

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BOBBI DARNELL,)
Petitioner,)
)
v.)
)
JOHN MERCHANT, SHERIFF)
Brown County, Kansas)
)
and)
)
KICKAPOO TRIBE IN KANSAS,)
KICKAPOO RESERVATION,)
HORTON, KANSAS)
Respondents.)
_____)

CIVIL ACTION

No. 17-3063-JWL

MOTION TO DISQUALIFY COUNSEL AND LAW FIRM

Petitioner Bobbi Darnell, by her attorney Napoleon S. Crews of the Crews Law Firm, hereby requests that Attorney Tom Lemon be disqualified from representing the Kickapoo Tribe in Kansas in this matter, and as grounds therefore see the attached memorandum.

Respectfully submitted Friday, May 5, 2017,

CREWS LAW FIRM

/s/ Napoleon S. Crews

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CERTIFICATE OF SERVICE

I hereby certify that on Friday, May 05, 2017, a true and correct copy of the foregoing **DOCUMENT** was electronically sent to the following recipient:

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Vincent Cox
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/s/ Napoleon S. Crews

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**MEMORANDUM IN SUPPORT OF
MOTION TO DISQUALIFY COUNSEL AND LAW FIRM**

Petitioner Bobbi Darnell, by her attorney Napoleon S. Crews of the Crews Law Firm, hereby submits this memorandum in support of her motion.

FACTS AND PROCEDURAL BACKGROUND

This matter is a petition for habeas corpus filed under 25 U.S.C. Section 1303. Ms. Darnell was convicted in the Kickapoo Tribal District Court on March 9, 2017. She was released on bond subsequent to her conviction, but as arrested on March 31, 2017 and has remained in the Brown County Jail since that time.

The petition for habeas corpus alleges a number of errors in the criminal proceedings in which Ms. Darnell was prosecuted. On May 5, 2017, Attorney Tom Lemon entered his appearance as attorney of record for the Kickapoo Tribe in Kansas. Mr. Lemon was either a

witness to or participated in the commission of the following errors in the proceedings against Ms. Darnell:

1. The presentence investigation report was touted by him as “well written,” even though it recommended an illegal prison sentence and recommended a non-existent BIA prison.
2. Mr. Lemon computed and presented an 18-year prison sentence for Ms. Darnell for essentially misdemeanor crimes, to the tribal judge, knowing that the sentence was wrong and based on a typo in the tribal ordinance.
3. Mr. Lemon heard the tribal judge ask the tribal court clerk if he should find one of Ms. Darnell’s character witnesses in contempt of court.
4. Mr. Lemon observed the tribal judge sorting through the names of prospective jurors during the jury selection process, rather than having the court clerk make a random selection in accordance with the requirements of the jury selection ordinance.
5. Mr. Lemon saw or should have observed the tribe’s general counsel sitting in the chair next to him, mouthing an answer to a prosecution witness who was under cross examination.

ARGUMENT AND AUTHORITY

There is no doubt that Mr. Lemon will be a material witness in any trial or evidentiary hearings regarding the petition for habeas corpus, to testify about the important contested issues related to Ms. Darnell’s prosecution in the tribal court.

The Kansas Rule of Professional Conduct (KRPC) 3.7(a) precludes a lawyer from acting as an advocate in a matter in which the lawyer is likely to be a necessary witness.

The court has the inherent power to disqualify counsel where necessary to preserve the integrity of the adversary process. See *Lowe v. Experian*, 328 F. Supp.2d 1122, 1125 (D. Kan. 2004); *Field v. Freeman*, 527 F. Supp. 935, 940 (D. Kan. 1981).

A motion to disqualify must be decided on its own facts, and the court must carefully balance the interest of protecting the integrity of the judicial process against the right of a party to have the counsel of its choice. *Kelling*, 1994 WL 723958, at *Regent Ins. Co. v. Ins. Co. of N. Am.*, 804 F. Supp. 1387, 1390 (D. Kan. 1992).

The Tenth Circuit has adopted the Kansas Rules of Professional Conduct. See *D. Kan. Rule 83.6.1(a)*. In determining whether an attorney's conduct warrants disqualification, the court will apply the standards developed under federal case law. *Cole*, 43 F. 3d at 1383.

The petition for habeas corpus sets forth numerous and serious violations of Ms. Darnell's constitutional rights of due process and equal protection by the entire Kickapoo District Court system, including Mr. Lemon as special prosecutor. The integrity of the judicial process dictates that he be disqualified from representing the Kickapoo Tribe at any trial or evidentiary hearing.

The Kickapoo Tribe will not be prejudiced if Mr. Lemon is disqualified from representation at any trial or evidentiary hearing as Attorney Vincent Cox from his firm also entered his appearance on behalf of the tribe.

Respectfully submitted Friday, May 5, 2017.

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