

have to get rid of those people or Council members." Her comments were clearly directed

at specific Tribal Council members, and in my opinion reflected deep personal animosity towards those persons. I do not think those Council members could ever receive a fair hearing in front of Judge Viles. Judge Viles would have a conflict of interest in any court I have ever practiced in.

3. The next occurrence is perhaps the most extreme that has occurred in this case. First, remember that the only pleading filed by Pat Morrell in this case was a motion for an order of restraint - to prevent certification of the election, and to prevent destruction of certain election records. No request exists anywhere asking that any records be turned over to Pat Morrell. Under court rules of procedure, such requests must be made in writing, and sent to counsel for a party. If a party objects to such a request, or wants to narrow it down, they can ask for a hearing. You must first have a claim for relief - specific instances of wrongdoing which you say occurred. You are not allowed to go on a fishing expedition - filing a case and then looking for, and hoping to find, dirt that will help you come up with a claim.

On February 21, 1995, (it might have been the 22nd), I received a phone call from the tribe that Judge Mary Viles and Pat Morrell had gone over to Sharon Newman's office that morning and demanded that Sharon turn the election records over to them. I immediately called the tribal court to find from Ken Blacketer what was going on, since I had not received any notice of this action. Diane Robertson answered the phone (she was supposedly still on vacation, which is why the case had been assigned to Mary). Diane professed ignorance of anything going on. I relayed what was going on, and my anger at the conduct of Mary in making ex parte contacts without my knowledge and without contacting me. Diane said she would check into it.

I asked Diane whether she was taking the case back now that she was back. She said no, because she was related to Pat Morrell. I asked her whether she had entered a disqualification order, and formally assigned the case to Mary. She said no.

An hour later I received a phone call (it was 4 or 4:30 p.m.) that Mary Viles, Gladys Bolton, Diane Robertson and Pat Morrell were all down at Sharon Newman's office trying to intimidate Sharon into turning over election records. Nelsen was down there and apparently asked Mary whether she had contacted me. Mary said no she had not, and did not need to because she already knew my position on this case. Pat Morrell and Diane were sitting outside Sharon's office, but were clearly visible to what was going on.

There are numerous problems with this scenario:

a. It is a violation of every known judicial canon for a judge to make ex parte contact of any kind with a party in a case, particularly when the judge knows the party is represented by counsel.

b. It is even worse violation for a judge to make an ex parte contact with a party in a case, deliberately excluding that party's legal counsel, for the purpose of influencing a result in the case.

This conduct would possibly be a criminal violation under Oregon law. It would certainly result in immediate removal of the judge from the office.

c. It was a gross violation of judicial ethics for other judges not involved in a case to be present at any proceeding or other action in a case. It is a violation of impartiality and objectivity for them to be involved. It is particularly objectionable that two judges with clear conflicts of interest (Diane had just admitted hers to me two hours earlier) to be sitting in a room attempting to intimidate a person into taking specific action. If you do not think that three judges, including the Chief judge of the legal system, appearing with the opposing party, attempting to assist the other party in getting what she wants, and trying to stop the person from consulting with her lawyer is not intimidation, then I do not know what intimidation is.

d. The judges were off making their own rules and law. As I stated earlier, there is no document in existence from Pat Morrell or anyone else asking for the election records to be released. Judges are not allowed to make things up, and to act on their own initiative for one party. By traveling outside the courtroom and demanding that Sharon turn over records that had never been requested, the judges were making up their own law.

e. The judges deliberately excluded me from providing advice to my clients. The judges attempted to prevent Sharon from talking to me. The judges made specific statements that they would not contact me about this matter, advise my clients, or make any arguments on behalf of my clients. This conduct is an express violation of the Indian Civil Rights Act (to have assistance of counsel) and might constitute a federal criminal violation.

f. It is an express violation of judicial ethics for a judge who has disqualified herself to have any involvement in a case. After Judge Robertson disqualified herself, she then went down and put herself in a physical situation where she was showing an opposing party that she supported Pat Morrell and knew what was going on.

g. Diane Robertson lied to me. Diane clearly knew what was going on when she professed ignorance of Mary's actions to me. I have been told that Mary and Diane have consulted numerous times in this case. An hour after I spoke with Diane, she was in Sharon Newman's office building and attempting to intimidate Sharon into improperly releasing records.

It is clear from this incident that the judges are acting in concert, have a preordained result clearly in mind, have no interest in court rules or procedures or ethics, and plan to do whatever is necessary to reach the desired result. There is no chance for a fair hearing in this case. The court is acting improperly in this case.

4. Now we come to the hearing of March 7, 1995. I have heard that all of the judges, and perhaps Pat Morrell, met the evening before to discuss the upcoming hearing. This is a violation of judicial ethics as set forth above. The hearing

the following day was clearly orchestrated and had been planned beforehand.

5. An hour before the hearing, I received information that telephone calls had been made to Sharon Newman and Walt Klamath, informing them that they had been subpoenaed. I asked whether anything had been served in writing, and was told that nothing in writing existed. I looked at the court rules, which state that subpoenas must be in writing, and informed Sharon and Walt that I did not believe they had been subpoenaed. They apparently took the rest of the day off.

At the hearing we waited for a half hour, with no explanation. When I asked Mary why we were waiting, she said they were waiting for Walt and Sharon. At 1:30 Mary stated that she was postponing the hearing to subpoena them, and now had to decide "what to do to them." Hold them in contempt. When I asked what she meant, Mary said they had been subpoenaed. After I questioned Mary, she finally admitted they had never been served with anything in writing, and backed off from sanctioning them.

6. I then raised the question of jurisdiction. As I stated in my pleadings, no complaint or notice of appeal has ever been filed. Under the court's own rules (I detailed these rules in my previous memo), the court has no jurisdiction to do anything until one of these two pleadings has been filed. In addition, even if by some wild reasoning the motion for a restraining order filed by Pat Morrell could be considered to give the tribal court jurisdiction, the court still had no case to hear on March 7, 1995. This is because the court rules, x 3.40(b), states that a restraining order "shall expire by its terms within such time after entry, not to exceed fifteen (15) days as the court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period."

The restraining order was not extended, and a brought this point up to Judge Viles. The restraining order had expired in mid-February, and the court had no basis for jurisdiction. Mary said no, she had set the matter for hearing and she did not care what the court rules said and was going to proceed with this matter. The court did not set the March hearing until 15 days after the restraining order was entered, again in violation of court rules. The court's order setting a hearing did not set a date. No hearing date was ever issued in writing.

7. I handed Judge Viles a copy of the Siletz Appellate Court's Order, enjoining the Tribal Court from proceeding with this case. Mary refused to accept it, stating that since Mike Dowsett was a non-tribal member, the Appeals

Court was not valid. I then handed the pleadings to Court Clerk Ken Blacketer, and announced publicly that I was filing these documents. The Tribal Court rules contain no specific requirements for appointment of appellate judges. The qualifications for Chief Judge do not require tribal membership; the requirements for Associate Judge do require tribal membership. Tribal Ordinances can be amended by Tribal Council Resolution. When the Tribal Council

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