

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

FORT PECK ASSINIBOINE AND SIOUX TRIBES
and ASSOCIATE JUDGE TERRY L. BOYD,
Defendants,

and **APPEAL No. 088**

CALVIN FIRST,
Plaintiff.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER DENYING HEARING ON COMPLAINT AND
RECOMMENDATION TO TRIBAL EXECUTIVE BOARD**

On October 11, 1989, Plaintiff Calvin First by and through Melissa G. Melton, Lay Advocate, filed a Complaint with this Court against Associate Judge Terry L. Boyd.

BACKGROUND

On August 29, 1989, Judge Boyd had presented Chief Judge Bemer with a letter in which he stated, "I believe that First's actions warrant immediate termination. His past behavior indicated his total lack of responsibility and his present actions confirm it." On August 30, 1989, Chief Judge Bemer sent plaintiff a Notice of Dismissal. The reason for the termination given in the notice was as follows:

"The cause of this action was your actions toward Judge Boyd on August 29, 1989. A copy of his letter is attached. This Court will not accept conduct of this manner from employees. Be also advised that you may also face Criminal Contempt charges as a result of your actions."

On September 1, 1989, plaintiff was ordered to show cause why he should not be held in Criminal Contempt of resistance to a verbal order issued by Associate Judge Terry L. Boyd on August 29, 1989 at 2:55 p.m. The Order to Show Cause dated August 30, 1989 was issued by Chief Judge Howard Bemer. On August 31, 1989, plaintiff filed a request for a Continuance and Disqualification of Judges and in support thereof stated, "I wish to continue my show cause hearing, till I retain counsel &

I wish to disqualify all sitting Judges." Judge Boyd denied the request.

On or about September 1, 1989, Melissa G. Melton filed a notice she was retained as legal counsel by plaintiff. As counsel, she then filed a Request for Summons dated September 1, 1989 requesting the Tribal Court summons Edith Adams, Clayton Reum, Cheryl Culbertson and Judge Boyd for the hearing set for 10:00 a.m.

The hearing went on as scheduled with Judge Boyd acting as the judge and refusing to respond to any subpoena or testify. Plaintiff presented his witnesses and was found guilty by Judge Boyd. The conviction was appealed.

Upon reviewing the record which included a transcript of the September 1, 1989 hearing, this Court found significant due process violations. There was no complaint filed and the chief material witness, Judge Boyd, acted as the judge and jury and made threatening statements to plaintiff's witness regarding criminal charges of perjury being filed against her while she was testifying. This Court also found insufficient evidence to sustain a verdict of guilty of criminal contempt. Therefore, the judgment of conviction was reversed.

FROM THE FOREGOING THE COURT HEREBY MAKES THE FOLLOWING,

FINDINGS OF FACT:

I.

On September 1, 1989, an order to show cause hearing was held by Judge Boyd to determine whether plaintiff was guilty of the charge of Criminal Contempt, a violation of III CCOJ 410.

II.

The Criminal Contempt charge was the result of an incident which occurred on August 29, 1989 at about 3:23 p.m. where Judge Boyd and plaintiff exchanged words regarding the handling of a minor, SRE.

II.

The circumstances and a portion of the exchange was as herein after set forth. Judge Boyd had ordered Calvin First to take SRE to the clinic. Calvin First as he was leaving stated, "Did you violate her again." Judge Boyd responded with, "If she kept her dirty little ass clean we wouldn't have to send her to the clinic." which offended plaintiff since she was his wife's niece. Calvin First then said, "I should knock you on your fucking ass."

III

In a letter dated August 29, 1989 to Chief Judge Bemer, Judge Boyd admitted an exchange of words between himself and Calvin First and claimed that he was acting as a supervisor at the time and stated, *"I* don't feel that his supervisor should be in a position to be verbally assaulted in public."

IV.

On August 30, 1989, Chief Judge Bemmer issued the Order to Show Cause to Calvin First to appear on September 1, 1989 at 10:00 a.m. and answer to the Criminal Contempt charge.

IV.

On September 1, 1989, Calvin First was tried by Judge Boyd on the Criminal Contempt charge. At the hearing, Judge Boyd refused to disqualify himself and/or respond to plaintiff's subpoena. Furthermore, Judge Boyd intimidated one plaintiff's witnesses during her testimony with the threat of a perjury charge to be filed by the prosecutor.

V.

After the hearing, Judge Boyd found Calvin First guilty of Criminal Contempt and entered judgment accordingly. On September 6, 1989, appellant appealed to this Court.

VI.

On October 6, 1989, oral arguments were heard on Calvin First's appeal. This Court found numerous procedural errors and irregularities at the September 1, 1989 hearing and held that Calvin First was not guilty of Criminal Contempt.

VII.

On October 11, 1989, Calvin First filed a Complaint and Brief In Support of Complaint against Judge Boyd alleging he did not comply with the Comprehensive Code of Justice I CCOJ 307 and violated Canons 1, 2(A), 2(B) and 3(A)(1), 3(A)(2) and 3(A)(3).

VIII.

The complaint alleges this Court has jurisdiction over this matter as set forth in I CCOJ 107(a), I CCOJ 107(b); I CCOJ 111, I CCOJ 113(a), I CCOJ 113(b), I CCOJ 202(a), and I CCOJ 202(c).

IX.

In the Complaint, Calvin First requests that this Court do the following:

1. Enter the appropriate recommendations, Opinions and/or Orders necessary in accordance with the CCOJ TITLE I, CH 3, SEC 306(a)(2)(3)(4) to terminate Judge Terry Boyd.
2. To enter judgement against Terry Boyd for costs in this action as well as attorney's fees.
3. Order any further relief that is deemed necessary and proper.

FROM THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING,

CONCLUSIONS OF LAW

I.

Title I CCOJ 307 sets forth who determines the reasons for the disqualification of a judge or justice in a particular case and reads in part as follows:

"A justice or judge shall be disqualified in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any the community; personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might be a witness, has any interest, or has any personal knowledge of disputed evidentiary facts concerning the proceeding, or has acted or is acting as a lawyer or lay counselor in the proceeding, or in which he/she might otherwise appear to be biased or prejudiced. The Lawyer Judge must determine all disqualifications in the Tribal Court. In cases where the Lawyer Judge disqualifies himself/herself, the case shall be assigned, by the Chief Judge, to a judge other than the Lawyer Judge...."

II.

Pursuant to I CCOJ 307, Chief Judge Bemer should have determined whether Judge Boyd should be disqualified from hearing the Calvin First criminal contempt charge since there was no Lawyer Judge and Judge Boyd should have been disqualified because he had personal knowledge of disputed evidentiary facts.

III.

Title I CCOJ 303 governs the appointment of judges and justices and reads in applicable part as follows:

"Judges shall be appointed for a term of two (2) years ... commencing with date fixed by the Tribal Executive Board unless removed for cause as hereinafter provided...."

IV.

Title I CCOJ 306 deals with the removal of judges or removal and reads in full as follows:

"(a) Initiation of charges. Upon written charges of specific misconduct, or physical or medical inability to carry out the duties of office, made by any member of the Tribal Executive Board, adopted by a majority vote of a meeting on the Tribal Executive Board at which a quorum is present, the Board shall initiate proceedings to remove a justice or judge from office. Misconduct as used in this Section shall mean: (1) conviction of a felony or a misdemeanor involving dishonesty or acts offensive to the morals or (2) abusive or clearly incompetent performance of duties in office; or (3) failure to perform the duties of office; (4) any other substantial violations of the Code of Ethics for judges and justices of the Fort Peck Tribal Courts.

"(b) Hearing of charges. All charges shall be in writing and served on the judge personally, or by certified or registered mail, return receipt requested, not less than ten (10) days prior to a hearing before the Tribal Executive Board on the charges. The Tribal Executive Board by a majority vote at a meeting at which a quorum is present may direct that a justice or judge shall be suspended from duty for a period not to exceed

twenty (2) days between the time charges are authorized and the date of hearing on the charges. A justice or judge so charged shall be given an opportunity to answer by written or oral presentation before the Tribal Executive Board, to have the charges proven only by sworn testimony of witnesses and documentary evidence, have the right to cross-examine witnesses, and have the right to be represented by counsel at his/her own expense at the hearing. After the hearing, a justice or judge may be removed by a vote, taken by secret ballot, or a two-thirds (2/3) majority of the Tribal Executive Board to remove a justice or judge shall be final."

V.

This Court has found numerous procedural errors or irregularities as a result of the Criminal Contempt charge and at the hearing on September 1, 1989. This Court found the procedural errors or irregularities constituted serious violations of Calvin First's rights under the ICRA and CCOJ and denied appellant equal protection of the Tribes' laws. (See Tribes vs. Calvin First, Appeal No. 084 (Oct. 1989.)

VI.

This Court does not have jurisdiction over complaints filed against judges or justices under I CCOJ 202 or authority to remove judges or justices under I CCOJ 306.

FROM THE FOREGOING CONCLUSIONS OF LAW THIS COURT HEREBY MAKES THE FOLLOWING,

ORDER

The Complaint of Calvin First against Associate Judge Terry L. Boyd is hereby dismissed without prejudice with direction to him to file the same with the Tribal Executive Board.

RECOMMENDATION

UPON CALVIN FIRST FILING A WRITTEN COMPLAINT WITH the Tribal Executive Board, the Executive Board should review the Complaint of Calvin First as a written charge of specific misconduct and this Court's opinion in Tribes vs. Calvin First, Appeal No. 084 (October, 1989). The Tribal Executive Board should then act accordingly under I CCOJ 306 and determine whether Associate Judge Terry L. Boyd's conduct in the Tribes vs. Calvin First criminal matter was abusive or clearly incompetent performance of duties in office and/or substantial violations of the Code of Ethics for judges and justices of the Fort Peck Tribal Courts.

DATED this 16th day of November, 1989.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary J. Melbourne, Associate Justice

Floyd Azure, Associate Justice
