

**IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION**

*In re:* The Matter of the Continued )  
Admission to the Muscogee (Creek) )  
Nation Bar Association by )  
Benjamin P. Zvenia )

SUPREME COURT  
FILED

MAR 14 2019

CO

COURT CLERK  
MUSCOGEE (CREEK) NATION

**ADMINISTRATIVE ORDER 2019-01**

“The Muscogee (Creek) Nation Supreme Court inherently possesses original and exclusive jurisdiction in all matters regarding procedure and standards for admission of attorneys to practice law before Muscogee (Creek) Nation courts. This Court possesses original jurisdiction to investigate claims of attorney professional misconduct and investigate allegations of the unauthorized practice of law before the Nation’s courts. This Court also possesses original jurisdiction to discipline for cause any and all attorneys duly admitted to practice law before Muscogee (Creek) Nation courts found to have engaged in professional misconduct. No attorney duly admitted to the Muscogee (Creek) Nation Bar may place himself beyond the power of this Court to maintain the roll of attorneys in accordance with the following rules by taking unto himself any office or position or shrouding himself in any official title.”<sup>1</sup>

**I. INSUFFICIENT CREDENTIALS FOR MEMBERSHIP IN THE MUSCOGEE  
(CREEK) NATION BAR**

On June 4, 2018, the Court unanimously adopted Administrative Order 2018-02, *In re:* Adoption of Rules Governing the Muscogee (Creek) Nation Bar and Attorney Professional Conduct.<sup>2</sup> (Hereinafter, the “*Rules*”). In a measured effort to identify what credentials and

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<sup>1</sup> See Administrative Order 2018-02, *In re:* Adoption of Rules Governing the Muscogee (Creek) Nation Bar and Attorney Professional Conduct, Pg. 1.

<sup>2</sup> These Rules were adopted following a sixty (60) day notice and comment period in which all bar members were individually notified of the proposed rule change and the proposed rules were placed on the Court’s website for review by the general public for the entire sixty (60) day notice and comment period. No comments were received by the Court. These Rules superseded the administrative order previously published by the Court *In re:* Adoption of the American Bar Association Model Rules of Professional Conduct (November 13, 2007) (all justices concurring).

supporting documentation had been, and would continue to be required for admission to the Muscogee (Creek) Nation Bar Association, the Court included the language of section 1-5 of the new *Rules*, which provides:

At the time an application for admission to the Bar is filed, applicants shall also provide:

- (a) The completed Application for Admission to the Muscogee (Creek) Nation Bar, including a signed and dated consent to jurisdiction on the form prescribed by the Supreme Court; and
- (b) *An official, original certificate of good standing issued by the bar of the highest court of any state of the United States or the District of Columbia* dated no more than ninety (90) calendar days prior to the date of application to the M(C)N bar; and
- (c) A seventy-five dollar (\$75.00) check or money order made payable to the M(C)N Bar Association (consisting of a one-time, non-refundable fifty-dollar (\$50.00) application fee and a twenty-five dollar (\$25.00) annual membership fee refundable upon denial of the application for admission).

[Emphasis Added]

Upon review of the then-current Muscogee (Creek) Nation Bar membership, it was determined that over seventy (70) Bar Members were deficient under either Rule 1-5 (a), for lack of a consent to jurisdiction form on file, 1-5 (b), for lack of a certificate of good standing on file, or 1-8, for lack of an oath of admission on file. Letters were sent to each Bar Member in mid-December, 2018, requesting supplementation of their Bar records with the necessary (and missing) documentation. The Bar Members were advised that failure to supplement their Bar records could result in disbarment.

The Respondent's original *Application* for membership to the Muscogee (Creek) Nation Bar Association was filed on January 18, 2005. Under the *Application* section entitled "Bar Memberships" the Respondent answered, "See attached material[.]" The attached "material" was a "Bio of the Hon. Benjamin Zvenia[.]" which included a "Membership/Affiliations" section, wherein the Respondent listed the "Bar Association of the District of Columbia (From 1997 to

Present)[.]” No certificate of good standing was provided at the time of the Respondent’s admission for either the Bar Association of the District of Columbia or that of any other state.

On December 18, 2018, a letter was sent to the Respondent advising him of the rule changes and requesting that he submit an original and certified certificate of good standing to the Court within thirty (30) days or face possible expulsion from the Muscogee (Creek) Nation Bar. (*See Exhibit 1*). In the weeks that followed, the Respondent contacted the Office of the Supreme Court via telephone and email requesting that this Court reconsider its application of the new *Rules* to previously admitted Bar Members, as, the Respondent argued, such application was in violation of Article 1, Section 10, of the U.S. Constitution, forbidding a state to pass “any bill of attainder, ex post facto law, or law impairing the obligation of contracts... [.]” The Court reviewed the Respondent’s claim and determined that its application of the new *Rules* towards previously admitted Bar Members would not be in violation of the ex post facto clause of the U.S. Constitution, as the new *Rules* were not criminal or punitive in nature, but concerned a civil regulatory scheme, clearly rationally related to the Court’s legitimate goal of insuring a proficient attorney Bar for the protection of individuals coming before the courts of the Muscogee (Creek) Nation.

On January 31, 2019, the Court sent a second letter to the Respondent advising him that, following review of his ex post facto claim, the Court stood by its previous request for submission of an original and certified certificate of good standing from the Bar Association of the District of Columbia or from any other state of the United States. (*See Exhibit 2*). The Court extended the Respondent’s submission deadline for another thirty (30) days from the date of the letter.

On February 11, 2019, the Respondent called the Office of the Supreme Court and advised that he received the Court’s January 31, 2019, letter and that he would be submitting a second,

formal request for reconsideration within the coming days. As of the date of this Administrative Order, no such formal request for reconsideration has been received by the Clerk of the Supreme Court. Further, this Administrative Order comes after the expiration of the Respondent's second thirty (30) day deadline/extension of time in which to show proof of good-standing in the highest court of any state of the United States or in the District of Columbia.

## II. CANDOR TOWARDS THE COURT

During communications with the Respondent, as described in part 1, above, the Court independently contacted the Bar Association for the District of Columbia to verify the Respondent's membership in that organization (based on the Respondent's claim of membership in his 2005 *Application* to the Muscogee (Creek) Nation Bar Association). The Court was advised on February 12, 2019, that no record was found under the Respondent's name. (See **Exhibit 3**). On February 13, 2019, a request was sent to the Respondent for his District of Columbia bar number, so that a second search could be conducted by the Bar Association for the District of Columbia using this unique identifier. (See **Exhibit 4**). The Respondent replied, essentially claiming that the "Bar Association of the District of Columbia[,]" as described in the Respondent's *Application*, was not the licensing body that manages the attorney bar for the District of Columbia, but was some other voluntary, non-licensing organization by the same name. This Court can find no record of the existence of such an organization.

At this time, the Court also located a March 26, 1999, Nevada Supreme Court *Order Removing Benjamin Zvenia from List of Appointed Non-Attorney Arbitrators*, wherein, the Nevada State Bar Association was directed to conduct an investigation into the Respondent concerning his "qualifications and past record" and to make a recommendation concerning the Respondent's fitness as an arbitrator. (See **Exhibit 5**). The Nevada State Bar issued its report and

recommendation in an October 1, 1998, filing wherein it was found that the Respondent was previously convicted of practicing medicine without a license, that he claimed to be a member of a foreign bar association of which he was not a registered member and that the Respondent misrepresented to the Nevada Bar Association that he held a PH.D. (*See Exhibit 6*). Based on these findings, the Nevada State Bar concluded that “it is fair to inquire with a curious eye as to whether Mr. Zvenia in fact holds a PH.D. or similar advanced degree, or is in fact a law graduate.” Further finding that the Respondent was “not qualified to be listed as an Arbitrator in the State of Nevada.” Based on these recommendations, the Nevada Supreme Court removed the Respondent from its list of non-attorney appointed arbitrators. The Respondent failed to disclose this *Order* to the Muscogee (Creek) Nation Bar Association, or to this Court at the time of his admission and in the years following.

Additionally, the Court located a July 26, 2000, *Order of Disbarment*, filed by the Duckwater Shoshone Tribal Court concluding that the Respondent “was not candid with this Court and failed to appraise this Court of his 1994 felony conviction, not graduating from an accredited college of law, and his removal from the Nevada Supreme Court’s List of Appointed Non-Attorney Arbitrators, thereby interfering with this Court’s proper initial and continuing consideration to allow him to practice law, that Benjamin P. Zvenia is hereby disbarred from the practice of law before the courts of the Duckwater Shoshone Nation Bar Association Member List.” (*See Exhibit 7*). The Respondent failed to disclose this *Order* to the Muscogee (Creek) Nation Bar Association, or to this Court at the time of his admission and in the years following.

This Court has long adopted a modified version of the Model Rules of Professional Conduct. (Hereinafter, the “Model Rule(s)”).<sup>3</sup> *Model Rule 8.1* provides the following:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, *shall not*:

- (a) Knowingly make a false statement of material fact; or
- (b) *Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter*, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

As the licensing body for the Muscogee (Creek) Nation Bar Association, it should be self-evident that the duty of the Court in its review of Bar applications is to insure that only qualified and ethically fit individuals are granted admission to practice law before the Nation’s courts. As a practical matter, this can only be achieved when the applicant is forthcoming about his record, education and professional affiliation credentials. This would include open disclosure by the applicant of any past criminal convictions or orders from courts of other jurisdictions concerning the applicant’s criminal or professional record or other issues of moral import. By failing to disclose issues of this kind, an applicant misrepresents his qualification and fitness to the Court in violation of Rule 8.1 of the *Model Rules*.

The Respondent failed to disclose his criminal record to the Court and has failed to disclose orders from two (2) jurisdictions (that are known to this Court.) concerning his deficient, if not fraudulent, applications for professional certification in those jurisdictions, both in violation of Rule 8.1 of the *Model Rules of Professional Conduct*. The Respondent has also failed to provide

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<sup>3</sup> A modified version of the Model Rules of Professional Conduct was initially adopted by this Court on November 13, 2007. However, application of the Model Rules has long held strong persuasive authority with this Court and the management of its Bar membership since its initial adoption by the House of Delegates of the American Bar Association on August 2, 1983.

proof of membership in a state bar association or the District of Columbia in violation of the *Rules Governing the Muscogee (Creek) Nation Bar Association*. For these reasons the Court issues its Order immediately disbarring Benjamin Zvenia from the practice of law before the courts of the Muscogee (Creek) Nation and removing his name from the role of admitted Bar Members. The Court further orders Benjamin Zvenia to give notice to all bar or professional authorities of any jurisdiction in which he currently practices, or in which he applies for membership in the future, of this Court's order, and give notice to any and all clients relying on his admission in this Court of this Court's order.

**IT IS HEREBY ORDERED** that Benjamin Zvenia is immediately disbarred from the practice of law before the courts of the Muscogee (Creek) Nation and shall be immediately removed from the roll of admitted bar members.

**IT IS FURTHER ORDERED** that Benjamin Zvenia shall give notice to all bar or professional authorities of any jurisdiction in which he currently practices, and/or is admitted to practice, of this Court's order within thirty (30) days of this order's filing date.

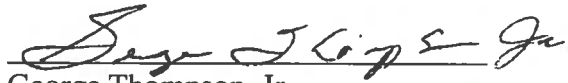
**IT IS FURTHER ORDERED** that Benjamin Zvenia shall give notice to all bar or professional authorities in which he seeks admissions in the future of this Court's order.

**IT IS FURTHER ORDERED** that Benjamin Zvenia shall give notice to all of his clients relying on his admission in this Court of this Court's Order within thirty (30) days of this order's filing date.

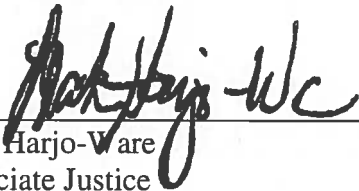
FILED AND ENTERED: March 14, 2019



Andrew Adams III  
Chief Justice



George Thompson, Jr.  
Vice-Chief Justice



Leah Harjo-Ware  
Associate Justice



Richard C. Lerblance  
Associate Justice



Kathleen Supernaw  
Associate Justice



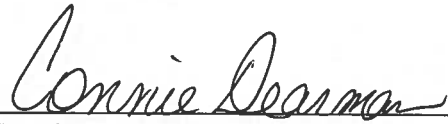
Montie Deer  
Associate Justice

MCNAC, J, not participating in the decision.



**CERTIFICATE OF MAILING**

I hereby certify that on March 14, 2019, I mailed a true and correct copy of the foregoing Administrative Order with proper postage prepaid to each of the following: Benjamin Zvenia, 5940 South Rainbow Boulevard, #1000, Las Vegas, Nevada 89118. A true and correct copy was also hand-delivered to: Donna Beaver, Clerk of the Muscogee (Creek) Nation District Court.

  
\_\_\_\_\_  
Connie Dearman, Court Clerk

Este Cvte Mvsko ke Etlwv Fvtceekv Cuko Hvlwat



Muscogee (Creek) Nation Supreme Court

P.O. Box 546 • Okmulgee, OK 74447

Telephone: 918-758-1439 • 918-732-7633

Fax: 918-758-1440

Benjamin Zvenia  
[REDACTED]  
[REDACTED]

December 18, 2018

Dear Bar Member,

On June 4, 2018, the Justices of the Muscogee (Creek) Nation Supreme Court entered Administrative Order 2018-02, *In re: Adoption of Rules Governing the Muscogee (Creek) Nation Bar and Attorney Professional Conduct*. This Order formalized the admissions requirements for the Muscogee (Creek) Nation Bar Association, including requirements that each applicant provide an "official, original certificate of good standing issued by the bar of the highest court of any state of the United States or the District of Columbia dated no more than ninety (90) days prior to the date of application to the M(C)N bar[.]"

Our records do not indicate that you have provided the Supreme Court Clerk with an "official, original certificate of good standing issued by the bar of the highest court of any state of the United States or the District of Columbia" for inclusion in your file. The Court is requesting your assistance in updating your file with this required document. Please be advised that failure to submit this certificate within thirty (30) days of the date listed above will result in the suspension of your license to practice law before the Muscogee (Creek) Nation Courts.

Should you have any questions, please feel free to email [REDACTED] or call our office at the number listed above.

Sincerely,

  
Joshua W. Atwood

Staff Attorney

Muscogee (Creek) Nation Supreme Court

Este Cvte Mvskoke Etlwv Fvtceckv Cuko Hvlwat



Muscogee (Creek) Nation Supreme Court

P.O. Box 546 · Okmulgee, OK 74447

Telephone: 918-758-1439 · 918-732-7633

Fax: 918-758-1440

Hon. Dr. Benjamin Zvenia  
[REDACTED]  
[REDACTED]

January 31, 2019

Honorable Dr. Zvenia,

The Court has reviewed your January 22, 2018, written objection to our December 18, 2018, *letter* advising you that, pursuant to our recently adopted Administrative Order, 2018-02, *In re: Adoption of Rules Governing the Muscogee (Creek) Nation Bar and Attorney Professional Conduct*, each MCN bar member must be a member in good standing with the bar of the highest court of any state of the United States or the District of Columbia, and requesting that you show proof of such state/D.C. membership within thirty (30) days of the *letter* or face expulsion from the Muscogee (Creek) Nation Bar Association.

The Court has considered your argument that such a provision is in violation of Article 1, Section 10, of the United States Constitution, which forbids a state to pass "any bill of attainder, ex post facto law, or law impairing the obligation of contracts...[.]" However, upon review of U.S. Supreme Court precedent on the subject, it is clear to our Court that the ex post facto prohibition does not apply in this civil/regulatory setting.

The U.S. Supreme Court has consistently held that "[t]he Ex Post Facto Clause flatly prohibits retroactive application of penal legislation." [Emphasis Added] (See, most recently, Bank Markazi v. Peterson, 136 S.Ct. 1310.) In many cases the U.S. Supreme Court has concluded specifically that ex post fact prohibitions only apply in a criminal context. (See, Calder v. Bull, 3 U.S. 386, the first U.S. Supreme Court decision concerning the application of the ex post facto clause, in which the Court provided the following advice, "I will state what laws I consider ex post facto laws, within the words and the intent of the prohibition. 1st. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2nd. Every law that aggravates a crime, or makes it greater than it was, when committed. 3rd. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender[.]" see also Carpenter v. Pennsylvania, 58 U.S. 456, 463, where the Court concluded that "if the [Act] involved a change in the law of succession, and could be regarded as a civil regulation for the division of the estates...this court

EXHIBIT 2

could not pronounce it to be an ex post facto law, within the 10<sup>th</sup> section of the 1<sup>st</sup> article of the constitution.” [Emphasis Added]).

While admittedly, civil legislation may sometimes produce punitive results, we are confident that Administrative Order 2018-02 concerns a civil regulatory scheme (*i.e.* management of our Bar membership), not a penal change. Such legislation has been consistently upheld by the U.S. Supreme Court over ex post facto challenges (*See Hawker v. People of New York*, 170 U.S. 189, where a change in the state’s medical licensing requirements retroactively prohibited the petitioner from maintaining his medical license due to a prior felony conviction. The Court, citing *Dent v. West Virginia*, 129 U.S. 114, held that “[t]he power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance as well as of deception and fraud.”). Our Court has made the conscious decision that our citizenry will be better protected and ensured more effective assistance of counsel when the Nation’s Bar membership are required to be state licensed attorneys, having completed formal legal training and having passed a state bar exam exhibiting their proficiency in the law.

Additionally, with respect to any possible due process concerns, *substantively*, we are of the opinion that Administrative Order 2018-02 is clearly rationally related to our legitimate goal of insuring a proficient attorney Bar for individuals coming before the Courts of the Muscogee (Creek) Nation, and *procedurally*, that each Bar Member was timely notified in early April of 2018 of proposed amendments to the MCN Rules of Professional Conduct (you were specifically notified on April 2, 2018, at 12:28 p.m., CST) and provided sixty (60) days, or until June 1, 2018, to submit comments or objections to these proposed changes. No comments were received and the proposed revisions went into effect on June 4, 2018.

As such, we stand by our request for evidence of your state bar good standing and will extend our request for an additional thirty (30) days from the date of this letter for you to provide our office with an original, certified certificate of good standing. Following this thirty (30) day extension, we will move forward with removing your name from our bar rolls.

Sincerely,

A handwritten signature in black ink that reads "Andrew Adams III". The signature is fluid and cursive, with the "III" written in a slightly larger, more formal script at the end.

Andrew Adams III  
Chief Justice  
Muscogee (Creek) Nation Supreme Court

**Josh Atwood**

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**From:** Nicole (D.C. Bar Member Services) [REDACTED]  
**Sent:** Tuesday, February 12, 2019 3:43 PM  
**To:** Josh Atwood  
**Subject:** Ticket #82151 Re: [EXTERNAL]Bar Member Good-Standing Request

##- Please type your reply above this line -##

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**Nicole (DC Bar)**

Feb 12, 4:42 PM EST

Mr. Atwood,

Thank you for contacting Member Services at the D.C. Bar. I was unable to locate a member by that name. Would it be under a different name perhaps?

Best,

Nicole Fisher D.C. Bar Member Services

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**EXHIBIT 3**



**From:** [Josh Atwood](#)  
**To:** [REDACTED]  
**Subject:** Bar Member Good-Standing Request  
**Date:** Tuesday, February 12, 2019 2:46:25 PM

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Dear D.C. Bar, Member Services,

My name is Joshua Atwood. I am the Staff Attorney for the Muscogee (Creek) Nation Supreme Court. Our Court manages the Muscogee (Creek) Nation's tribal bar membership. In order to maintain membership with our bar, members are required to be licensed in either a state bar association or in the District of Columbia. One of our bar members has listed that he is a member in good standing with the District of Columbia Bar Association. However, I am unable to find any record of his membership on your site.

I was hoping you could provide information on this individual, specifically, (1) if he is currently a member in good standing with the D.C. Bar, and (2) if he has ever been a member in good standing with the D.C. Bar. His application with our Court states that he was admitted to the D.C. Bar in 1997.

The individual's name is Benjamin P. Zvenia, date of birth [REDACTED].

Thank you for any help you can provide in this matter.

Sincerely,

Joshua W. Atwood  
Staff Attorney

Muscogee (Creek) Nation, Supreme Court  
P.O. Box 546  
Okmulgee, Oklahoma 74447  
Office: 918-758-1439  
Fax: 918-758-1440  
[REDACTED]

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## Josh Atwood

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**From:** Josh Atwood  
**Sent:** Wednesday, February 13, 2019 2:58 PM  
**To:** 'Hon. Benjamin Zvenia'  
**Subject:** RE: Followup

Hon. Dr. Zvenia,

In reviewing your original October 18, 2005, *Application for Admission to the Muscogee (Creek) Nation Bar Association*, the Court noticed that you listed the "Bar Association of the District of Columbia (From 1997 to Present)" under the Bar Membership section of the Application.

The Court is requesting that you provide our office with your current bar number with the D.C. Bar Association, or, if you are no longer a member, to provide our office with any bar number you were previously issued by the D.C. Bar Association since your admittance in 1997.

Sincerely,

Joshua Atwood  
Staff Attorney  
Muscogee (Creek) Nation Supreme Court

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**From:** Hon. Benjamin Zvenia [mailto: ]  
**Sent:** Tuesday, January 22, 2019 11:34 AM  
**To:** Josh Atwood < >  
**Subject:** Followup

To Joshua:

See attached as we discussed and with respect to history, as you know, admission was based on all at that time by Judge Moore and Justice Oliver plus clerk at the time. All was done based on discussions at National Judicial College and tribal court programming the he and I attended which with respecting tribal sovereignty started with discussion from our Navajo classmates and fact of law school graduates taking their bar and being members of FBA but where else would status be given. Remember this was a tribal courts were starting to get more recognition with respect to VAWA orders etc and state bars have NO business with respect to tribal courts. In fact at that time and previous tribal bar members were looked at like international law equivalents. Not like today where your tribal bar membership NOW allows you to join the ABA and all is based on USDOL ECAB Ruling with Rule change from Oct 20, 2008 that I provided to you.

What the new rules do if followed, create an ex post facto situation which cannot stand. The court and bar association can make all tighter for NEW admissions but NOT for older current and active members of the bar. You can however mandate CLE to keep status as most bars do.

You need to realize what the admission means and for those of us over 10+ yrs active creates rights and protected by case law. Call me and if needed I'm happy to jump on conference call or as I do spend time in Lawton OK come by.

Thanks,

Ben

-----  
**Hon. Dr. Benjamin Zvenia**

Phone: [REDACTED]

Fax: [REDACTED]

Cell: [REDACTED]

Email: [REDACTED]

[REDACTED]

**This email and any attachments thereto are intended only for use by the addressee(s) named here in and may contain legally privileged and/or confidential information. The unauthorized disclosure of interception of Email is a federal crime. See 18 U.S.C. § 2517(4). If you are not the intended recipient of this email, you are hereby notified any dissemination, distribution or copying of this email, and any attachments thereto, is strictly prohibited. If you receive this email in error please immediately notify us at [REDACTED] and permanently delete the original copy and any copy of any email, and any printout thereof.**



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DEVELOPMENT  
OF ALTERNATIVES TO TRADITIONAL  
LITIGATION FOR RESOLVING LEGAL  
DISPUTES.

ADKT 126

**FILED**

MAR 26 1999

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER REMOVING BENJAMIN ZVENIA  
FROM LIST OF APPOINTED NON-ATTORNEY ARBITRATORS

On April 10, 1998, pursuant to a certification from the State Bar of Nevada and an order of this court, Benjamin Zvenia was appointed as a non-attorney arbitrator to the Court Annexed Arbitration Program. Thereafter, on May 14, 1998, this court dismissed an appeal by Zvenia from a judgment of conviction. Zvenia, who claims to be a naturopathic physician, was convicted of practicing medicine without a license and sentenced to a six-year prison term.

Accordingly, on September 2, 1998, this court directed the state bar to conduct an investigation into Zvenia's qualifications and past record and to make a recommendation with respect to Zvenia's fitness as an arbitrator. The state bar filed a timely recommendation and report with respect to Zvenia, in which it submits that Zvenia is not qualified to be listed as an arbitrator. Zvenia has not responded to the state bar's report.

In support of its recommendation, the state bar discloses, among other things, that Zvenia has been charged with and/or convicted of numerous offenses and that Zvenia has misrepresented his professional status and educational background. We therefore agree with the state bar that Zvenia is not qualified to be listed as an arbitrator in the State of

EXHIBIT 5

99-13465

Nevada. Accordingly, we remove his name from the list of non-attorneys appointed as arbitrators.

It is so ORDERED.

Rose, C.J.  
Rose

Young, J.  
Young

Maupin, J.  
Maupin

Shearing, J.  
Shearing

Agosti, J.  
Agosti

Leavitt, J.  
Leavitt

Becker, J.  
Becker

CC: All District Court Judges  
Hon. Steven D. McMorris, Special Master/  
Arbitration Commissioner  
Thomas W. Biggar, Discovery/Arbitration Commissioner  
Wesley M. Ayers, Discovery/Arbitration Commissioner  
David I. Nielson, Discovery Commissioner/  
Arbitration Program  
Wayne Blevins, Executive Director  
Christopher T. Boadt, Director of Continuing Legal  
Education, State Bar of Nevada  
Benjamin Zvenia

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3  
4 **IN THE MATTER OF THE DEVELOPMENT**  
5 **OF ALTERNATIVES TO TRADITIONAL**  
6 **LITIGATION FOR RESOLVING LEGAL**  
7 **DISPUTES**

ADKT: 126

**FILED**

OCT 01 1998

8                                   **RECOMMENDATION AND REPORT**  
9 **PURSUANT TO ORDER OF REFERRAL**  
10 **RE: BENJAMIN ZVENIA**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. Bloom*  
CHIEF DEPUTY CLERK

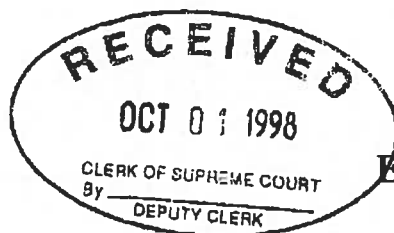
11           The State Bar of Nevada agrees with this Honorable Court that Benjamin Zvenia is not qualified  
12 to be listed as an arbitrator in the State of Nevada.

13           Pursuant to this Court's Order of September 2, 1998, the State Bar did conduct an investigation  
14 into Mr. Zvenia's qualifications and past record. The following is apparent.

15           In its Order of referral to the State Bar of Nevada, this Court noted that it dismissed an appeal  
16 by Zvenia from a judgment of conviction of one count of practicing medicine without a license. In its  
17 Order dismissing the appeal, this Court noted that Appellant, who claims to be a naturopathic physician,  
18 engaged in conduct defined as the practice of medicine and, consequently, was sentenced to a six year  
19 prison term and ordered to pay a fine. Because it is evident that Mr. Zvenia has a prior conviction, the  
20 State Bar conducted some inquiry into his past criminal record and was able to obtain a listing of various  
21 offenses which evidently Mr. Zvenia has been charged with or convicted of. **Exhibit 1.**

22           The State Bar is aware of a situation which occurred in Immigration Court earlier this year  
23 wherein Mr. Zvenia made application to the Court to practice therein. Mr. Zvenia's letter to the  
24 Honorable Judge Mullins is included herein. **Exhibit 2.**

25           It is apparent from Mr. Zvenia's letter to Judge Mullins that the basis upon which he made  
26 application to practice in Immigration Court was his alleged licensure as an attorney by the Supreme  
27 Court of the Federated States of Micronesia. However, the Chief Clerk of Court of the Supreme Court  
28



1 of the Federated States of Micronesia indicated at approximately the same relevant time period, that Mr.  
2 Zvenia was not a member of the Bar of the Federated States of Micronesia. **Exhibit 3.**

3 Based upon the fact that Mr. Zvenia has been convicted of practicing medicine without a license,  
4 it is apparent to the State Bar that there is an issue concerning the truthfulness surrounding any  
5 professional status or professional degree that Mr. Zvenia may claim he possesses. In addition, as is  
6 apparent above, in this same vain evidently Mr. Zvenia has claimed to be a member of a foreign bar of  
7 which he is not. Based upon these concerns, the State Bar believes there is reason to question the  
8 legitimacy of Mr. Zvenia's representations of holding of advanced degrees or professional status. In  
9 addition to the above, of relevant note, Mr. Zvenia has represented that he is a PH.D. as is evident by  
10 the labeling of his name followed by the designation "PH.D." on a check written to the State Bar of  
11 Nevada on or about December 5, 1997 as payment prior to his attendance at the Arbitration Training  
12 Program. **Exhibit 4.** In addition, Mr. Zvenia has indicated he is a law graduate in paperwork submitted  
13 to the State Bar which accompanied his request to participate in Arbitration Training. **Exhibit 5.**

14 Based upon the above, the State Bar believes it is fair to inquire with a curious eye as to whether  
15 Mr. Zvenia in fact holds a PH.D. or similar advanced degree, or is in fact a law graduate.

16 As spelled out in the Affidavit of Rob W. Bare, Bar Counsel, on September 23, 1998, at  
17 approximately 2:50 p.m., Bar Counsel had a personal conversation with Benjamin Zvenia, which followed  
18 Bar Counsel's phone call to him. **Exhibit 6.** Bar Counsel asked him if he was a law school graduate and  
19 he said that he was and he had graduated from a law school that is recognized by the California Bar. He  
20 stated it is in Burbank, California known as Kensington College School of Law.

21 Bar Counsel asked him about his purported status as to holding a PH.D., he indicated that he  
22 graduated and received a PH.D. from a school in Puerto Rico. Bar Counsel asked that he forward to the  
23 Bar by September 25, 1998, the paperwork evidencing that. He indicated he would, as he was "just  
24 across the street and he would run it right over."

25 On September 28, 1998, Office of Bar Counsel contacted Kensington University, College of Law,  
26 located in Glendale, California. The office of Bar Counsel spoke with Norma Machulla, Law School  
27 Administrator, and she informed that there is no record of a Benjamin Zvenia graduating from their  
28

1 school. She also stated that Mr. Zvenia did submit his application to their University in June, 1994 and  
2 he never completed enrollment.

3 Further, as of the filing of the instant Recommendation and Report, no documents concerning Mr.  
4 Zvenia's "PH.D." or any other documents have been received by the Office of Bar Counsel.

5 Based upon the above, the State Bar agrees that Benjamin Zvenia is not qualified to be listed as  
6 an Arbitrator in the State of Nevada. This is because there appears to be serious questions as to his  
7 character for honesty and truthfulness concerning his professional background and/or status.

8 DATED this 29th day of September, 1998.

9 STATE BAR OF NEVADA

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ROB W. BARE, Bar Counsel  
Nevada Bar No. 4914  
600 E. Charleston Blvd.  
Las Vegas, NV 89104  
(702) 382-2200

NM-ZVENIA C BENJAMIN SID- 000 55-  
 CS-0915646 BD- RC-W SX-M HT-609 UT-180 HR-BRO TY-BND  
 AX-ZVENIA BENJAMIN PHILLIP SID- 001  
 FI-13 U SPC  
 FI-18 U  
 BP-NEW YORK, NY FB-960 012 JAS SI- 01-CON REG 02-F/A NO  
 A1-995 SIERRA VISTA, #322, LAS VEGAS, NV 89109 081491  
 CP151 MPD MUST REG PRAC MED W/O LIC#99837 94 NV 041994 \*\*\* MUST REGISTER \*\*\*  
 CP152 MPD FELONY FLSE USE SS # (FED) 89 NV 121989 REGISTERED  
 CP153 MPD FELONY UNAUTH USE ACC DEV (FED) 89 NV 121989 REGISTERED  
 CP154 MPD FELONY FLSE STMT LOAN (FED) 89 NV 121989 REGISTERED  
 CP155 NLV FELONY FUG LARC/GT/FRAUD 89 NV 121989 REGISTERED  
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 FI252 000000 MPD\*\*ALSO USES SS-090325717\*\*  
 FI253 000000 MPD\*\*90 DAY TEMP PER ARRESTS EXP 082190\*\*032190  
 FI254 000000 MPD- \*\*\* AFIS 12-16-88 \*\*\*  
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 DR254 MPD 101088 VEH THEFT R/O | RECOVERED 101088 88-96135  
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 AR245 MPD 006 041291 DISP DANG DRUGS 90-85374 MPD  
 AD245 MPD 000 041994 DISP DANG DRUGS RBK MPD CJT-99837  
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 AD246 MPD 004 041994 FORG PRESCRIP RBK MPD CJT-99837  
 C99837X FIN DISM  
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 AD248 MPD 004 041994 DISP DANG DRUGS MPD WA-4516-90F  
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 AD249 MPD 007 041994 PRACT MED U/ASSUMED NAME MPD WA-4516-90F  
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 AD252 MPD 004 041994 FORG PRESCRIP MPD WA-4516-90F  
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 AR254 USN 002 011389 FED FLSE INFO T/FED RDR 010389MPD  
 AR255 ZZZ 001 120888 FUG LARC/GT/FRAUD RBK NCF 011489MPD  
 FL FUG-FL

EXHIBIT

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**PASSO, ZVENIA & ASSOCIATES**  
a Professional Association

**Richard A. Passo, Esq.**  
(Member California Bar)

**Benjamin Zvenia, Esq.**  
(Member Federated States of Micronesia Bar)

[Principals not registered with Nevada Bar]

VIA FACSIMILE AND U.S. MAIL

March 24, 1998

The Honorable Judge Mullins  
EOIR - Immigration Court

Re: Bar admissions of Ben Zvenia and of Passo, Zvenia & Associates

Dear Judge Mullins:

Enclosed please find documentation which should allay any concerns on your part, the INS and the DOJ concerning my formal admission last November 1997 to the Bar of the Federated States of Micronesia (which, as you know, is part of the 9th Circuit Court of Appeals of the United States of America). This documentation includes (1) correspondence from Salomon Saimon, name partner and Trial Counselor of the Law Offices of Hollinrake and Saimon. (Incidentally, this firm is the largest and most prestigious law firm in the Federated States of Micronesia.) and (2) the home page of the web site of the Law Offices of Hollinrake and Saimon (its URL is: <http://www.fsm/hollinrake>). This Internet information is provided as adequate background material to confirm our belief for the authenticity of my Bar Admission there.

As my partner, Rick Passo, and I indicated to your staff and as I personally indicated to you yesterday, the Federated States of Micronesia is 17 hours ahead of Las Vegas time. I was able to contact personally the office this morning, but Mr. Saimon and the office associates were either tied up or out of the office. As indicated in the aforementioned documentation, my bar license hangs in his office in Kolonia, Pohnpei, in the Federated States of Micronesia. As soon as is humanly possible, a copy will be sent to you to be placed in your files. In the interim, as was also detailed to your staff, if there is truly a problem, I should be covered by my admission to the Duckwater Shoshone Tribal Court (Bar No. 0009) and the Inter-Tribal Court of Appeals of Nevada, which are Courts of Federal Jurisdiction (documentation of these admissions is also enclosed). Furthermore, my partner Rick Passo is a member of the State Bar of California, the 9th Circuit Court of Appeals and the United States Districts Court for the Central, Eastern and Southern Districts of California. If necessary, as I discussed with you yesterday, Rick is willing to supervise all my immigration files, until you, the INS and the DOJ are satisfied with my bar status.

Additionally, as in indicated in the enclosed correspondence from Salomon Saimon of the Law Offices of Hollinrake and Saimon, Mr. Saimon intends to be in the Las Vegas area "sometime in late March or early April 1998 to develop [our] Las Vegas Office as a correspondent office for [the Law Offices of Hollinrake and Saimon]." I am sure that Salomon would be happy to meet with you at that time should you still require any further clarification or the legitimacy of the ongoing, and developing, relationship between the largest law firm in the Federated States of Micronesia and Passo, Zvenia & Associates.

MAR-24-1998 16:18  
09-21-98 23:17

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EXHIBIT

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Ltr. to Judge Mullins  
Re: Passo, Zvenia & Assoc.  
Dtd. 3/24/98  
Page 2

I trust that you share the concerns of both Rick and I that my professional reputation -- and that of Passo, Zvenia & Associates -- not be tarnished by what is at most a clerical error. Both Rick and I hold and cherish deeply the highest canons of professional ethics as attorneys. I trust that you have always found that my professional conduct has always been of the highest order and that my zealous advocacy for all of my immigration clients has always been beyond reproach. Please rest assured that both Rick and I will endeavor to do whatever you require to address your concerns. All we ask is for the professional courtesy of having adequate time to gather any further information that might be required -- especially given the geographic separation between Las Vegas and the Federated States of Micronesia.

The bottom line for me, for Rick and for Passo, Zvenia & Associates always has been and always will be what is best for our clients and what is best for the professional ethical standards which we hold dearly. With that as our sole goal, Rick and I request your advice on how to best handle the multiple cases that Passo, Zvenia & Associates have on calendar for Thursday, March 26, 1998. If necessary, Rick is willing to step in for me at that time. However, since I am most familiar with immigration law and with these particular cases, that would not necessarily be the best for these clients. (Plus, this would require Rick to clear an entire day's calendar of clients which has long been set in order to accommodate this request. However, Rick would be happy to do so at some personal and client expense, if absolutely necessary.)

Please call with respect to guidance for Thursday's calendar.

Very truly yours,



Benjamin Zvenia, Esq.

cc:  
1-file  
1-S. Simon, FSM

encl:  
-material from FSM  
-material from Tribal Courts



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03/18/98 WED 09:48 FAX 320X750

FSM SUPREME CT

0001



**SUPREME COURT  
of the  
FEDERATED STATES OF MICRONESIA**

**Richard W. Benson**  
Associate Justice

**Andres L. Amaraich**  
Chief Justice

**Martin G. Young**  
Associate Justice

☐ **CHAMBER STATE**  
P.O. Box 100  
Chambers, MS 39201  
Tel: 662/434-1111  
Fax: 662/434-1111

☐ **NEWARK STATE**  
P.O. Box 100  
Newark, NJ 07102  
Tel: 973/596-1111  
Fax: 973/596-1111

☐ **POCONO STATE**  
P.O. Box 100  
Pocono, PA 18344  
Tel: 610/534-1111  
Fax: 610/534-1111

☐ **YAP STATE**  
P.O. Box 100  
Yap, MS 39201  
Tel: 662/434-1111  
Fax: 662/434-1111

March 18, 1998

**Mr. James Stovall,**  
**Special Counsel**  
**FSM Embassy**  
[Redacted Address]

**Fax:** [Redacted]

**Dear Mr. Stovall:**

Greetings from Palikir. I have reviewed the roll of attorneys certified to practice law before the Supreme Court of the Federated States of Micronesia, and that Mr. Benjamin Iwanis is not a member of the FSM Bar.

Sincerely,

*[Signature of Robert M. Keller]*  
**Robert M. Keller**  
Chief Clerk of Court

MAR-25-1998 14:29  
09-21-98 23:17

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BENJAMIN ZVENIA, P.H.D.

94-152 949  
1212  
94900419

505

DATE Dec 5, 1997

State Bar of Nevada

PAY TO THE ORDER OF

One hundred seventy-five dollars & 00/100

\$ 175.00

DOLLARS



U.S. BANK 1-800-US BANKS

U.S. BANK OF NEVADA  
NORTH AND SOUTH OFFICES

MEMO

Arbitration LLC

EXHIBIT

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DEC 08 1997

STATE BAR OF NEVADA

## ARBITRATION TRAINING

Please photocopy this page before you mail it to us, and keep it for your records.

No confirmations will be sent, unless requested below.

Please sign the following:

I have practiced my profession for eight years or more. Please sign on the line below.

[Signature] Health Care & Law Graduate

Please check the location where you will attend:

☐ Reno • Thursday, December 4, 1997 • The National Judicial College

☐ Las Vegas • Friday, December 5, 1997 • CCSN High Desert Conference Center

Nevada Bar Card Number \_\_\_\_\_

Name Benjamin Zvenia

Where do you work? \_\_\_\_\_

Address \_\_\_\_\_

City/State/ZIP \_\_\_\_\_

FAX \_\_\_\_\_

E-mail \_\_\_\_\_

NOTE: Add \$25 Late Fee to the prices below if paying after Tuesday, December 2, 1997.

All registrants receive a complete set of written materials.

☒ \$225 tuition.

☒ \$150 tuition for those who have to travel over 100 miles round trip to attend.

☐ Check here if you would like to be faxed a conformation.

175 **Total enclosed**

Please make checks payable to: State Bar of Nevada

### Paying by plastic!

Please indicate the type of card: ☐ Visa ☐ MasterCard ☐ American Express

Account Number \_\_\_\_\_ Expiration \_\_\_\_\_

Date \_\_\_\_\_

Name as it appears on card \_\_\_\_\_

Signature \_\_\_\_\_

Mail to:

Arbitration CLE- State Bar of Nevada

600 E. Charleston

Las Vegas, Nevada 89104

☐ I am also licensed in California and wish to apply this seminar toward the MCLE requirements of the State Bar of California.

Course #538

Course Level: Intermediate

EXHIBIT

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AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

ROB W. BARE, under penalty of perjury, being first duly sworn, deposes and says  
as follows:

1. That your Affiant is a licensed attorney in Nevada and currently employed as Bar  
Counsel for the State Bar of Nevada.

2. That on September 23, 1998, I personally contacted Benjamin Zvenia, by  
telephone, to determine what law school he had graduated from and where he received his  
PH.D.

3. That during the telephone conversation, Benjamin Zvenia stated he was a  
graduate from a law school recognized by the California Bar. According to Mr. Zvenia, the law  
school is located in Burbank, California and is known as Kensington University, College of  
Law. Mr. Zvenia also indicated that he graduated and received a PH.D. from a school in  
Puerto Rico.

4. That I requested Mr. Zvenia provide to me by September 25, 1998 the  
paperwork evidencing the same. Mr. Zvenia indicated he would, as he was "just across the  
street and he would run it right over."

5. That on September 28, 1998, the office of Bar Counsel contacted Kensington  
University, College of Law located in Glendale, California. The Law School Administrator,  
Norma Machulla stated that there was no record of a Benjamin Zvenia graduating from their  
school. She also stated that Mr. Zvenia did submit an application to the University in June,  
1994 and he never completed enrollment.

///

///

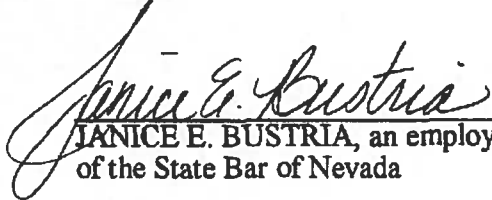




**CERTIFICATE OF MAILING**

I, hereby certify that on the 30<sup>th</sup> day of September, 1998, the foregoing  
**RECOMMENDATION AND REPORT PURSUANT TO ORDER OF REFERRAL RE:**  
**BENJAMIN ZVENIA** was served on the below party by mailing a copy thereof, first class mail,  
postage prepaid, to:

Benjamin Zvenia  

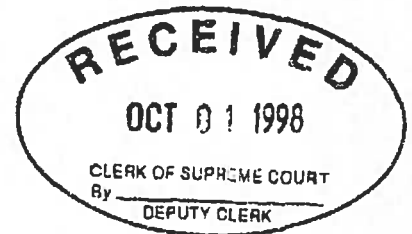

  
JANICE E. BUSTRIA, an employee  
of the State Bar of Nevada

# STATE BAR OF NEVADA

REPLY TO ☐ RENO ☒ LAS VEGAS

September 30, 1998

Ms. Janette Bloom  
Clerk of the Supreme Court  
[REDACTED]  
[REDACTED]




*RE: Recommendation and Report Pursuant to Order of Referral:  
Re: Benjamin Zvenia  
ADKT: 126*

Dear Ms. Bloom:

Enclosed are an original and three copies of the **RECOMMENDATION AND REPORT PURSUANT TO ORDER OF REFERRAL RE: BENJAMIN ZVENIA** for filing in this matter. Please file stamp our copy and return it to me in the self-addressed, stamped envelope I have provided for your convenience.

Thank you.

Very truly yours,

  
Janice E. Bustria  
Assistant, Ethics Department

Enclosures

The Court recognizes that the issue of affidavits of prejudice are very likely to be filed in the future. Conflicts, whether real or imagined, occur in courts everywhere. It is also recognized that in the instant case, it was very short-lived. The case was dismissed prior to any ruling that might have been made by the Court of Appeals.

Based on the foregoing, we now hold that the issue of who may rule on an affidavit of prejudice is not moot, and we will decide the issue.

## Second Issue

The second issue goes to the authority of the legislative body of the Tribes, the Colville Business Council, to enact a provision specifically directing the Court on who may rule on an affidavit of prejudice.<sup>2</sup> The trial court first found that it is a long-standing practice of the trial court judges to rule on affidavits of prejudice against themselves, finding the complained against judge was in the best position to make the decision on the affidavit. See Trial Court's Order Dismissing With Prejudice, entered June 13, 2000 and signed July 5, 2000, at pp. 2-3. A long-standing practice does not rise to the level of a law when the law is plain on its face. There is no ambiguity in the wording of the statute in which the trial court may exercise discretion in its interpretation.<sup>3</sup> The trial court has not offered any reasoning, nor have we found any, to dispute this rule of law.

The trial court also based its decision on a finding that to allow one judge to rule on another's affidavit of prejudice could, at some point, make such decisions rise to the level of a matter of law. In other words, asserts the trial court, once judge A rules on judge B's affidavit based on fact pattern C, judge A could be bound to rule on all fact patterns similar to C in the same manner, thereby become a rule of law.

We disagree with the trial court's conclusions that *stare decisis* would dictate granting an affidavit of prejudice against a judge in similar fact patterns. Every affidavit of prejudice must be reviewed particularly for the individual case and individual parties. The reviewing judge is not bound to automatically grant the affidavit, but may make an exhaustive inquiry into the nature of the affidavit. See *Stensgar v. CCT* [20 Indian L. Rep. 6151] and *St. Peter v. CCT*, 1 CCAR 73, at 74 [20 Indian L. Rep. 6108] (1993). Each reason will, by its very nature, be unique to each party filing the affidavit, dealing with the party's relationship with the judge.

It is very clear that the language in the affidavit of prejudice section<sup>4</sup> directs that a judge other than the affidavit judge

should make the ruling on the motion. The judge in this case reviewed the affidavit of prejudice and made a ruling on it. We hold that this was in error. This ruling will not impact the instant case because it is closed at the trial level. The impact is prospective. Based on the foregoing we grant the appeal and Reverse the trial court's holding.

*It is so Ordered.*

Counsel for appellants/minors: Wayne Svaren

Counsel for appellee/mother: James Edmonds

Counsel for appellee/tribes: Cynthia Jordan

## DUCKWATER SHOSHONE TRIBAL COURT IN THE MATTER OF THE CONTINUED ADMISSION OF Benjamin P. ZVENIA

No. 001-00 (July 26, 2000)

### Summary

The Duckwater Shoshone Tribal Court disbars the respondent from the practice of law before the Duckwater Shoshone Tribal Courts and strikes the respondent's name from the Duckwater Shoshone Nation Bar Association Bar Member List.

### Full Text

Before JOHNNY, Chief Judge

### Order of Disbarment

On July 26, 2000, this matter came before the Court for hearing as scheduled.

Present: Benjamin P. Zvenia, *pro se* (unrepresented), by telephone with permission of the Court. See Order to Show Cause and Order Setting Time and Date for Hearing at 3 (Duckwater Tr. Ct., July 18, 2000).

On July 18, 2000, this Court issued an order to Benjamin P. Zvenia "to show cause why his name should not be removed from the list of inactive members of the Duckwater Shoshone Nation Bar Association given his apparent lack of candor with this Court relative to him failing to notify the Court of his 1994 felony conviction, not graduating from an accredited college of law, and his removal from the [Nevada Supreme Court's] List of Appointed Non-Attorney Arbitrators." See Order to Show Cause and Order Setting Time and Date for Hearing at 3 (Duckwater Tr. Ct., July 18, 2000). This Court also removed Mr. Zvenia's name from the list of active bar members to inactive and noted the reason. See *id.*

The order to show cause was issued after the Court had received a complaint from the Las Vegas Metropolitan Police

tribunal judge. The initial judge shall refer the affidavit to another judge for decision.

Such an order of the Trial Court may be appealed immediately under the procedures established in the Subchapter on Appellate Proceedings of this Chapter, and all further actions in the case will be stayed pending outcome of the appeal. Only one such change will be allowed. Such an order of the Appellate Court shall not be appealable.

<sup>2</sup>At oral arguments the parties were asked to comment on the issue of whether or not the Colville Business Council violated separation of powers by enacting a law directing the Court on who could rule on the affidavit of prejudice. It appears the older statute left that decision up to the judge against whom the affidavit was filed. See CTC 1.5.04, 1979 version. Though the issue had not been briefed, nor could counsel supply any caselaw, it was generally felt that the Business Council could change the law on the affidavit of prejudice and it was not a violation of the separation of powers doctrine. Absent a fully developed argument to the contrary, this Court agrees.

<sup>3</sup>See CTC Section 1-1-7(b) *Principles of Construction*:

The following principles of construction will apply to all of the Law and Order Code unless a different construction is obviously intended: .... (b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

<sup>4</sup>1-1-143 *Disqualification of Judge*. Any party to any legal proceeding hereunder, including trials and appeals, may accomplish a change of assignment of his case from one judge to another upon filing an Affidavit of Prejudice with the Court, giving satisfactory reasons for the change. The Affidavit shall be in written form and must be filed with the Court before any trial action whatever has been taken by the ini-



Department, and supporting documents, that Mr. Zvenia is a convicted felon, was removed from the Nevada Supreme Court's List of Non-Attorney Arbitrators, and had not graduated from "an accredited college of law," the latter as required by Court Rule 1.1(a), (d).

During the hearing, Mr. Zvenia advised that because the Rules of this Court imposed no mandatory or express penalty on him to report his felony conviction, his removal from the Nevada Supreme Court's List of Non-Attorney Arbitrators, that he had not obtained a Juris Doctorate from Kensington University-College of Law, Glendale, California, that he decided not to report any of that to this Court, or words to that effect. See Tape Recording of Proceeding (Duckwater Tr. Ct., July 26, 2000).

Mr. Zvenia also suggested that by submission of his resume that in his view, he had never submitted a "petition" to this Court to be admitted to practice law, or words to that effect. See

Mr. Zvenia also asserted, for the first time, that in April 1998, he had submitted a letter to this Court during the tenure of former Court Clerk Lorinda Sam, that purported to ask this Court that he be moved from the status of "counselor," "counselor," "professional attorney," "attorney" (see Court Rule 1.1(a), (d)) to the status of "lay counselor," or "spokesman" (see Court Rule 1.1(c), (e)), and had telephone conversations with Ms. Sam, or words to that effect. See *id.*

When questioned about the lack of any such letter in his admission file, Mr. Zvenia merely stated he had proof that he had mailed an envelope to this Court which allegedly contained the purported letter. See *id.*

In addition to the felony conviction for practicing medicine without a license, Mr. Zvenia admitted he had one other conviction for violation of federal law related to obtaining a loan to which he was not entitled, using a military identification card that apparently had been altered or had an incorrect number on it. See *id.*

With regard to Mr. Zvenia's suggestion that his submission of a resume did not constitute the submission of a "petition," this Court finds Mr. Zvenia's position without merit. Court Rule 1.1 does not define a "petition." Mr. Zvenia submitted to this Court the same resume he submitted to the Nevada Supreme Court for admission to the List of Non-Attorney Arbitrators. Therefore, a "petition" constitutes whatever is submitted to the Court for purposes of admission to practice law and that which is acted upon by the Court.

The Duckwater Shoshone Law & Order Code does not impose either the Model Rules of Professional Conduct or the Model Code of Professional Responsibility on any person admitted to practice law in this Court. See generally, Duckwater Law & Order Code.

The lack of the adoption of the Model Code or Model Rules does not mean that these instruments, or others, should not be consulted in deciding what a person admitted to practice law should do.

The Model Code does not specifically compel a person applying to practice law or having been admitted to practice law, such as Mr. Zvenia, to report to this Court a felony conviction, not graduating from an accredited college of law, and or removal from a state or tribal supreme court's List of Appointed Non-Attorney Arbitrators, however, the Model Code "might [ ] consider [ ] ... [it] to be a 'fraud,' DR 1-102(A) not to correct misunderstanding of the bar authorities. The Model Rules are, in contrast, quite clear on this point. The lawyer or applicant may not 'fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter....' Rule 8.1(b) (emphasis added)...." See Ronald R. Rotunda, *Professional Responsibility* 26 (West 1984) (avail-

able at the Law Library, The National Judicial College, Reno, NV).

This Court being the court that considers and admits persons to practice law before any of the Duckwater Shoshone Tribe's courts, including the Inter-Tribal Court of Appeals of Nevada relative to appeals from this Court, this Court has exclusive jurisdiction of disciplinary and or disbarment proceedings. See Court Rule 1.1. See also Felix F. Stumpf, *Inherent Powers of the Courts; Sword and Shield of the Judiciary* 22-23 (Reno, NV: The National Judicial College, 1994) (citing authority for this Court's assertion of inherent, exclusive jurisdiction).

Good cause appearing, it is the order of this Court, that because Benjamin P. Zvenia was not candid with this Court and failed to apprise this Court of his 1994 felony conviction, not graduating from an accredited college of law, and his removal from the Nevada Supreme Court's List of Appointed Non-Attorney Arbitrators, thereby interfering with this Court's proper initial and continuing consideration to allow him to practice law, that Benjamin P. Zvenia is hereby disbarred from the practice of law before the courts of the Duckwater Shoshone Tribe and his name is hereby struck from the Duckwater Shoshone Nation Bar Association Bar Member List.

It is further ordered, that Benjamin P. Zvenia shall give notice to all bar authorities of any jurisdiction in which he practices law of this Court's order, and give notice to any and all clients relying on his admission in this Court of this Court's order.

*Esh-um-bäy!*

## FORT PECK TRIBAL COURT OF APPEALS

Hazel Cantrell BOYD v. James A. BOYD

No. 337 (July 13, 2000)

### Summary

The Fort Peck Tribal Court of Appeals affirms the order of the trial court distributing marital property.

### Full Text

Before SULLIVAN, Chief Justice; BEAUDRY and DeCOTEAU, Associate Justices

SULLIVAN, Chief Justice, with whom BEAUDRY and DeCOTEAU, Associate Justices, concur

### Opinion and Order

This matter comes on for review from an order dated and filed on December 27, 1999, dividing the marital estate of appellant, Hazel Cantrell Boyd, and James A. Boyd. Clayton Reum, Lay Counselor at Law, of Wolf Point, Montana, appearing on behalf of appellant and Mary L. Zemyan, Esq., of Wolf Point, Montana, appearing on behalf of appellee.

### Brief Factual Overview and Procedural History

Hazel Cantrell and James A. Boyd were married on August 20, 1988, in Wolf Point, Montana. Hazel filed for dissolution of marriage on June 28, 1999, requesting, among other things, that