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

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IN THE MATTER OF,  
CALVIN FIRST,  
Plaintiff/Appellant,

vs.

**Appeal No. 104**

FORT PECK TRIBES/JUDGE BOYD,  
JUDGE BEMER,  
Defendants/Appellees.

**THIS APPEAL** came before the Court on a number of issues from various appeals and motions on a civil action regarding the termination of the employment of Calvin First. The issues were submitted on written briefs and were argued orally on September 19, 1990.

**APPEARANCES:**

**FOR PLAINTIFF/APPELLANT:** Melissa G. Schauer  
Lay Law Advocate  
P.O. Box 214  
Wolf Point, MT 59201

**FOR DEFENDANTS/APPELLEES:** Robert L. McAnally  
Tribal In-House Counsel  
P.O. Box 1027  
Poplar, MT 59255

Joint opinion issued by Gerard M. Schuster, Chief Justice, and Gary James Melbourne, Associate Justice. Justice Debra Johnson filed a disqualification in the case on appeal, after denial of a Plaintiff/Appellant's Motion to Disqualify.

**HELD:** 1. Plaintiff/Appellant's action is remanded to Tribal Court for a determination of whether Plaintiff/Appellant was terminated from a federally funded program which requires the individual be given the right to appeal; and if so, a trial on the merits of appeal with specific direction that Chief Judge Bemmer, and Associate Judges Boyd and Stafne are disqualified from hearing the same.

2. The Fort Peck Tribes are dismissed as a party Defendant to this action.

### **FACTS:**

On March 6, 1990 a hearing was held at the Tribal Court at Wolf Point, Montana; the Honorable A.T. Stafne presiding. Plaintiff/Appellant (hereinafter referred to as Appellant) was not present and was not represented by Counsel at the hearing. Defendants/Appellees (hereinafter referred to as Appellees) were represented by Robert McAnally. The Court thereupon issued an oral order dismissing this action with prejudice, by default. REF. **TRANSCRIPT**, March 6, 1990 at pages five (5) and six (6).

Although Appellant did not file a petition for review of the March 6, 1990 order with the Appellate Court within the time frame of I CCOJ 207(a), this Court does review and consider the merits of the various matters before the Trial Court on March 6, 1990 in entering this Opinion, in that a written order was not issued by the Trial Court, entry of judgment.

The March 6, 1990 hearing at the Trial Court was the culmination of a series of events and issues which this Appellate Court finds to be substantially as follows:

1. On August 29, 1989, Associate Judge Terry Boyd ordered Juvenile Officer Calvin First to transport a minor, SHE, to the clinic in Poplar. 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 Officer First since SHE was his wife's niece. Officer First then said, "I should knock you on your fucking ass."
2. As a result of said incident, on August 30, 1989, Chief Judge Bemer issued a letter designated a "Notice of Dismissal" and Order to Show Cause to Calvin First to appear on September 1, 1989 and answer to a Criminal Contempt charge.
3. Calvin First was terminated from his position as Tribal Juvenile Officer and eventually found guilty of Criminal Contempt by Judge Boyd, which conviction was subsequently overturned by the Fort Peck Court of Appeals, REF. Appeal No. 084, Fort Peck Court of Appeals, decided October 6, 1989.
4. On October 11, 1989, Calvin First tiled a complaint with the Court of Appeals against the Fort Peck Tribes and Associate Judge Terry Boyd. The Court of Appeals dismissed this complaint. REF. Appeal No. 088, Fort Peck Court of Appeals, decided November 16, 1989.
5. On September 11, 1989, a grievance hearing was held regarding the termination of Calvin First. A four (**14**) person panel received evidence and upheld the termination of Calvin First. The grievance. committee based its

decision on seven (7) findings which they concluded gave Chief Judge Bemmer just cause to terminate. REF. Appeal No. 091, Fort Peck Court of Appeals, decided November 20, 1989.

6. On September 19, 1989, Calvin First filed a petition for review with the Court of Appeals regarding the termination of his employment. The Court of Appeals on November 20, 1989, concluded that it had proper jurisdiction to hear this appeal under Title I, CCOJ 113(a)(b) and under Title I, CCOJ 202, and subsequently remanded the petition for review to the Tribal Court for a hearing on whether the termination was proper under CCOJ, other applicable law and/or administrative rules. The Court of Appeals further ordered Associate Judge Stafne to hear this petition, finding Chief Judge Bemmer and Associate Judge Boyd were disqualified. REF. Appeal No. 091 [sic correctly as Appeal 096], Fort Peck Court of Appeals, decided November 20, 1989.

A subsequent Motion for Disqualification was filed by Appellant on January 24, 1990 and denied on February 2, 1990.

On February 1, 1990, based on the issues remanded to the lower Court from the Appellant Court, Appellees filed their **MOTION TO DISMISS**, arguing therein that the Appellate Court lacked personal and subject matter jurisdiction to review Officer First's termination because of the doctrine of tribal sovereign immunity, judicial sovereign immunity and a statutory bar against Court review of the administrative decision of the Tribal Personnel Grievance Committee. REF. **MOTION**. Filed February 1, 1990.

Subsequently, the March 6, 1990 hearing on the **MOTION TO DISMISS** was held, in which Judge Stafne stated that counsel for Appellant had been notified by telephone call of the hearing and that he had so advised her thereof. REF. **TRANSCRIPT**, March 6, 1990, page 5. Judge Stafne thereupon entered his judgment.

### **ISSUES:**

1. Whether this Court has jurisdiction to hear this appeal.
2. Whether Appellant has a right to appeal the termination proceedings.
3. Whether the Fort Peck Tribes should be a party Defendant to this action.

### **DISCUSSION:**

Issues 1 and 2.

Under the facts of this case, this Court has jurisdiction to review this matter. 1 CCOJ 113(a) Appellant was a Juvenile Probation Officer employed by the Tribes. Appellant was terminated from that

position by Chief Judge Bemer. Subsequently, Judge Boyd improperly heard and decided a charge of criminal contempt brought against Appellant. We concur with and affirm the previous opinion on **APPEAL NO. 084, FORT PECK COURT OF APPEALS**, decided October 6, 1989 in this regard.

As to the civil action grievance process, we take judicial notice of the **TRIBAL PERSONNEL POLICIES and PROCEDURES** manual (November 14, 1986) as follows: Beginning with Chapter 1-1-1, setting forth the purpose of the personnel manual, we quote:

"The purpose of this manual is to promote proper maintenance of an **equitable personnel management system** within the Fort Peck Tribal Government."

The principles which are to govern the personnel management are set forth in Chapter 1-2-1. These read as follows:

These Personnel Policies and Procedures are based upon the following principles:

(a) Recruiting, selecting and promoting employees on the basis of their knowledge, abilities, skills, training and experience.

(b) Providing fair compensation for work performance.

(c) **Retention of employees based upon high quality Job performance, encouraging employees as appropriate to correct inadequate performance, and dismissal of employees whose performance is not satisfactory....** (emphasis made)

An obvious but paramount fact here is that Appellant was, prior to these proceedings, a **Tribal employee**. Chapter 1-7-1- of the manual defines an employee as follows:

## Section 7. **Tribal Employees**

1-7-1 A tribal employee is an individual who is employed by the Fort Peck Tribes, paid directly through the Tribe's Central Accounting office and follows these Tribal Policies and Procedures.

As a Tribal employee, Appellant is entitled to protection afforded under the Tribal Personnel Policies and Procedures manual. Under the termination grievance procedure, Section 6-3-3 reads:

After hearing all evidence and testimony, the committee in closed session will make it's decision. The decision shall be based solely on the evidence and testimony brought out at the hearing. The Chairman will then re—open

the hearing and in the presence of the aggrieved employee and the program Director/Supervisor, will announce the committee's decision, which will be inserted in the written minutes of the hearing. The decision shall not be appealable to the Fort Peck Tribal Courts. In the event that an aggrieved employee is terminated from a federally funded Tribal program and the program requires that the individual be informed of his/her right to appeal. (sic) The Chairman of the committee will advise the aggrieved employee, the program Director, the Supervisor and the Personnel Manager in writing of the committee's decision at a reasonable time after the decision.

We conclude that a decision of the committee in this case is not reviewable by the Fort Peck Tribal Courts unless the employee is terminated from a federally funded tribal program and the program requires that the individual has the right to appeal. **Manual, Section 6-3-3**

We do not have sufficient evidence in the appeal file to determine whether Appellant meets the requirements for appeal of the grievance committee decision. Therefore, an evidential hearing will be necessary in this regard. If the Appellant does meet the requirements for review, a full evidentiary hearing on the procedural and substantive issues raised by Appellant is in order, and we so order that one be held. We specifically direct that Judges Bemmer, Boyd and Stafne be disqualified from hearing the remanded matter. REF. **1 CCOJ Section 307.**

### Issue 3:

The Fort Peck Tribes are dismissed as a party Defendant to this action. **1CCOJ Section 110, SANTA CLARA PUEBLO v. MARTINEZ**, 436 U.S. 58-59 (1978); **U.S. v. TESTAN**, 424 U.S. 392, 399, 47 L.Ed 2d 114 (1976); **U.S. v. UNITED STATES FEDELITY GUARANTY CO.**, 309 U.S. 506, 512-13 (1940); **AMERICAN INDIAN AGRICULTURAL CREDIT CONSORTIUM, INC. v. STANDING ROCK SIOUX TRIBE**, 780 F.2d 1374 (8th Cir. 1985), 13 Indian L. Rep. 2017 (1986), **SEE** F. Cohen, **HANDBOOK OF FEDERAL INDIAN LAW**, 324-328 (1982 ed.). Here, also, the record reflects that Counsel agree upon dismissal of Fort Peck Tribes. **RECORD ON APPEAL**

### **CONCLUSIONS and ORDERS:**

1. This matter should be and is hereby remanded to Tribal Court for a determination of whether Appellant was terminated from a federally funded program which requires the individual be given the right to appeal; and if so, a trial on the merits of appeal with specific direction that Chief Judge Bemmer, and Associate Judges Boyd and Stafne are disqualified from hearing the same.

2. The Fort Peck Tribes should be, and they are hereby dismissed as a party Defendant to this action.

**DATED** this 9th day of January, 1991.

**BY THE COURT OF APPEALS:**

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Gerard M. Schuster, Chief Justice

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Gary James Melbourne, Associate Justice

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