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

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FORT PECK ASSINIBOINE AND  
SIOUX TRIBES,  
Plaintiff/Appellee,

vs.

**Appeal No. 079**

CARL FOURSTAR, JR.,  
Defendant/Appellant.

**THIS APPEAL** is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable A.T. Stafne, Associate Judge, presided.

**FOR APPELLANT:** Rita A. Weeks, Lay Counselor, 908 W. Blaine Street, Wolf Point, Montana 59201.

**FOR APPELLEE:** Emmett Buckles, Tribal Prosecutor, Box 1133, Wolf Point, Montana 59201.

**CRIMINAL:** PURSUANT TO CANON 10 OF THE CODE OF ETHICS FOR ATTORNEYS AND LAY COUNSELORS OF THE FORT PECK RESERVATION, UPON A MOTION TO THE COURT, COUNSEL IS PERMITTED TO DECLINE OR TERMINATE FURTHER REPRESENTATION OF A DEFENDANT WHO REQUESTS COUNSEL ENGAGE IN CONDUCT THAT VIOLATES CANON 13; AND STRICT COMPLIANCE TO II CCOJ 401 DOES NOT DENY A DEFENDANT DUE PROCESS OF LAW OR EQUAL PROTECTION OF THE LAW.

**ARGUED:** August 21, 1989.      **DECIDED:** August 21, 1989.

Opinion by Arnie A. Hove, Chief Judge, joined by Gary James Melbourne, Associate Justice and Floyd G. Azure, Associate Justice.

HELD: IT IS THE UNANIMOUS DECISION OF THIS COURT TO GRANT APPELLANT'S COUNSEL'S MOTION AND PERMIT APPELLANT'S COUNSEL TO DECLINE OR TERMINATE FURTHER REPRESENTATION OF APPELLANT.

IT IS ORDERED THE JUDGMENTS ENTERED AGAINST APPELLANT ARE AFFIRMED AND HE IS TO BEGIN SERVING HIS SENTENCES IMMEDIATELY. IT IS FURTHER ORDERED THE TRIBES SHALL HAVE JUDGMENT AGAINST APPELLANT FOR THE COST OF THE TRANSCRIPT.

## FACTS:

On June 5, 1989, the Tribal Court entered judgments of guilty against appellant on his pleas of guilty to charges of Resisting Arrest, Resisting Lawful Arrest, Simple Assault, Simple Assault, Criminal Mischief, Driving Motor Vehicle While Under Influence of Alcohol Beverage or Drugs (DUI), and attempted Aggravated Assault violations of III CCOJ 411, III CCOJ 411, III CCOJ 215, III CCOJ 215, III CCOJ 306, IX CCOJ 107 and III CCOJ 112 and 213, respectively. On that same date, the Tribal Court entered a Final Disposition on each of the charges.

On the two (2) Resisting Arrest charges, appellant received 30 days in jail or a \$150.00 fine. On the two (2) Simple Assault charges Appellant received 30 days in jail or a \$150.00 fine. On the Criminal Mischief charge, appellant received 20 days in jail or a \$100.00 fine. On the DUI charge, appellant received 2 days flat, with an additional 45 days in jail or a \$225.00 fine and 10 sessions of DUI school. On the Attempted Aggravated Assault, appellant received 45 days flat and drug and alcohol treatment. Appellant was also given a work release.

On June 23, 1989, appellant filed a Notice of Appeal alleging he was adjudged guilty of crimes but was not served with notice of such, and that he appeared and entered pleas of guilty without counsel and/or the understanding of the nature of the charges and the effect of the pleas and his rights. On July 28, 1989, appellant's appeal was granted and the hearing set for August 18, 1989 and later rescheduled and heard on August 21, 1989.

At the hearing on August 21, 1989, appellant did not appear. Appellant's lay counselor appeared and requested to be permitted to withdraw from further representation of appellant. The reasons given by counsel were that appellant had been uncooperative and had misrepresented facts to counsel.

The issues to be addressed by this Court are as follows:

1. Whether Appellant's lay counselor should be permitted to withdraw from further representation of appellant who has refused to cooperate and misrepresented facts to counsel.
2. Whether appellant was denied due process of law and equal protection under the law at the June 5, 1989 hearing in which he entered guilty pleas to the charges against him.

### I.

Whether appellant's lay counselor should be permitted to withdraw from further representation of appellant who has refused to cooperate and misrepresented facts to counsel.

On August 21, 1989, appellant's lay counselor advised this Court that she had attempted to have her client present at oral arguments. Appellant's lay counselor also advised this Court appellant had been uncooperative in assisting her to prepare this appeal and had misrepresented facts to her.

Because of the above, in an oral motion counsel requested to be permitted to withdraw from further representation of appellant. The tribal prosecutor expressed no objection to counsel's motion. Therefore, this Court granted counsel's motion.

In reviewing Canon 10 of the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation, counsel's motion was timely and granting the same was appropriate. Canon 10 reads in full as follows:

"(1) An attorney shall terminate representation if a client requests that the attorney engage in illegal or fraudulent conduct or conduct that violates the Fort Peck Code of Ethics.

"(2) An attorney may withdraw from representing a client if withdrawal can be accomplished without adversely affecting the client's interests, or if:

"(a) the client fails substantially to meet an obligation to the attorney regarding the attorney's services and the client has been notified that the attorney will withdraw if the obligation is not met;

"(b) the representation will result in an unreasonable financial burden on the attorney or has been made unreasonably difficult by the client; or

"(c) other good cause for withdrawal exists.

"When the attorney is representing the client in a Court matter, withdrawal can only be accomplished upon motion to the Court. When ordered by a court of the Fort Peck Reservation to continue representation, an attorney shall do so despite good cause for terminating the representation. If termination of representation is granted, an attorney shall take reasonable steps to protect the client's interests. Such steps include giving the client reasonable notice and time to appoint new counsel, and surrendering papers and property to which the client is entitled."

Appellant had represented to counsel that certain rights of his were violated at his arraignment hearing and requested counsel represent him before this Court. Counsel indicated her representation of appellant was based on those representations and the reason(s) in the Notice of Appeal were as follows:

"That Defendant was adjudged to be guilty of crime(s) but was not served notice of such, and that defendant appeared and entered a plea(s) of guilty without counsel and/or the understanding of the nature of the charges and the effect of the plea(s) and his rights to such."

Upon review of the arraignment transcript, counsel claims she discovered the misrepresentations. Counsel has advised this Court she could not continue to represent her client and state the facts to this Court as he had represented them to her.

As a result of appellant's misrepresentations, counsel was unknowingly a party to and engaging in fraudulent conduct or conduct that violates Canon 13 of the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Indian Reservation. Further representation by counsel would require her to intentionally be a party to and engage in fraudulent conduct or conduct that violates Canon 13. Canon 13 reads in full as follows:

"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. Nor shall an attorney fail to disclose significant legal authority directly adverse to his or her client's position."

Under the circumstances herein, it was appropriate for counsel to decline or terminate representation and present her oral motion under Canon 10 which discusses declining or terminating representation. Canon 10 as set forth above states, "When the attorney is representing the client in a Court matter, withdrawal can only be accomplished upon motion to the Court." At oral arguments, counsel was representing appellant in a Court matter and made her motion to the Court to withdraw.

Because counsel acted appropriately under Canon 10 and the circumstances warrant, it would be inappropriate to order counsel to continue her representation. Upon reviewing the record and statements of counsel in the present circumstances, counsel is hereby permitted to withdraw from further representation of appellant.

## II.

Whether appellant was denied due process of law and equal protection under the law at the June 5, 1989 hearing in which he entered guilty pleas to the charges against him.

Appellant contends he was denied due process of law and equal protection under the law at his arraignment. Appellant's arraignment hearing was held on June 5, 1989. At the hearing, appellant was read certain rights and asked if he understood those rights. Whether appellant was denied due process of law and equal protection under the law, requires a review of the tribal court's procedure and the rights read to appellant at the June 5, 1989 hearing.

Title II CCOJ 401 defines arraignment and governs how tribal judges conduct arraignment proceedings. This section reads in full as follows:

"(a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this Code.

"(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court.

"(c) Before an accused is required to plead to any criminal charges the judge shall:

"(1) Read the complaint to the accused and determine that he/she understands the complaint and the Section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty; and

"(2) Advise the accused that he/she has the right (a) to remain silent, (b) to have a speedy and public trial where he/she will be confronted with witnesses against him/her after he/she has had sufficient time to prepare hi/her defense if he/she pleads "not guilty," (c) to be tried by a jury if the offense charged is punishable by imprisonment, and (d) to be

represented by counsel at his/her own expense, before he/she pleads to the charge.

"(d) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.

"(e) The judge shall call upon the defendant to plead to the charge:

"(1) If the accused pleads "not guilty" to the charge, the judge shall then set a trial date and consider conditions for release prior to trial as provided in Section 402.

"(2) If the accused pleads "guilty" to the charge, the judge shall accept the plea only if he/she is satisfied that the plea is made voluntarily and the accused understands the consequences of the pleas, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he/she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

"(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his/her behalf."

In this case, the tribal court met the requirement of II CCOJ 401(c)(1) and the complaints were read to appellant. The tribal court read the Sections of the Tribal Code which appellant was charged with violating, including the maximum authorized penalty, were also read to appellant. Appellant was then asked if he understood or had any questions. Appellant indicated he understood or had no questions. (See Arraignment Transcript, Page 1, Line 15 to Page 7, Line 7.)

The tribal court also met the requirement of II CCOJ 401(c)(2) and advised appellant of the rights therein. The portion of the Arraignment Transcript where the tribal court reads appellant his rights and asked if he understood in the following:

Judge Stafne:	"Mr. Fourstar, you have various charges here. this is the first part of your arraignment here and this part is just to read you your civil rights. "If you plead not guilty, you have the following rights: The right to counsel at your own expense; the Right to a trial by jury; the right to have the trial judge order into court all the evidence and witnesses in you favor; the right to see, hear and question all the witnesses against you; the right to remain silent; the right to speedy and public trial and the right to bail." Do you understand these rights?"
Carl Fourstar Jr.:	"Yeah! I do." (Page 1, Lines 1-11.)

Under II CCOJ 401(e) and at the request of the tribal prosecutor, the judge then called upon the defendant to plead to the charges. This portion of the Arraignment Transcript read as follows:

Emmett Buckles:	May we ask him to plea on that charge?
Judge Stafne:	You want to ask for pleas as we go along?

Emmett Buckles: Yes.

Judge Stafne: Okay! Carl, if you understand this, I have to ask you .. if have to plea one way or the other .. guilty or not guilty. And at this time, I have to ask you, how do you plea to this charge of Attempted Aggravated Assault?"

Carl Fourstar Jr.: Of attempted. I'd like to ... I was drunk and ....

Judge Stafne: No. Carl, we don't want to know any of the circumstances.

Carl Fourstar Jr.: I'm going to have to say that I was guilty.

Judge Stafne: Pardon?

Carl Fourstar Jr.: I will have to say guilty.  
(Page 7, Lines 10-21.)

The tribal judge then proceeded to read the rest of the charges and ask appellant how he would plead. After each charge, appellant had no questions when asked and responded by stating guilty. (See Page 7, Line 22 to Page 11, Line 11.) It is evident from the record, the tribal judge was clearly satisfied that appellant's pleas were knowingly and voluntarily made and the tribal judge made sure appellant understood the rights he was waiving before accepting them.

Finally and before passing sentence the judge afforded appellant an opportunity to be heard as required by II CCOJ 401(e) (2). This Portion of the Arraignment Transcript reads as follows:

Judge Stafne: Mr. Fourstar have You anything to say for Yourself before I pass sentence?

Carl Fourstar Jr.: How am I going to be able to keep my job and pay my fines. I mean, I would like to pay the fines if I could. I would. I am working for Ross Sansaver. ANd (sic) I would like to be able to keep that Job cause it pay good money. I would be able to pay the tines off plus save a little money for school. ANd (sic) I would go to treatment or AA meetings and stuff like that. The DUI classes but it's really important to me that I keep that job because if I can't Pay the fines off and I have to do time, I may not be able to make it to school in the Fall. I am in the process of putting in my applications and trying to get my grants and stuff so can get to school. I do realize that this is a very, very expensive mistake and ... I ...

In conclusion, the above reviewed the entire tribal court Proceedings to determine if appellant's contention that he Was denied due process and equal protection under the law, had merit. Because the tribal judge carefully followed and met all of the requirements of II CCOJ 401, appellant's contentions are without merit. Therefore, this Court affirms the judgments entered and sentences imposed of the tribal court.

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IT IS THE UNANIMOUS DECISION OF THIS COURT TO GRANT APPELLANT'S COUNSEL'S MOTION AND PERMIT APPELLANT'S COUNSEL TO DECLINE OR TERMINATE FURTHER REPRESENTATION OF APPELLANT. IT IS FURTHER ORDERED THE JUDGMENTS ENTERED AGAINST APPELLANT ARE AFFIRMED AND HE IS TO BEGIN SERVING HIS SENTENCES IMMEDIATELY. IT IS FURTHER ORDERED THE TRIBES SHALL HAVE JUDGMENT AGAINST APPELLANT FOR THE COST OF THE TRANSCRIPT.

DATED this \_\_\_\_ day of October, 1989.

**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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Floyd G. Azure, Associate Justice

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