

Jul 26, 2010

ISSUED
CLERK OF COURT

CA-08-011

Pascua Yaqui Tribe Court of Appeals

In the matter of:

Nicholas Fontana, Respondent.

FINAL ORDER

Nicholas Fontana, Esq., Pascua Yaqui Public Defender's Office, Tucson, 85757,
Respondent.

Alfred Urbina, Esq., Pascua Yaqui Prosecutor's Office, Tucson, 85757.

This matter came before the Court of Appeals upon an ethics complaint by the Office of the Prosecutor against Respondent Nicholas Fontana, formerly the Chief Public Defender for the Pascua Yaqui Tribe.

The ethics violation allegedly committed by the Respondent occurred in the pursuit of his duties as Public Defender for the Pascua Yaqui Tribe and while investigating the case of a client.

As the alleged violation only occurred by virtue of his employment with the Office of the Public Defender for the Pascua Yaqui Tribe, and Respondent having left his position with the Tribe since this action was initiated, this court now finds the ethics complaint moot.

Accordingly, the ethics complaint against Nicholas Fontana is hereby dismissed.

So ORDERED this 26th day of July, 2010.


Mark McMillan, Judge pro tem

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251



Yancy A. Jencsok
Interim Chief Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

In the matter of:)	Case No. CA-08-011
)	
NICHOLAS FONTANA,)	ETHICS COMPLAINT
)	
Respondent.)	
_____)	

Complainant Yancy A. Jencsok alleges that on or about April 9, 2008, Respondent Nicholas Fontana violated American Bar Association Model Rules of Professional Conduct Rule 4.2 and Arizona Ethics Rules 4.2¹ by communicating about a legal matter with a person he knew to be represented. In support of these allegations, Complainant states the following:

1. Respondent Nicholas Fontana is the Chief Public Defender for the Pascua Yaqui Tribe and is certified to practice in the Pascua Yaqui Tribal Court pursuant to 3 PYTC § 1-4-20. Attorneys practicing in Pascua Yaqui Tribal Court must conform to “the usual standards of conduct of the American Bar Association.” 3 PYTC § 1-4-40(C). This has been interpreted by the Tribal Court to refer to the ABA Model Rules of Professional Conduct. As an attorney licensed to practice law in Arizona, Mr. Fontana is also required to abide by the Arizona Ethics Rules.
2. Mr. Fontana recently represented Defendant Salvador Uriarte in three related matters: CR-06-386, CR-06-388 and TR-06-033 (the Uriarte cases). Those matters were consolidated and involved the revocation of Mr. Uriarte’s probation. Mr. Fontana also recently represented Defendant James Carino in CR-08-074 (the Carino case). That case involved initial charges against Mr. Carino.

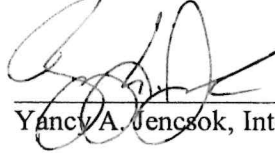
¹ ABA and Arizona Ethics Rule 4.2 differ by only one word. ABA Rule prohibits contact with a represented “person.” Arizona Ethics Rule 4.2 substitutes the word “party” for “person.” The two rules are otherwise identical.

3. In the Uriarte cases and the Carino case, Mr. Fontana filed motions to vacate the transport of the defendants. The motions challenged the legal authority of Detention Sgt. Milissa Mace to file motions requesting that defendants be transported from one detention facility to another.
4. In the Uriarte cases, the Office of the Attorney General (AG) entered its appearance on behalf of Sgt. Mace and filed a response to Mr. Fontana's motion to vacate transport on March 28, 2008. In the Carino case, the AG filed a response to Mr. Fontana's motion to vacate transport on April 2, 2008 indicating in the response that the AG was representing Sgt. Mace. On April 9, 2008 the AG filed a separate Notice of Appearance.
5. On April 9, 2008 Mr. Fontana called Sgt. Mace at the detention office during work hours and asked her about the transport motions that were the subject of the proceedings.
6. In the Uriarte cases, Mr. Fontana filed a motion on April 9, 2008 seeking to have the AG disqualified from representing Sgt. Mace.
7. In the Carino case, a plea agreement was entered into and filed on April 22, 2008. The plea agreement disposed of all pending motions.
8. In the Uriarte cases, the AG filed a Motion to Suppress Improperly Obtained Evidence on April 23, 2008 citing Mr. Fontana's communication with Sgt. Mace and seeking sanctions under 3 P.Y.T.R.Crim.Proc. Rule 42.
9. A hearing on Mr. Uriarte's revocation of probation as well as the pending motions had been set for May 7, 2008 at 1:00 p.m. On May 7, 2008 at 10:49 a.m. Mr. Fontana filed a Notice of Withdrawal of the pending motions in the Uriarte cases. At the hearing, Mr. Uriarte's probation was revoked and sentence was imposed. The Court did not rule on the Defendant's or AG's pending motions.
10. Complainant alleges that Mr. Fontana's communication with Sgt. Mace violated ABA and Arizona Ethics Rule 4.2's prohibition against communication with a represented person. The response and notice of appearance filed in the Uriarte cases on March 28, 2008 and the response filed in the Carino case on April 2, 2008 put Mr. Fontana on notice that Sgt. Mace was represented by the AG. Mr. Fontana's motion seeking to disqualify the AG filed April 9, 2008 indicates that Mr. Fontana was aware that Sgt. Mace was represented. However, he communicated with Sgt. Mace specifically about the matter that was the subject of the representation.

WHEREFORE, Complainant submits this Ethics Complaint to the Court for investigation, and if appropriate, sanctions against Nicholas Fontana.

RESPECTFULLY SUBMITTED this 20th day of May, 2008.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



Yancy A. Jencsok, Interim Chief Prosecutor

Copy delivered May 20, 2008 to:

PYT Public Defender

PYT Attorney General

By

