAnally and Associate Judge Mary Gourneau, were present to testify to the unwritten rules of Tribal Court on the suspension of an attorney or lay counselor in Tribal Court. The judges further testified that Clayton Reum should only be suspended from practice in Judge Hamilton's Court until the final determination.

The matter was continued and an Order For Continuance Of I CCOJ 504 Hearing was issued on November 17, 1988 wherein Judge Hamilton, Ron Arneson, Emmett Buckles and other witnesses were ordered to appear on November 22, 1988 at 9:30 a.m. and give testimony in this matter. The order permitted Clayton Reum to practice in Poplar and Juvenile Tribal Courts until this Court acted upon Judge Hamilton's suspension.

At the hearing November 22, 1988, Judge Hamilton and Emmett Buckles were present and testified. Ron Arneson made himself available by telephone and gave testimony.

This Court will address the following issues:

"1. Whether an Associate Judge, acting on her own motion, has the authority under Title I CCOJ 504(a) to suspend a lay advocate from practice in "her court" as has been claimed in the Notice of Suspension?

"2. Whether Clayton Reum's suspension was justified based on the record before Judge Hamilton."

I.

In answer to the first issue, an associate judge does not have authority under I CCOJ 504(a) to suspend a lay advocate from practice pursuant to the current informal rules adopted by the Tribal Court. Both Judge McAnally and Judge Gourneau testified as to what the informal unwritten rules were that had been adopted by the Tribal Court to deal with disbaring or suspending an attorney or lay counselor under I CCOJ 504 (a).

The judges testified that before an associate judge was able to suspend an attorney from practice in their court, the approval of the chief judge was needed. The judges testified that the associate judge was to notify the chief judge in writing of the problems they were having with the attorney or lay counselor. The judge would also request that the attorney and 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 request for disbarment or suspension when approved by the chief judge was honored in the entire Fort Peck Tribal Court system.

Pursuant to the informal unwritten rules adopted by the Court under I CCOJ 504(a), an associate judge of the Tribal Court does have authority to recommend to the chief judge that an attorney or lay counselor be disbarred or suspended from practice. The chief judge then acting on behalf of the entire Tribal Court is to give to the attorney or lay counselor the required notice of the charges and opportunity to respond before acting on the associate judge's request.

This Respondent was not suspended according to the informal unwritten rules adopted by the Fort Peck Tribal Court judges. It is the strong recommendation of this Court that the informal unwritten rules of adopted by the Fort Peck Tribal Court

judges pursuant to I CCOJ 504(a) be written and formally adopted. The judges, attorneys and lay counselors should then receive copies of these rules so that the procedure is hereinafter followed.

II.

Based on the record before Judge Hamilton, Respondent's suspension may have been justified. This Court will address each of Judge Hamilton's reasons for suspending the Respondent. of Judge Hamilton's reasons for suspending the Respondent. First, this court is aware of the allegations made against Judge Hamilton in the Anna Pipe matter as to a relationship between herself and the parties. This Court investigated the allegations against Judge Hamilton and determined they were untrue.

An attorney or lay counselor who knowingly makes or presents false allegations in Tribal Court would be guilty of violating Canon 11, 13 and 14 of the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation. The applicable portions of Canon 11 reads,

"...An attorney shall not raise or controvert issues without a substantial basis for doing so."

The applicable portion of Canon 13 reads,

"An attorney shall act with honesty toward the Fort Peck Courts. An attorney shall not knowingly make false statements to the Courts or knowingly offer false evidence...."

The applicable portion of Canon 14 reads,

"An attorney shall act in a manner fair to the opposing party. In order that fair access to evidence be maintained, an attorney shall not:

" ...

"(b) falsify existing evidence or create new evidence; or

"(c) influence a witness to give false or misleading testimony."

Although the allegation against and complained of by Judge Hamilton was determined to be false, no evidence was presented that Respondent was responsible for the allegation and knowingly made the same or knowingly offered false evidence in violation of Canon 13. Furthermore, there was no evidence that Respondent violated Canon 14.

Respondent may have violated Canon 11 when he raised or controverted issues without a substantial basis for doing so in Tribes vs. Anna Pipe, Appeal No. 049. In Pipe, Respondent should have presented to this Court, along with his petition to review, affidavits from parties with personal knowledge of the alleged relationship between Judge Hamilton and parties which were prohibited by I CCOJ 307. Without affidavits, Respondent did not have a substantial basis for making the allegations and raising the issue and should have refrained from presenting and/or making the same. Furthermore, Respondent's continued attempts, to get this Court to change its final Opinion and order to keep his client from serving time properly

ordered by Judge Hamilton and affirmed by this Court, are delay tactics designed to frustrate the opposing parties attempt to obtain a legal remedy in violation of Canon 12. However, Judge Hamilton refused to testify on the date of the hearing and assert these claims.

As for the allegations made against Judge Hamilton in Tribes vs. Wayne Weeks, this Court was never presented with any testimony or evidence at the hearing denying the same since Judge Hamilton refused to testify. Therefore, this Court cannot address the truth or falsity of those allegations.

As for Respondent being intimidating or threatening to Judge Hamilton or disrupting her court, again Judge Hamilton refused to testify or present evidence to substantiate the allegation. Emmett Buckles was present to testify to threats by Respondent but at the hearing refused to testify. Ron Arneson was available and did testify that he had been threatened by the Respondent but that later Respondent had apologized. Respondent admitted he may have gotten angry on occasions with court officials or during court proceedings. The allegation made by Judge Hamilton as to Respondent's conduct towards her and in her court, if substantiated, would have been a violation of Canon 16 which reads,

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

Finally, as for the other numerous allegations to be brought up at the hearing, again Judge Hamilton did not testify at the hearing. This Court had no sworn to testimony or evidence before it to make an appropriate determination on whether respondent had committed significant violations of the Code of Ethics of the Assiniboine and Sioux Tribes of the Fort Peck Reservation as grounds for disbarment (or suspension). Based on the record before this Court, Respondent's suspension was not justified in Tribal Court and should be lifted. As for Respondent's admissions of anger towards court officials and during court proceedings he is admonished to maintain a professional attitude with court officials and before the court.

THEREFORE, THE SUSPENSION OF RESPONDENT TO PRACTICE IN THE FORT PECK TRIBAL COURTS IS HEREBY LIFTED. RESPONDENT IS TO RESOLVE MATTERS WITH JUDGE HAMILTON AND AT ALL TIMES MAINTAIN A PROFESSIONAL ATTITUDE WITH COURT OFFICIALS AND BEFORE THE COURT.

DATED this ____ day of January, 1989.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Associate Justice
