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

FORT PECK TRIBAL COURT,
Appellee/Petitioner,

vs.

Appeal No. 068

IRIS ALL RUNNER,
Appellant/Respondent,

THIS APPEAL is from a Petition for Review of the action of the deceased Honorable Chief Judge William "Tolly" McClammy as outlined in the Memorandum dated October 13, 1984.

FOR APPELLEE: The Tribes were not represented.

FOR APPELLANT: Garrett Big Leggins, Lay Counselor, P.O. Box 1391, Poplar, Montana 59255.

CIVIL: THE DECEASED HONORABLE CHIEF JUDGE WILLIAM "TOLLY" McCLAMMY'S MEMORANDUM DATED OCTOBER 13, 1984 COMPLIED WITH I CCOJ 504; THE ACTION OF THE DECEASED HONORABLE CHIEF JUDGE WILLIAM "TOLLY" McCLAMMY ON OCTOBER 13, 1984 COMPLIED WITH I CCOJ 504 AND THE REVIEW OF DECEASED HONORABLE CHIEF JUDGE WILLIAM "TOLLY" McCLAMMY'S ACTION IN DISBARRING APPELLANT AS LAY COUNSELOR WAS APPROPRIATE IN THAT THERE WAS NO OFFICIAL CODE OF ETHICS, OFFICIAL RULES OF COURT OR A FINAL ORDER OF DISBARMENT.

Argued: April 17, 1989. Decided: April 17, 1989.

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

HELD: A FINAL ORDER OF DISBARMENT IS ENTERED PURSUANT TO I CCOJ 504(b) WHEREIN APPELLANT IS DISBARRED FROM PRACTICE AS A LAY COUNSELOR WITHIN THE FORT PECK TRIBAL COURT SYSTEM.

On March 23, 1989, Appellant filed a Petition for Review in which she requested this Court review the action of the deceased Honorable Chief Judge William "Tolly" McClammy as outlined in his Memorandum dated October 13, 1984. The Memorandum set forth eight reasons for the disbarment of Appellant. These reasons were as follows:

"1. On two different occasions I have had to caution you about dismissing witnesses from the stand; this is the duty of the presiding judge.

"2. Your clients are not properly represented, on one occasion you left some papers on a divorce action, had the court clerk stamp them, then went to the Safety Committee and accused the court of not entering this on the court calendar.

"3. In another case I presided on, handled by you and a counsel from the Legal Services, you stated to the Safety Committee that I had not acted on a motion initiated by you, when in fact I had, one council member stated we can't have things of this nature coming to this committee, where Mrs. All Runner states I hadn't acted on the motion and the Judge says he has, I congratulate him for saying this.

"4. You have tried with a former judge, to get a jury trial on a traffic citation.

"5. You have tried to get a jury trial from a present judge on a class B misdemeanor, the maximum penalty of which is a \$100.00 fine.

"6. One client you were representing was dropped by you when he wanted to sign a waiver of extradition.

"7. In another case, a trial for criminal mischief and resisting arrest, the defendant was found guilty and sentenced, you asked for an appeal, the sentence was stayed pending the appeal; I was advising you how to enter the appeal, you interrupted with the statement "I know the procedure". Sometime after the 15 day deadline one of the complaintants (sic) that was awarded restitution asked if any money was paid, I checked this out and found that it had not been. I issued a warrant, then members of the defendant's family came to me stating they had been informed by the Court Administrator's office that they could appeal, I said this was not true, that it was past the deadline.

"8. In an arraignment case for (D.W.I.) Driving While Intoxicated, the defendant you were representing pleaded not guilty. You requested a jury trial, a date was set, the bond and driving license were held pending the trial. At some later date you had advised your client to get a duplicate driver's license and stated "the Tribal court loses everything anyway", the court has this duplicate license also."

As a result of the Memorandum and the above reasons set forth therein, the Appellant requested this Court review the action taken by deceased Honorable Chief Judge William "Tolly" McClammy. The Appellant gave the following three reasons for her appeal:

"1. A Final Order of Disbarment does not exist as a matter of the Court Records.

"2. Official Rules of the Court encompassing disbarment procedures were not in existence at the time of the action taken against the Appellant (sic).

"The official Rules of Court were formally adopted by the Tribal Executive Board on March 3, 1985.

"3. Official Code of Ethics governing Lay Counselor conduct, did not exist at the time of the action taken against the Appellant. (sic)

"The Code of Ethics for Lay Counselors was formally adopted by the Tribal Executive Board on August 10, 1987."

The issue which will be addressed by this Court will be,

"Whether deceased Honorable Chief Judge William McClammy properly disbarred Appellant from practice within the Fort Peck Tribal Court system pursuant to I CCOJ 504 and a final order of disbarment should be issued."

I.

This Court granted Appellant's Petition for Review in that there was no final order of disbarment. The issues also raised the lack of official rules of the court and official code of ethics at the time of her disbarment.

At the hearing, Appellant testified that she had not responded within the ten days set forth in the Memorandum since she was not aware of any rules and did not know what to do. Appellant stated she went to then Tribal Court Administrator Skip Yellowrobe and Bob McAnally to determine what would be a proper course of action. Appellant claims she was provided no guidance and, therefore, failed to take any action. In response to the above, this Court found it would be appropriate and necessary to take testimony from Appellant and other parties to determine Appellant's fitness to practice as a lay counselor within the Fort Peck Tribal Court system.

Appellant was asked questions regarding her activities within the Fort Peck Tribal Court system before and after her disbarment as a lay counselor on October 13, 1984. Appellant testified that she was responsible for dramatic and positive changes within the Tribal Court system. Appellant admitted there was hostility between her and Chief Judge McClammy and testified Chief Judge McClammy's hostility towards her increased when there was a move to get her appointed judge.

Appellant was asked questions regarding her activities in the Fort Peck Tribal Court system since her disbarment. Appellant testified she only went to the Tribal Executive Board as an enrolled member and not as a lay counselor in Runs Above vs. Adams, however, she acknowledged that this was the case which prompted her to petition for reinstatement as a lay counselor. Appellant further testified she had never represented anyone or represented to anyone she could from the date of the memorandum.

Testimony was received from the Honorable Terry Boyd, Associate Judge. Judge Boyd brought with him a file entitled Fort Peck Tribes vs. Iris All Runner. In this action, Appellant was charged by two criminal complaints. The Criminal Complaint signed by Edward D. Bear and dated July 31, 1986 charged Appellant with Theft, a violation of III CCOJ 304, and stated,

"Iris All Runner did intentionally obtain approximately \$21,500.00 from me by means of

misrepresentation deception and threat stemming from a personal injury incident in which she acted as my legal counsel. The time frame was Nov. 84 with the last transaction in Sept. 85."

The Criminal Complaint signed by Clayton Reum and dated August 1, 1986 charged Appellant with Criminal Contempt, a violation of III CCOJ 410, and stated,

"On Oct. 25, 84 you, Iris All Runner were disbarred as a Lay Counselor. Therefore barring you from practicing in that capacity. Information received in this court alleges you were presenting yourself in that capacity to the public from approx. Oct. 30, 84 until Sept. 6, 85. Therefore, you are hereby charged with criminal contempt of this court. Pursuant to Title III, Chapter IV, Section 410 of the Fort Peck Code of Justice."

The last official court action taken in Appellant's case was the judge granted a Motion for Continuance on October 2, 1986. There was some speculation former Tribal Prosecutor David Red Fox may have dismissed the cases, however, there is no record of this in the official court file.

Appellant was informed of her lay counselor's surprise as to the criminal charges against appellant. The testimony went as follows:

Iris Allrunner: No, he's not.
Justice Hove: Were you aware of that?
G. Big Leggins: No, I was not aware of that. But, Your Honors, I would like to state that this case hasn't come to trial and there has been no final determination here and what would be the purpose of it. I mean,... we don't know if she is guilty or not."
[Hearing Transcript, Page 21, Lines 22—24 to Page 22, Lines 1-3.]"

In reviewing, Chief Judge McClammy's memorandum, this Court determined that one of his primary complaints was Appellant's honesty towards the Fort Peck Courts. In view of the above and the Appellant's testimony at the hearing, a majority made the determination that Appellant was not being honest with this Court during the hearing.

Under Canon 13 of the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Indian Reservation, Appellant is required to act with honesty toward the Fort Peck Courts. The Appellant did not do so before Chief Judge McClammy who determined Appellant's conduct was serious enough to disbar her or this Court which held the final authority to reinstate or disbar her.

In addition, under Canon 20 of the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation, Appellant is not to make false or misleading statements about his or her services. Appellant obviously lead Edward D. Bear that she could provide him legal services as a lay counselor in the Fort Peck Tribal Court system when she had been disbarred and was not permitted to practice. This is not only a violation of the current Code of Ethics it also resulted in felony and misdemeanor charges for violation of Tribal law.

Another of Chief Judge McClammy's complaints which appears in the October 13, 1984 memorandum was Appellant's competence while practicing as a lay counselor. During her practice as a lay counselor, Appellant seemed to be either

ignorant of proper courtroom procedure and the function of a lay counselor or purposely attempting to disrupt Chief Judge McClammy's court.

Appellant made this Court aware of her attempted representation of a party in All Runner vs. Adams. Appellant approached the Tribal Executive Board at the time an appeal had been filed and at approximately the same time as her petition for reinstatement as a lay counselor was filed. It is obvious from the above, Appellant does not understand proper procedure in that while an appeal is pending; the Fort Peck Tribal Courts have jurisdiction over the same. Appellant's act of approaching the Tribal Executive Board on behalf of one of the parties was performing the function of a lay counselor in All Runner vs. Adams.

It is the majority opinion of this Court that Chief Judge William McClammy had sufficient reasons set forth in his memorandum of October 13, 1984 to disbar Appellant pursuant to I CCOJ 504 despite the fact there was no code of ethics or rules of court. Chief Judge McClammy did give Appellant 10 days to respond to the charges or action was going to be taken against her. Appellant admittedly did not respond within the 10 days, however, there still is no record of a final order of disbarment.

Therefore, it was the majority decision of this Court that Appellant should not be permitted to practice as a lay counselor before the Fort Peck Tribal Court system and a final order of disbarment shall be issued.

CONCURRING OPINION OF ASSOCIATE JUSTICE FLOYD AZURE:

This Associate Justice in joining with the majority rule and submitting a special concurring opinion.

Having reviewed the memorandum issued by the Honorable Chief Judge William McClammy on October 13, 1984 concerning the disbarment of Lay Counsel, Iris Allrunner.

I find that Chief Judge William McClammy's primary argument was whether Lay Counsel Iris Allrunner was honest with the courts in her practice.

In the eight issues that were read aloud by Justice James Melbourne, Issues 2, 3, and 7 were what I thought Chief Judge McClammy was using to point out her dishonesty with the courts.

In having testimony from Lay Counsel Iris Allrunner, she contradicted herself twice, stating she had not practiced law since the memorandum was issued when in fact she defended a tribal member in case in September, 1985. She also stated that her Lay Counsel Garrett Big Leggins knew of this which he quickly denied.

I also feel that the issues of respect for the courts and her client's wishes were also a subject to be dealt with. Chief Judge William McClammy gave Lay Counsel Iris Allrunner ten days to respond to this memorandum in defense of the accusations against her. She made no attempt to do so.

In my opinion, I will support Chief Judge William McClammy's opinion and in joining with Chief Justice Arnie A. Hove, deny her the opportunity of practicing law in the Fort Peck Tribal Court System.

THEREFORE, IT IS THE MAJORITY OPINION OF THIS COURT THAT APPELLANT SHALL NOT BE PERMITTED TO PRACTICE AS A LAY COUNSELOR BEFORE THE FORT PECK TRIBAL COURTS AND THAT A FINAL ORDER OF DISBARMENT IS HEREBY ISSUED AGAINST THE APPELLANT. PURSUANT TO I CCOJ 504(b) THIS ORDER SHALL BE FINAL.

DATED this _____ day of April, 1989.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Floyd Azure, Associate Justice

A DISSENTING OPINION BY ASSOCIATE JUSTICE
GARY JAMES MELBOURNE WILL BE PREPARED
AND FILED WITH THE MAJORITY OPINION.
