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

IN THE MATTER OF
MARY L. ZEMYAN, AN ATTORNEY
PRACTICING BEFORE THE FORT PECK **APPEAL NO. 187**
TRIBAL COURT SYSTEM
Respondent.

THIS APPEAL is from an Order dated March 3, 1993 that was issued by the Honorable Justice Florence Youpee, Disbarring Attorney, Mary L. Zemyan, an attorney licensed to practice in the Fort Peck Tribal Court. On March 4, 1993, Mary L. Zemyan filed a Petition For Review, pursuant to I CCOJ 504(b). A I CCOJ 504 (c) hearing was scheduled for March 26, 1993, this hearing date was vacated and rescheduled for April 16, 1993 at 1:00 p.m. in the Tribal Court at Wolf Point, Montana.

FOR APPELLEE/PETITIONER: JUSTICE FLORENCE YOUPEE
PRO SE, P.O. BOX 52
POPLAR, MONTANA 59255

FOR APPELLANT/RESPONDENT: MARY L. ZEMYAN, ATTORNEY
PRO SE, P.O. BOX 1094
WOLF POINT, MONTANA 59201

ARGUED: APRIL 16, 1993 DECIDED: APRIL 23, 1993

OPINION by Debra A. Johnson, Associate Justice, joined by Joni McClammy, Alternate Justice, and Tom McAnally, Alternate Justice.

Held: The ORDER DISBARRING ATTORNEY THAT WAS ISSUED MARCH 3, 1993, BY JUSTICE FLORENCE YOUPEE IS HEREBY VACATED AND RESPONDENT IS READMITTED TO PRACTICE LAW IN THE FORT PECK TRIBAL COURTS, PURSUANT TO I CCOJ 504 (d), EFFECTIVE IMMEDIATELY. THE HONORABLE CHIEF JUDGE HOWARD BEMER'S ORDER DATED OCTOBER 31, 1990 IS AFFIRMED. THE ALLEGATIONS OF INAPPROPRIATE CONDUCT AND/OR ACTION BY THE RESPONDENT AND VIOLATIONS OF THE CODE OF ETHICS FOR ATTORNEYS AND LAY COUNSELORS OF THE FORT PECK RESERVATION MADE BY PETITIONER ARE DETERMINED TO BE UNSUPPORTED AND UNSUBSTANTIATED EVIDENCE, WHEREBY NOT WARRANTING A DISBARMENT. PETITIONER ORDERED RESPONDENT BANISHED (ORDER, page 10). BANISHMENT IS NOT A POWER GIVEN TO A JUSTICE ALONE, BUT A GOVERNMENTAL POWER

BESTOWED UPON THE LEGISLATIVE BODY WITH FINAL APPROVAL BY THE SECRETARY OF THE INTERIOR (Article VII—Governmental Powers, section 5, 6, and 8, FORT PECK ASSINIBOINE AND SIOUX CONSTITUTION AND BY—LAWS). THEREFORE, PETITIONER DID NOT HAVE THE AUTHORITY TO BANISH RESPONDENT RENDERING THIS ISSUE MOOT. JUSTICE YUPEE'S ACTIONS TAKEN SOLELY ON HER OWN, WERE INAPPROPRIATE AND NOT LEGALLY WITHIN THE SCOPE OF THE LAW BY VIOLATING RESPONDENTS RIGHTS TO DUE PROCESS OF LAW AS PROVIDED BY THE INDIAN CIVIL RIGHTS ACT 25 USC 1302 (8), THIS TYPE OF ACTION WILL NOT BE TOLERATED BY THIS COURT OF APPEALS. PETITIONER DID NOT FOLLOW PROPER DISBARMENT PROCEDURES AS PROVIDED IN THE COMPREHENSIVE CODE OF JUSTICE, I CCOJ 504 (a). THIS COURT TAKES JUDICIAL NOTICE OF JUSTICE YUPEE'S PARTICIPATION IN THE PREPARATION OF A TRANSCRIPT OF A TRIAL COURT RECORDING WHICH WAS ALLEGEDLY REMOVED ILLEGALLY BY MELISSA BUCKLES FROM THE FORT PECK TRIBAL COURT AND RETURNED BY DANA BUCKLES, DESTROYED. THIS IS NOT PROPER CONDUCT OF A JUSTICE. DUE TO THIS ALLEGED CRIMINAL ACT, THE MATTER INVOLVING THIS COURT RECORDING IS REMANDED TO THE TRIBAL COURT FOR POSSIBLE PROSECUTION AND ANY OTHER SANCTIONS AGAINST MELISSA BUCKLES THE COURT DEEMS APPROPRIATE AND JUST. FURTHER, THIS COURT OF APPEALS, MAKES THE ABOVE WRITTEN CHARGES OF SPECIFIC MISCONDUCT OF ASSOCIATE JUSTICE FLORENCE YUPEE AND GIVES NOTICE TO THE FORT PECK TRIBAL EXECUTIVE BOARD, PURSUANT TO I CCOJ 306 (a), WHICH SETS FORTH A PROCEDURE FOR REMOVAL OF A JUSTICE FOR MISCONDUCT, "...2."... ABUSIVE, OR CLEARLY INCOMPETENT PERFORMANCE OF DUTIES IN OFFICE ...", OF THIS COURTS STRONG RECOMMENDATION FOR TERMINATION PROCEEDING.

NOW THEREFORE, THIS COURT ORDERS FLORENCE YUPEE BE AND HEREBY IS SUSPENDED FROM ANY AND ALL ACTIVITY AS AN ASSOCIATE JUSTICE OF THE FORT PECK COURT OF APPEALS, UNTIL THE EXPIRATION OF HER TERM OF OFFICE OR UNTIL SUCH A TIME THE FORT PECK TRIBAL EXECUTIVE BOARD INITIATES TERMINATION PROCEEDINGS. FLORENCE YUPEE IS FURTHER ORDERED SUSPENDED FROM ANY AND ALL PRACTICE BEFORE THE FORT PECK TRIBAL COURTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ENTRY OF THIS OPINION, PURSUANT TO I CCOJ 504 (c). THIS IS UNANIMOUS OPINION BY THIS COURT OF APPEALS.

FACTS:

On March 3, 1993, the Honorable Florence Youpee, (hereinafter PETITIONER) Associate Justice of the Fort Peck Court Of Appeals, issued an Order (hereinafter ORDER), disbaring Mary L. Zemyan, an attorney (hereinafter RESPONDENT) licensed to practice before the Fort Peck Tribal Courts, pursuant to I CCOJ Chapters 2,3, and 5. Whereby, Petitioner, 1. Vacates the Order readmitting attorney to practice, dated October 31, 1990. 2. Re-affirms disbarment Orders dated April 12, 1989 and May 23,1989 ([Appeal No. 031](#)); and immediately disbars Respondent from practicing law before the Fort Peck Tribal Courts. Petitioner further states in her Order, that Respondent has committed numerous violations of the Comprehensive Code Of Justice and the Canons Of Ethics for attorneys and lay counselors of the Fort Peck Indian Reservation. Petitioner further states in her Order that it is not appealable. Petitioners Order also banished Respondent as an undesirable from all land within the exterior boundaries of the Fort Peck Reservation. Petitioners Order brings forth new allegations of misconduct by Respondent in the Fort

Peck Tribal Courts and misrepresentation of Respondents clients in Court matters after the 1989 Orders.

On March 4, 1993, Respondent filed a Petition For Review Of Order Disbarring Attorney and cites the following errors of law: A. Failure of Justice Youpee to disqualify herself. In that Petitioner is an Appellee in Appeal No. 171 which is pending and she would directly benefit from the Order. B. Improper disqualification of Justices Schuster and Johnson. C. Failure to be faithful to the law, I CCOJ 504 (c). D. Violation of Petitioners Oath Of Office, by failing to be impartial in the application of the laws of the Fort Peck Tribes which Petitioner r has sworn to uphold.

A hearing was scheduled for March 26, 1993 at 1:00 p.m. this hearing date and time were Vacated and rescheduled for April 16, 1993 at 1:00 p.m. in the Wolf Point Tribal Court, Wolf Point, Montana, pursuant to I CCOJ 504.

At the hearing, Petitioner Justice Florence Youpee was present and appeared pro se. Respondent, Mary L. Zemyan was present and appeared pro se. A closed door Pre Hearing Conference was held on the Courts own Motion. After the Pre Hearing Conference Petitioner and Respondent gave Oral Arguments and presented their cases before the Appellate Court. The issues presented before the Court were as follows:

1. The Order Disbarring Attorney dated March 3, 1993.
2. The Honorable Judge Bemer's Order, dated October 31, 1990.
3. Violations of the Comprehensive Code Of Justice and Canon Of Ethics by Respondent.
4. New allegations of misconduct by Respondent after the 1989 Orders.
5. Banishment of Respondent
6. Removal and destruction of Trial Court recording from the Fort Peck Tribal Court.

I.

Petitioner testifies to the validity of her Order, reaffirming it and further stating, that proper procedure was followed, further reaffirming the previous disbarment Orders of 1989. Further stating that I CCOJ 504 (d) does not apply to Respondent for readmission to practice before the Fort Peck Tribal Courts.

II.

Respondent testified that she was disbarred by Petitioner Vacating and Order For Readmission entered on October 31, 1990 by the Honorable Chief Judge Howard Bemer, as follows:

Disbarment

Section 504 (d). Any person who has been disbarred or suspended for in excess on one (1) year from

the practice of law before the Fort Peck Courts may reapply for admission before the Chief Judge of the Fort Peck Tribal Court. If the Chief Judge had previously disbarred or suspended the applicant, then the application shall be filed with an Associate Judge of the Tribal Court. The person must submit a statement of reasons for the disbarment or suspension, and the reasons for readmission to the appropriate Judge of the Tribal Court. After receiving such statement, the appropriate Judge shall determine whether there is good cause for applicant to be readmitted to practice before the Fort Peck Courts. If the applicant for readmission is denied by the Judge, the applicant may appeal such decision to the Fort Peck Court Of Appeals within ten (10) working days from receipt of such denial in writing. The decision of the Court Of Appeals shall be final.

Respondent argues that this portion of the Code was applicable to her, and proper application was made pursuant to I CCOJ 504 (d). This Court has reviewed de novo pursuant to I CCOJ 504 (d) whether Petitioner was justified in vacating the Order dated October 31, 1990 by the Honorable Chief Judge Bemmer. Petitioner's Order states "... The re—admittance provision at I CCOJ 504 (d) applies only to persons who have been or will be disbarred subsequent to the date of approval of the statement. The Code is quite clear in I CCOJ 504 (d), it does not say subsequent to the date of approval. This Court finds Chief Judge Bemmer acted well within the Comprehensive Code Of Justice insofar as compliance for readmission.

III.

Petitioner testifies that Mary Zemyan, an attorney licensed to practice before the Fort Peck Tribal Court, was guilty of significant violations of the Comprehensive Code Of Justice, Canon Of Ethics, and that Respondent should be disbarred. Respondent argues that Petitioner lacks supported and substantiated evidence in that there are no signed affidavits or complaints from any individual against Respondent. In reviewing the Order and the file in this matter, the Court finds no statements, affidavits or any other documented evidence to substantiate Petitioner's claim of violations of the Comprehensive Code Of Justice or Canon Of Ethics. Hearsay is not admissible in a Court Of Law.

IV.

Petitioner brings forth in her Order new allegations which were not in the 1989 Orders. These new allegations are that of Respondent's misconduct toward the Fort Peck Courts and Respondent's representation of clients. Respondent argues whether the introduction of new allegations by Petitioner were supported by substantive documented evidence and that Respondent was not afforded Due Process in addressing these new issues and/or allegations. Upon review of Petitioner's Order, this Court found that Respondent was not afforded Due Process Of Law. The Petitioner by immediately disbarring attorney did not allow Respondent to address these new allegations of misconduct.

V.

Petitioner in her Order banishes Respondent from the Fort Peck Reservation, stating she has the authority to do this. Respondent argues whether Petitioner has authority to banish anyone from the Fort Peck Reservation. This Court finds that Petitioner does not possess such a power and/or authority to banish anyone from the Fort Peck Reservation. Banishment is a governmental power given to the legislative body which then has to meet final approval of the Secretary of the Interior (Article VII -

Governmental Powers, Section 5,6, and 8, FORT PECK ASSINIBOINE AND SIOUX CONSTITUTION AND By - LAWS). Petitioner is misrepresenting and misusing her judicial authority as Associate Justice by taking assuming such authority.

VI.

This Court on its own Motion brings forth the issue of whether Justice Youpee participated in the alleged illegal removal and destruction of a Trial Court recording by Melissa Buckles through personally transcribing said recording. This Court takes Judicial Notice of this alleged criminal the statements submitted to this Court by the Clerks Of Court. Justice Youpee told the Justices that she transcribed the tape in question. This kind of conduct puts the Petitioners Ethics in question.

THEREFORE, IT IS THE ORDER OF THIS COURT, THE ORDER DISBARRING ATTORNEY THAT WAS ISSUED MARCH 3, 1993, BY JUSTICE FLORENCE YOUPEE IS HEREBY VACATED AND RESPONDENT IS READMITTED TO PRACTICE LAW IN THE FORT PECK TRIBAL COURTS, PURSUANT TO I CCOJ 504 (d), EFFECTIVE IMMEDIATELY. THE HONORABLE CHIEF JUDGE HOWARD BEMER'S ORDER DATED OCTOBER 31, 1990, IS AFFIRMED. THE ALLEGATIONS OF INAPPROPRIATE CONDUCT AND/OR ACTION BY THE RESPONDENT VIOLATIONS OF THE CODE OF ETHICS ARE DEEMED UNSUPPORTED AND UNVERIFIABLE AT THIS TIME. PETITIONER DID NOT HAVE AUTHORITY TO BANISH RESPONDENT. FURTHER, THAT PETITIONER DID VIOLATE RESPONDENTS DUE PROCESS OF LAW, BY NOT FOLLOWING PROPER DISBARMENT PROCEDURES AS PROVIDED IN THE COMPREHENSIVE CODE OF JUSTICE, I CCOJ 504 (a). THIS COURT TAKES JUDICIAL NOTICE OF JUSTICE YOUPEE'S PARTICIPATION IN THE PREPARATION OF A TRANSCRIPT OF A TRIAL COURT RECORDING WHICH WAS ALLEGEDLY REMOVED ILLEGALLY FROM THE TRIBAL COURT BY MELISSA BUCKLES AND RETURNED BY DANA BUCKLES DESTROYED. THIS IS NOT PROPER CONDUCT FOR A JUSTICE. DUE TO THIS ALLEGED CRIMINAL ACT, THE MATTER INVOLVING THIS COURT RECORDING IS REMANDED TO THE TRIBAL COURT FOR POSSIBLE PROSECUTION AND ANY OTHER SANCTIONS AGAINST MELISSA BUCKLES THE COURT DEEMS APPROPRIATE AND JUST. FURTHER THE FORT PECK COURT OF APPEALS MAKES THE ABOVE WRITTEN CHARGES OF SPECIFIC MISCONDUCT OF ASSOCIATE JUSTICE FLORENCE YOUPEE AND GIVES NOTICE TO THE FORT PECK TRIBAL EXECUTIVE BOARD, PURSUANT TO I CCOJ 306 (a), WHICH SETS FORTH A PROCEDURE FOR REMOVAL OF A JUSTICE FOR MISCONDUCT, "... 2 "... ABUSIVE, OR CLEARLY INCOMPETENT PERFORMANCE OF DUTIES IN OFFICE - ...", THIS COURT SENDS A STRONG RECOMMENDATION FOR TERMINATION PROCEEDINGS. **NOW THEREFORE THIS COURT FURTHER ORDERS,** FLORENCE YOUPEE BE AND HEREBY IS SUSPENDED FROM ANY AND ALL ACTIVITY AS AN ASSOCIATE JUSTICE OF THE FORT PECK COURT OF APPEALS, UNTIL THE EXPIRATION OF HER TERM OF OFFICE OR UNTIL SUCH A TIME THE FORT PECK TRIBAL EXECUTIVE BOARD INITIATES TERMINATION PROCEEDINGS. FLORENCE YOUPEE IS FURTHER **ORDERED** SUSPENDED FROM ANY AND ALL PRACTICE BEFORE THE FORT PECK TRIBAL COURTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ENTRY OF THIS OPINION, PURSUANT TO I CCOJ 504 (c). THIS IS A UNANIMOUS OPINION BY THIS COURT OF APPEALS.

THIS APPELLATE COURT, BECAUSE OF THESE PROCEDURAL VIOLATIONS, LACK OF DUE

PROCESS OF LAW AND ERRORS OF LAW, WILL NOT TOLERATE ANY MISCONDUCT OR MISREPRESENTATION OF THE LAW BY ANY INDIVIDUAL BE THEY AN ATTORNEY, LAY COUNSEL, JUDGE OR JUSTICE. **ALL ARE UNDER THE LAW, NOT ABOVE THE LAW.**

DATED this _____ day of April, 1993.

BY THE COURT OF APPEALS:

DEBRA A. JOHNSON, JUSTICE

JONI McCLAMMY, JUSTICE

TOM McANALLY, JUSTICE
