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

JAMES A. BOYD,
Plaintiff/Appellant,

vs.

Appeal No. 098

MYRNA BOYD YOUNGMAN,
Defendant/Appellee.

THIS APPEAL is from the January 3, 1990 judgment in favor of defendant entered in the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable Howard Bemer, Chief Judge presided.

FOR APPELLANT: Lewellyn J. Cantrell, Lay Counselor, General Delivery, Poplar, Montana 59255.

FOR APPELLEE: Clayton Reum, Lay Counselor, P.O. Box 38, Wolf Point, Montana 59201.

Argued: March 2, 1990. **Decided:** March 2, 1990.

CIVIL: LAY COUNSELOR'S SHALL PROVIDE COMPETENT REPRESENTATION TO THEIR CLIENTS; INADEQUATE PREPARATION BY A LAY COUNSELOR IS NOT A REASON IN THE CCOJ FOR A REVIEW OF A JUDGMENT AND/OR NEW TRIAL IN A CIVIL MATTER; AND PREPARING DOCUMENTS FOR FILING IN THE TRIBAL COURT FOR WHICH ATTORNEY FEES ARE REQUESTED IS THE PRACTICE OF LAW.

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

HELD: THE TRIBAL COURT'S ORDER DISMISSING PLAINTIFF'S COMPLAINT AND JUDGMENT ENTERED IN FAVOR OF DEFENDANT ARE REVERSED. THIS MATTER IS REMANDED FOR A NEW TRIAL WITHIN THIRTY (30) DAYS OF THE FILING OF THIS OPINION.

RECOMMENDATIONS: (1) ALL LAY COUNSELORS UNABLE TO ADEQUATELY PREPARE CIVIL MATTERS FOR TRIAL SHOULD REFRAIN FROM FURTHER PRACTICE AS LAY COUNSELORS. (2) BECAUSE MARY L. ZEMAN

CONTINUES TO PRACTICE IN VIOLATION OF THIS COURT'S APRIL 7, 1989 ORDER, A COPY OF THIS OPINION SHALL BE DELIVERED TO THE COMMISSION ON PRACTICE OF THE SUPREME COURT OF MONTANA.

FACTS:

On October 23, 1989, plaintiff, who was then represented by Melvin Eagleman, Sr. a lay counselor, filed a document entitled Civil Action Complaint. Plaintiff filed his complaint against the defendant, his daughter, who allegedly gave him a trailer house on February 7, 1987 for moving it from a lot in Wolf Point, Montana. The complaint resulted from daughter's request for the return of the trailer house. Plaintiff's complaint requests \$5,000.00 from defendant for the expenses in moving the trailer house.

A hearing was held on November 6, 1989. At the hearing, the court issued an Order Granting Temporary Injunction. Defendant requested a continuance to enable her to prepare an answer. Judge Berner reset the hearing for December 7, 1989. The record is not clear whether the December 7, 1989 hearing was ever held.

On November 15, 1989, defendant did file an Answer and Counter-Claims and Motion Opposing Entry of Default. Defendant's answer requests plaintiff's complaint be dismissed. Defendant's counterclaims ask for \$4,200.00 for rent; \$1,426.14 for a co-signed loan for her father; costs and expenses and a court order directing him to hire an experienced and licensed person to move the trailer house to a site chosen by defendant at Wolf Point.

On December 31, 1989, plaintiff's lay counselor was served with a Notice of Action. On January 2, 1990, defendant's lay counselor was served *with* the same Notice of Action. The Notice of Action states: "You are hereby notified that the attached complaint h been filed against you, and you are herewith ordered to appear in Court to answer to such complaint on the 3 day of Jan., 1990, at 9AM O'clock." The notice was dated December 19, 1989 and signed by Chief Judge Berner.

The hearing was held on January 3, 1990. The plaintiff's lay counselor presented his case and at the conclusion there was insufficient evidence presented to support his claim for an award of damages. The Tribal Court granted an order dismissing plaintiff's claim. Defendant then proceeded to present her counterclaims for relief against plaintiff. The Tribal Court found for defendant on the issue of ownership of the trailer house and entered judgment accordingly.

On January 4, 1990, plaintiff terminated the services of his lay counselor Melvin Eagleman, Sr. with a Notice of Release. On January 4, 1990, Lewellyn J. Cantrell filed a Notice of Legal Counsel in which he would be pursuing any further legal action on behalf of plaintiff.

On January 8, 1990, plaintiff filed a Petition for Review and appealed the January 3, 1990 judgment of the Tribal Court. In the petition, plaintiff set forth three (3) reasons for the appeal which were as follows:

"a. Plaintiffs Counsel failure to present Clients evidence at HEARING.

"b. Plaintiffs inadequate representation.

"c. Plaintiffs Hearing problem not properly addressed to Court."

The issues which will be addressed by this Court are as follows:

1. Whether plaintiff's lay counselor incompetently represented him at the January 3, 1990 hearing and he is entitled to a new trial.

3. Whether defendant's request for attorney fees for Mary L. Zemyan as a consulting attorney was proper because of her previous disbarment from practice in Tribal Court.

I.

WHETHER PLAINTIFF'S LAY COUNSELOR INCOMPETENTLY REPRESENTED HIM AT THE JANUARY 3, 1990 HEARING AND HE IS ENTITLED TO A NEW TRIAL.

Canon 1 of the Code of Ethics for Attorneys and Law Counselors of the Fort Peck Reservation addresses the competence of attorneys and lay counselors. This canon reads:

"An attorney shall provided competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonable necessary for the representation."

In the instant case, plaintiff's lay counselor Melvin Eagleman, Sr. did not adequately represent him at the January 3, 1990 hearing. At the January 3, 1990 hearing, the Tribal Court recognized the lay counselor's inadequate preparation and alluded to the same in two (2) instances during the proceedings.

The first instance of inadequate preparation alluded to by the Tribal Court was as follows:

Judge Bemmer: Well, I have to frank with you, Mr. Eagleman. If you don't have any more witnesses, and with the evidence that you presented me . . . you've not presented me a case that I can . . . that I can give you any relief on. I kept notes here. Number one, you called Myrna Youngman and she stated that she never asked anybody to move the trailer. A And then you called James Boyd and he was requested he says that he was requested by Myrna to move the trailer. And then she said that if that he moved it, he can have it. And you've never presented any witnesses to corroborate that statement. And in your Brief or the complaint you're asking for damages. you've never presented any testimony concerning any recovery of any amounts of money. And I'm going to recess this for half an hour and to see if you can round up Mr. Eagleman . . . not Mr. Eagleman, but Mr. Lemke . . . to present any more testimony that you have. And if you don't, then I'm going to have to make a decision in this case. So, Court is recessed until 10:00 o'clock.

[Transcript, P. 9, L. 1-20.]

The next instance of inadequate preparation alluded to by the Tribal Court and evidence of the same was as follows:

James Boyd: So far, I can't understand why it's going this far. What I'm saying is that I'm thinking that the ownership of the trailer has not been established yet. I don't know who owns it. And under the circumstances, she's saying that she does. and if she wants it, all I want is what I've got in it. This is all.

Judge Bemmer: But, Mr. Boyd . . you and your Counsel have not proven to the Court what you have in it.

James Boyd: Oh! We give you a whole bunch of slips . . .

Judge Bemmer: This is a trial. This is when your Counsel is suppose to present that evidence. He has failed to do so.

James Boyd: Where did they go?

Judge Bemmer: He never brought them up.

Marvin Eagleman: I filed them, Your Honor.

James Boyd: They were filed here.

Judge Bemmer: That's filing them. This is the trial. This is when you bring those up, Mr. Eagleman. I asked you several times . . . are you resting your case.

Melvin Eagleman: And then that was . . for the trial . . . okay.

James Boyd: And to me, when she says that "I own it," I can't understand how she owns it when day before yesterday, I'm talking to two of the heirs . . and they're saying . . .

Clayton Reum: Your Honor, I'm going to object. Are they going to allow us to continue with the direct examination?

Judge Bemmer: Yes.

[Transcript, p. 36, 1. 18 through p. 37, 1. 20.]

It is obvious plaintiff's lay counselor failed to present his case to the Tribal Court where a proper decision could have been made on the requests for relief in his October 20, 1989 complaint. Regardless, the CCOJ does not provide for specific relief where a lay counselor has inadequately prepared for and represented a client during a civil trial.

In addition to the above, the jurisdiction of the Court of Appeals is limited by I CCOJ 202. This section reads in applicable part as follows:

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence....

In applying I CCOJ 202 and reviewing the determinations of the Tribal Court, the Tribal Court was correct in finding the plaintiff's lay counselor had not presented relevant and sufficient evidence to support his requested relief. In addition, as a matter of law the Tribal Court was correct when granting de defendant's motion to dismiss the complaint at the conclusion case. Finally, the Tribal Court was correct in proceeding with the defendant's counterclaims after it had determined the lay counselor had received a copy of the defendant's pleadings.

Although the CCOJ provides for no specific relief nor the decisions of this Court have addressed where a lay counselor has inadequately prepared or represented his client during a civil trial, the parties entered into a Stipulation to Dismiss Appeal and

believed filed with the clerk of the Tribal Court on February 3, 1990. The stipulation was not received by this Court until the oral arguments on March 2, 1990.

In the stipulation, the parties request an order dismissing the appeal and remanding the matter to the lower court for a new trial to be set for hearing within thirty (30) days after entry of the order. There was no reason given for the dismissal in the stipulation, however, at oral arguments both lay counselors agreed Mr. Eagleman, Sr. had not properly represented plaintiff. The lay counselors also suggested the Tribal Court or this Court take action against Mr. Eagleman, Sr. This portion of the transcript reads:

Justice Hove: It says here "The Tribal Court or the Court of Appeals may disbar an attorney or lay—counselor from practice before the Court for such time as the Court or upholds the suspension from practice for such time as the Court deems appropriate pursuant to rules adopted by the Court. The Court shall give such attorney or lay-counselor prior notice of the charges against him and an opportunity to respond to them." Are you then requesting that this Court go ahead and look at a possible disbarment of Mr. Eagleman, based on the fact that you feel that he's not competent any more to represent his clients.

Clayton Reum: Well, I shouldn't really argue that point, because he wasn't representing me . . but it's obvious, from my point of view, that he did not represent these people properly.

Justice Hove: He was incompetent(sic)?

Mr. Reum: Yes.

Justice Melbourne: I wanted to ask about . . .

Clayton Reum: I wanted to bring one other point . . .

Justice Melbourne(sic): Is this your signature on this?

Mr. Reum: Yes, it is. One other point, I refer to the Code of Ethics for Judges and Justices. And in this case, for attorneys and lay-counselors, also. But, I know that in the memorandum that the tribal Attorney sent at that time, there was also a recommendation to either use the Code of Ethics as the main guideline and to use the Code in a different manner or whatever. But they were suppose to make that . . difference there . . define that but to my knowledge, they haven't done that.

Justice Hove: But you are stating that you think that this Court or some Court . . Tribal Court . . should began proceedings against Mr. Eagleman. to determine whether he is competent or should be disbarred or suspended until . .

Mr. Reum: Right. But I wouldn't like that to be in my request because he hasn't hurt me any. But as another lay-advocate . . Yes. I think it should be the responsibility of either the Court to either initiate its own actions or from this party here to file a complaint Mr. Eagleman.

Justice Hove: Mr. Cantrell, would you concur with what Mr. Reum has been saying?

Llewellyn Cantrell: Well, Your Honor, I was not at the hearing when this case was presented in the lower Court. All I can go by is hearsay. Basically, because I don't have the transcript.

Justice Hove: How about the record that is before you? That you have before you?

Mr. Cantrell: Well, . . .

Justice Hove: Is that what you have . . the documents before you?

Mr. Cantrell: Yes.

Justice Hove: Were they presented properly in Court?

Mr. Cantrell: No, Your Honor. They were not.

Justice Hove: Do you feel that this Court should take a look at the disbarment or suspension of Mr. Eagleman?

Mr. Cantrell: I hate to say it, Your Honor, but I think in all fairness to future clients, I believe, that would be proper.

[March 2, 1990 Transcript, P.14, L.13 through P.17, L.I.]

In this case although the CCOJ provides no relief, plaintiff is entitled to a new trial because of the parties stipulation filed with the Tribal Court. Furthermore, the circumstances of this case may require that Melvin Eagleman's competence be addressed at a later time upon receipt of a request therefore.

It is clear, Mr. Eagleman did not adequately prepare plaintiff's case or a defense to the counterclaims which were raised. Second, although the Tribal Court recognized Mr. Eagleman's failure to present a case, plaintiff's complaint was dismissed. The portion of the transcript which reflects the Court's dismissal of plaintiff's claim went as follows:

Judge Bemer: Okay. Do you wish to present any other evidence or . . are you resting your case?

Melvin Eagleman: I'm not going to rest my case, at this point, Mr. Honor or . . Your Honor. I understand that the Defendant's witnesses also have some knowledge as the authorization to move that. I will be asking them questions.

Judge Bemer: Well, basically . . according to the Chapter 2 of the Civil Procedure . . under Trial Procedure, that the case . . sub-section (d) . . "The case of the Plaintiff shall be presented first, followed by the case of the Defendant."

Melvin Eagleman: Yes.

Judge Bemer: And are you done with your case? You certainly have the right to cross-examine whatever witnesses that Mr. Reum calls but . . .

Melvin Eagleman: Yes, Sir, Your Honor. That's all I was informing the Court . . at this point. That would be our witnesses in our particular case.

Judge Bemer: Okay. And you won't be allowed to call any more witnesses unless . . . I require some Rebuttal in this matter. Do you understand that?

Melvin Eagleman: Yes, Sir.

Judge Bemer: Okay. Then are you done with your case?

Melvin Eagleman: Yes, we are, Your Honor. May I add to the Court. that . . we have expectations, Your Honor, that there are some . . that there is some information forthcoming to establish the ownership of the trailer. I'm not satisfied that . . whoever owns the trailer . . and if we move that trailer house without authorizations . . then I believe we're liable.

Judge Bemer: Okay.

Melvin Eagleman: This is a form of protecting ourselves in this venture. We will be forthcoming with that information. Naturally, it will be a discovery of the case.

Judge Bemer: Okay. Are you also aware that there are some counter-claims against your client?

Melvin Eagleman: No, I'm not.

Judge Bemmer: Mr. Eagleman, I have before me, in the file here, **a document** which was filed with the Court on November 15th, 1989. And is an answer to the Complaint that you filed. And there are . . . it's entitled "answer and Counter-claims." And on the back of this document . . . it was signed by Myrna Boyd Youngman and it was notarized by Mary House Zemyan on the 15th day of November. And they have a certificate of mailing. It says, "I hereby certify that a true and accurate copy of the above was sent to Plaintiff's Counsel, address as follows: Melvin Eagleman Sr.; Lay-Counselor; P.O. Box 781; Poplar, Montana; 59255, by Certified U.S. Mail, Return Receipt Requested, on the 15th day of November, 1989." And are you stating that you have never received that?

Melvin Eagleman: Specifically Counter-claims is what I was referring to. No, I did receive that. Yes!

Judge Bemmer: Okay. It states three counter-claims in that document.

Clayton Reum: Your Honor, we would like the Court to establish, whether or not, Mr. Eagleman has concluded his case at this time. So we may move on appropriately.

Judge Bemmer: I just wanted to make sure that he's got this document.

Melvin Eagleman: Your Honor, I have . . . I don't have the date on this one . . . but I did have something . . . it's 12 items and the Defendant prays for . . . there are two other items and if that's the one that's being referred to then, I have it.

Judge Bemmer: There are several pages, Mr. Eagleman. The fact, it is a four page document . . .

Clayton Reum: Your Honor, if I'm not mistaken, Mr. Eagleman had showed a copy that he had received in chambers, at one meeting that we had with myself and Mr. Eagleman and Your Honor.

Judge Bemmer: Okay. I don't recall it.

Clayton Reum: the question had arose then if Mr. Eagleman had received service. At that point . . . that was at the hearing where we were establishing, whether or not, all parties had been served properly. And then when we were acquainted with the details, then we got into discovery and so forth. And at that time Mr. Eagleman produced a copy of our Answer and Counter-claims, at that time.

Judge Bemmer: Okay. I recall that then. Are you prepared to answer that, Mr. Eagleman? Because it's certainly going to be brought up in this Trial.

Melvin Eagleman: Your Honor, I was asked . . . if I had received that counter-claim and I told you that I had . . . had received it.

Judge Bemmer: And you're ready . . . we're going to proceed on that so I . . . just for your information.

Melvin Eagleman: Okay.

Judge Bemmer: Okay. At this time . . . the prosecution . . . or the Plaintiff having rested their case . . . is that correct?

Melvin Eagleman: Yes, Your Honor.

Judge Bemmer: Okay. Then, Mr. Reum, you may proceed with yours. Do you wish to make an opening statement?

Clayton Reum: Yes. Your Honor, we're going to move the Court, at this time, to dismiss the claim brought before this Court by Plaintiff, James Boyd. On the grounds that they have failed to establish a claim....

[Transcript P. 12, L. 13 to P. 16, L. 16.]

When asked to respond to the motion to dismiss, Mr. Eagleman again demonstrated inadequate preparation. This portion of

the transcript went as follows:

Judge Bemmer: Okay. Do you wish to answer that motion Mr. Eagleman?

Mr. Eagleman: I can't hear you.

Judge Bemmer: Mr. Eagleman, do you wish to answer that motion?

Judge Bemmer: In the discussion, Your Honor, with my client . . . anticipation of request for dismissal . . . he said that all he wanted was his expenses and if the Judge's prerogative (sic) is to dismiss, that would be accepted.

Judge Bemmer: Okay. Is that all you have to say?

Melvin Eagleman: Yes, your Honor.

Judge Bemmer: Alright. I am prepared to rule on this . . . the basic facts are, in this case, that Mr. Boyd filed a complaint with the Court. I think, Mr. Reum covered . . . and he's alleging (sic) that Myrna Boyd Youngman told him that he could have the trailer house if he moved it. And he also says that Myrna Boyd Youngman wants to take it back and refused to reimburse Mr. James Boyd for expenses. And the Plaintiff informed her that as soon as she brought him \$5000.00 to pay for the past expenses, she could come and get it. Okay. And in the case that was presented by the prosecution . . . my Mr. Eagleman, he called three witnesses . . . first of all, he called Myrna Youngman, who stated that she never asked Mr. Boyd to move the trailer. And then he call Mr. James Boyd and Mr. Boyd said that he was requested by Myrna Youngman to move the trailer and that she said if he moved it, he could have it. And then he stated that Mr. Lemke and himself moved the trailer and he also stated that he does not have the title to the trailer. The third witness that the Plaintiff called was Mr. Al Lemke and he testified that James Boyd asked him to move the trailer. To help him move the trailer and that Mr. Boyd said that the trailer would be given to him if he moved it. However, Mr. Lemke does not have personal knowledge of a statement being made to that effect by Mrs. Youngman. And that James Boyd gave him \$300 for helping him move the trailer. At this point, I cannot see where the Plaintiff has proven their case by submitting any evidence or testimony to the Court. Other than, basically, we have two people's word against one another. We have Myrna saying that she never gave the trailer to her father and we have James saying that his daughter told him that he would be given the trailer if he moved it. This Court has no evidence other than the testimony. And so, at this point, I feel that I have no choice but to dismiss the action filed by Mr. James Boyd against Myrna Boyd Youngman. At this time, I'm going to ask that Mr. Reum proceed with counter claims against . . . that he has filed against Mr. James Boyd. That Myrna Boyd Youngman has filed against Mr. James Boyd. Mr. Reum, you may proceed.

[Transcript p. 19, L. 7 to P. 21, L.12.]

In conclusion the record is clear, statement's made by plaintiff's lay counselor and previously set forth herein reflect inadequate preparation in that necessary evidence was not introduced during the January 3, 1990 hearing. As previously discussed, the CCOJ does not provide for a new trial, however, there was a stipulation signed by the lay counselors of both parties agreeing to another hearing. Therefore, plaintiff shall be granted a new trial.

In conclusion, Melvin Eagleman, Sr. demonstrated inadequate preparation in his representation of plaintiff at the January 3, 1990 hearing. However, this Court will take no official action against Melvin Eagleman, Sr. until receiving a written complaint from affected parties requesting the same. Finally, because both lay counselors expressed their concern for future clients of

Mr. Eagleman, Sr. and both (one somewhat reluctantly) indicated action should be taken, this Court will recommend to all lay counselors unable to properly prepare cases for trial refrain from further practice in the Fort Peck Tribal Court.

II.

WHETHER DEFENDANT'S REQUEST FOR ATTORNEY FEES FOR MARY L. ZEMYAN AS A CONSULTING ATTORNEY WAS PROPER BECAUSE OF HER PREVIOUS DISBARMENT FROM PRACTICE IN THE TRIBAL COURT.

Defendant's request for attorney fees for Mary L. Zemyan as a consulting attorney was not proper because of her previous disbarment from practice in the Tribal Court. The portion of the transcript dealing with the request for attorney fees went as follows:

Clayton Reum: So we would ask the Court to find in our favor and award Myrna Boyd Youngman as follows: \$72.00 for witness fees. And I believe the Court still has a money order there for one of the witnesses who did not appear. \$150.00 for legal services for the work performed by Mary Louise Zemyan in preparing some of the documents in this presentation. There was \$4.25 in Court costs, which were mailing of a certified letter and a receipt . . . for copies that were made. And we can provide receipts for the Court for this. \$250.00 fees for Legal representation. You Honor. With myself, I would state to the Court at this time, Myrna Boyd Youngman has paid me a \$100.00 Retainer fee, as of this date. An so the Court should also be aware of that....

[Transcript, P. 67, L. 7-21.]

The colloquy between the Tribal Court and Mr. Reum regarding the request for attorney fees went as follows:

Judge Bemer: ... And that leaves us with the matter of \$150.00 for legal services for Mary Zemyan. I would ask Mr. Reum, if you would prepare a Brief, on what exactly those services were.

Clayton Reum: Concerning?

Judge Bemer: Concerning the \$150.00 payment that you are requesting for Mary Zemyan.

Clayton Reum: Okay. Your Honor, we can provide that. But I would like the court to award that simply on the fact, that's what it cost my client in order to bring this action to the Court in Defense, not only of our claims but defenses (sic) against the original complaint that brought us to this Court and caused her to have to seek legal counsel and legal representation. And the Court should rule whether or not, this case had any hopes of succeeding.

Judge Bemer: I will get to that. However, I will read the part concerning attorney fees. It says, "Exclusive the Court shall include filing fees, costs and expenses exclusive of attorney fees to the prevailing party in a civil suit. Unless the Court determines the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success." And Mr. Reum, are you saying that Mary Zemyan's fees are coming under the heading of attorneys fees?

Clayton Reum: Yes, Your Honor.

Judge Reum: Okay.

Clayton Reum: It's not unusual to have two attorneys representing one client.

Judge Bemmer: I agree with that. I have no problem with it. You are alluding to the fact, that we all know that she's been disbarred. I have no problem with her acting outside the Fort Peck Tribal Court, as a consulting attorney, so to speak.

Clayton Reum: Yes, Your Honor.

[Transcript, P. 75, L. 7 through P. 76, L. 18.]

In reviewing the reason for the request for attorney fees, Clayton Reum admitted the payment was for Mary L. Zemyan's services in preparing the documents filed in the Tribal Court. In the Matter of Mary L. Zemyan. An Attorney Licensed to Practice before the Fort Peck Tribal Court System, Appeal No. 026 (April 12, 1989), Mary L. Zemyan was disbarred from practicing in the Fort Peck Tribal Court. It is obvious from Clayton Reum's request and the pleadings filed herein that Mary L. Zemyan is practicing in violation of her suspension.

Although the Tribal Court was not concerned with Mary L. Zemyan's disbarment, this Court is concerned with the blatant disrespect shown for its previous order. Therefore, pleadings obviously prepared by Mary L. Zemyan and filed with the Tribal Court will no longer be entertained.

Because Mary L. Zemyan continues to practice in violation of this Court's April 7, 1989 order of disbarment, she is in violation of Rule 5.5, Unauthorized Practice of Law, of the Rules of Professional Conduct for attorneys in Montana. This section reads:

- A lawyer shall not:
- (a) practice law in a jurisdiction where doing so violates that regulation of the legal profession in that jurisdiction; or
 - (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

In conclusion, Mary L. Zemyan's continued practice in Tribal Court in violation of the April 7, 1989 order of disbarment requires that the Commission on Practice of the Supreme Court of Montana be notified of the same. Therefore, a copy of this Opinion will be presented to the Commission on Practice along with a request that appropriate disciplinary action be taken.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO REVERSE THE DISMISSAL OF THE TRIBAL COURT AND REMAND THIS MATTER FOR A NEW TRIAL WITHIN THIRTY (30) DAYS OF THE FILING OF THIS OPINION.

RECOMMENDATIONS:

- (1) ALL LAY COUNSELORS UNABLE TO ADEQUATELY PREPARE CIVIL MATTERS FOR A TRIAL SHOULD REFRAIN FROM FURTHER PRACTICE AS LAY COUNSELORS

AND REPRESENTATION OF INDIVIDUALS IN TRIBAL COURT UNTIL THEY HAVE
ACQUIRED THE SKILLS TO DO SO.

(2) BECAUSE MARY L. ZEMYAN WAS DISBARRED APRIL 7, 1989 AND HAS SINCE
CONTINUED TO PRACTICE IN VIOLATION OF THIS COURT'S ORDER, A COPY OF
THIS OPINION SHALL BE SENT TO THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF MONTANA WITH A REQUEST FOR DISCIPLINARY ACTION TO
BE TAKEN.

DATED this _____ day of April, 1990.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Associate Justice

Floyd G. Azure, Associate Justice
