

**IN THE MUSCOGEE (CREEK) NATION DISTRICT COURT
OKMULGEE DISTRICT**

DISTRICT COURT
FILED

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2011 FEB 21 A 9 21

A.D. ELLIS, in his official capacity as
Principal chief of the Muscogee
(Creek) Nation,

Plaintiffs,

v.

MUSCOGEE (CREEK) NATION
NATIONAL COUNCIL,

Defendant,

Case No. CV 2010-157

NANCY JUKICH
COURT CLERK
MUSCOGEE (CREEK)
NATION

Date: February 21, 2010

APPEARANCE OF COUNSEL

COMES NOW, John A. L. Campbell and appears specially for non-parties Yonne Tiger, Roger Wiley, and Stacy Leeds.

Respectfully Submitted,



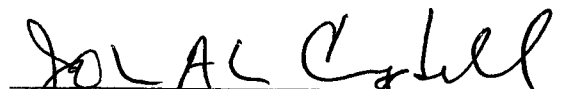
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CERTIFICATE OF MAILING

I certify that a true and correct copy of the above document was served First-Class mail, postage prepaid, on February 21, 2010 to:

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John A. L. Campbell

**IN THE MUSCOGEE (CREEK) NATION DISTRICT COURT
OKMULGEE DISTRICT**

DISTRICT COURT
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2011 FEB 21 A 9:22

A.D. ELLIS, in his official capacity as
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Plaintiffs,

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MUSCOGEE (CREEK) NATION
NATIONAL COUNCIL,

Defendant,

Case No. CV 2010-157
NANCY JUKICH
COURT CLERK
MUSCOGEE (CREEK)
NATION

Date: February 21, 2010

OBJECTION TO THE COURT'S FEBRUARY 16, 2011 ORDER

COME NOW, Yonne Tiger, Roger Wiley, and Stacy Leeds, by and through their attorney John A. L. Campbell and for their Objection to the Court's February 16, 2011 Order submit the following:

BACKGROUND

1. On September 30, 2010, the Plaintiff filed, *inter alia*, a Petition for a contempt citation.
2. On November 1, 2010, the National Counsel filed a Special and Limited Entry of Appearance for the purpose of Contesting Jurisdiction.
3. Defendant never filed a general appearance.
4. Defendant never answered the subject petition.
5. Counsel for the Plaintiff were advised by Counsel for the Defendant more than 30 days prior to the subject hearing that they would not be attending the hearing.
6. Upon information and belief Yonne Tiger, Roger Wiley, and Stacy Leeds submit that this Court knew they would not be attending the subject hearing.

PROPOSITION I: YONNE TIGER, ROGER WILEY, AND STACY LEEDS HAD NO AUTHORITY OR DUTY TO APPEAR FOR THE FEBRUARY 16, 2011 HEARING.

A lawyer's obligation to appear in any court is governed by his or her attorney/client agreement and by the rules of professional conduct applicable to the venue. A party has no legal obligation to appear in

court in a civil case or defend the case in any way. Obviously, there are circumstances where a Judge might specifically order an attorney to appear in Court. In this case, there is no court order specifically requiring Yonne Tiger, Roger Wiley, and/or Stacy Leeds to appear. The undersigned attorney was not able to locate any law that required an attorney to appear in court merely because a hearing was set in a case where the attorney had made an appearance. Moreover, an attorney's failure to appear at a hearing is not *prima facie* evidence of malpractice or an ethics violation. The attorney's agreement with his client may not authorize him or her to appear at all hearings or any hearings. According to 5, Appendix 3-A O.S. § Rule 1.2 Scope of Representation and Allocation of Authority between Lawyer and Client, an attorney must "abide by a client's decisions regarding the objectives of representation."

In this case, Yonne Tiger, Roger Wiley, and Stacy Leeds were not authorized by their client to appear at the February 16, 2011 hearing. Indeed, after the Motion to Dismiss was denied, they were not authorized to file any papers or appear at any hearings in this court. As such, they had no duty, legally or ethically, to appear at the subject hearing.

PROPOSITION II: IF YONNE TIGER, ROGER WILEY, AND/OR STACY LEEDS HAD APPEARED FOR THE FEBRUARY 16, 2011 HEARING SUCH CONDUCT WOULD HAVE BEEN UNETHICAL.

As mentioned above, the Oklahoma ethics rules adopted by the Muscogee (Creek) Nation require an attorney to "abide by a client's decisions regarding the objectives of representation." *Id.* Yonne Tiger, Roger Wiley, and Stacy Leeds' client, the Muscogee (Creek) Nation National Council did not authorize them to appear at the subject hearing. If they had ignored their client's instructions and appeared at the subject hearing, they would have been in violation of numerous ethics rules, to-wit:

1. Oklahoma law, 5 O.S. ch. 2 sec. 3 (as persuasive authority), an attorney has a duty "... To maintain inviolate the confidence, and at any peril to himself, to preserve the secrets of his client."
2. Rule 1.2 of the rules of professional conduct governing the scope of representation and allocation of authority between client and lawyer, prohibits an attorney from taking action

without client consent. Attorneys are certainly prohibited from acting when the client has provided clear instruction to refrain from acting.

3. Rule 1.4 of the rules of professional conduct regarding communication with the client requires the lawyer to consult with his or her client regarding the means to accomplish the goals of the client.
4. Rule 1.6 of the rules of professional conduct regarding confidentiality of information; and
5. Rule 8.4 of the rules of professional conduct states that it is misconduct to violate or attempt to violate the Rules.

PROPOSITION III: THIS PROCEEDING IS AN ABUSE OF THE COURT'S DISCRETION.

As discussed above, Yonne Tiger, Roger Wiley, and Stacy Leeds do not have a general duty to appear for every hearing set by this court in the above-styled and numbered cause. Ordering them to appear in this Court and explain their absence or face punishment for not appearing is an abuse of this Court's discretion.

PROPOSITION IV: THE COURT'S ORDER VIOLATES THE DUE PROCESS RIGHTS OF YONNE TIGER, ROGER WILEY, AND STACY LEEDS AS IT ENGAGES IN UNAUTHORIZED BURDEN SHIFTING.

The Court's February 16, 2011 order requires Yonne Tiger, Roger Wiley, and Stacy Leeds to "show cause" why they are not guilty of contempt of court. Such an order results in an impermissible burden shifting as it requires the accused to disprove their guilt. While the nature of these proceedings is not clear (as explained below) there clearly is a threat by the Court that Yonne Tiger, Roger Wiley, and Stacy Leeds, may face a deprivation of their individual liberty. Under the Constitution of the United States, the Indian Civil Rights Act, and the Constitution of the Muscogee (Creek) Nation the Court cannot assume Yonne Tiger, Roger Wiley, and Stacy Leeds are guilty of contempt and then require them to prove their innocence. The fact that the Court has already adjudicated the guilt of the accused is evident in his order on page 4 where the Court states "... Counsel are cautioned that this Court is obligated, **and fully intends**, to report any past or prospective unreasonable disregard of its Orders to

the Muscogee (Creek) Nation Bar Association and also that of the state(s) of their bar licensure.”

(emphasis added).

PROPOSITION V: THE COURT'S ORDER VIOLATES THE DUE PROCESS RIGHTS OF YONNE TIGER, ROGER WILEY, AND STACY LEEDS AS IT DOES NOT IDENTIFY WITH SUFFICIENT SPECIFICITY THE CHARGES BROUGHT AGAINST THEM.

The Court's February 16, 2011 order does not clearly identify what charges or claims are pending against Yonne Tiger, Roger Wiley, and Stacy Leeds. On page 3 of the subject order the Court notes that “Said attorneys are subject to this Court's order regarding any proven **direct or indirect contemptuous conduct.**” (emphasis added). Later on the same page the Court discusses alleged “professional misconduct” by the accused and cites to an ethics rule. On page 4 of the subject Order the Court states that the hearing will be convened for the purpose of “showing cause why they should not be held in contempt. . . .” Finally, on page 4 the Court states “this Court is vested with the authority to levy sanctions against attorneys. . . .”

It is unclear whether the proceedings on February 21, 2011 will be a direct contempt action, and indirect contempt action, civil sanctions, or an administrative proceeding related to the accused's Muscogee (Creek) Nation Bar license. The Court's Order is so vague regarding the nature of the proceedings against my clients that it violates right of due process as guaranteed by The United States Constitution, The Indian Civil Rights Act, and the Constitution of the Muscogee (Creek) Nation and is therefore unlawful.

PROPOSITION VI: THIS COURT DOES NOT HAVE THE AUTHORITY TO ADJUDICATE ETHICS COMPLAINTS FOR THE MUSCOGEE CREEK NATION.

The Court's sole grievance against my clients is that the Court believes that their absence from the February 16, 2011 hearing was “deliberate conduct prejudicial to the administration of justice.” The Court offers no evidence or explanation how the absence of lawyers from the hearing was prejudicial to the administration of justice. Nonetheless, it is clear that this is an allegation of a breach of the ethics rules. This Court is not the proper venue to adjudicate ethics violations. If the Court believes that my

clients have violated the rules for professional conduct for the Muscogee (Creek) Nation or for any applicable state bar, the Court should report that violation. However, the alleged violation cannot form the basis for a contempt action.

PROPOSITION VII: YONNE TIGER, ROGER WILEY, AND STACY LEEDS HAVE IMMUNITY FROM THIS ACTION.

Title 27, §1-102 D. affirms sovereign immunity to “the Muscogee Nation, its officers, employees, agents. . .” except in cases for “injunctive, declaratory, or equitable relief. . .” Yonne Tiger is an agent and employee of the tribe. Roger Wiley and Stacy Leeds are agents of the tribe. The action initiated by this Court against them is a legal action with a criminal or civil penalty. Because Yonne Tiger, Roger Wiley and Stacy Leeds are agents or employees and this is not a case for injunctive, declaratory or equitable relief it must fail due to sovereign immunity.

PROPOSITION VIII: THIS COURT WAS DISSOLVED PURSUANT TO NCA 10-189 AND HAS NO AUTHORITY OVER YONNE TIGER, ROGER WILEY, AND STACY LEEDS.

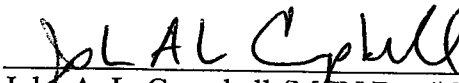
On November 22, 2010 NCA 10-189 became the law of the Muscogee (Creek) Nation. That law repealed Title 26 of the Muscogee (Creek) Nation code and created a new Title 26. The new Title 26 created three new district courts to provide for more speedy and efficient adjudication of matters at the district court level. The above-styled and numbered cause has not been re-numbered and transferred to the new district court system in accordance with the law.

PROPOSITION IX: THE COURT'S ORDER HAS PROVIDED INADEQUATE TIME FOR YONNE TIGER, ROGER WILEY, AND STACY LEEDS TO PREPARE A DEFENSE

The Court's February 16, 2011 Order allowed the accused two business days to prepare a defense. If this is a civil matter that such violates Rule 10 of the Judicial Procedures contained within Title 27 of the Muscogee (Creek) Nation Code. If this is a criminal matter then it certainly violates the due process rights of the accused.

WHEREFORE, premises considered, Yonne Tiger, Roger Wiley, and Stacy Leeds respectfully request this honorable Court find the accused not guilty and enter an order reflecting that Yonne Tiger, Roger Wiley, and Stacy Leeds have not engaged in any wrongdoing.

Respectfully Submitted,


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