



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480)362.6315

**Salt River Pima-Maricopa Indian
Community,**

Appellee/Plaintiff,

vs.

**A. H-J.,
DOB: 01/29/98**

Appellant/Minor,

Case No.: **APJ-16-0001**

Trial Court Case No.: **JT-16-0001**

OPINION AND ORDER

Appellant Vincent Barraza appeals a finding of contempt of court in the above referenced matter for failing to appear on October 13, 2015, at the initial hearing of minor A. H-J (DOB 1/29/98) (the "Minor") after filing a notice of appearance earlier that morning in accordance with Administrative Order No. 11-0001 (Amended). Appellant is the Director of the Defense Advocate Office of the Salt River Pima-Maricopa Indian Community. Ms. Donna Ray, an advocate with the Defense Advocate Office, attended the initial hearing in Appellant's stead and the proceeding continued with Ms. Ray in attendance.

Appellant raises three issues on appeal:

1. Did the court err in holding a contempt hearing under the civil proceedings?
2. Did the court err in not providing Appellant with counsel for the contempt hearing? and
- Did the court err in finding Appellant in contempt of court for not appearing at the initial hearing when Ms. Ray from the same office appeared in his place?

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INDIAN COMMUNITY COURT

Because we find that the court below erred in finding Appellant in contempt when Ms. Ray was present and qualified to represent the Minor for the limited purpose of the initial hearing, we do not reach the other issues.

Administrative Order No. 11-0001 (the "Administrative Order") provides the procedures for filing a notice of appearance on behalf of a client in the Community courts. It also lists the means by which a notice of appearance be communicated, i.e. through a written document filed with the court. An advocate or attorney who files a notice of appearance becomes the counsel of record for the case.

The Administrative Order also anticipates that the counsel of record may not be available at all times. "So long as there is a counsel of record for the party or defendant, a counsel may make an oral association of counsel limited solely to the scheduled proceeding at which counsel appears." The Administrative Order does not require counsel of record to provide explanation for such an association of alternative counsel. It also does not require the court to make a finding of good cause based on that explanation.

In the underlying matter, we find that counsel of record, Appellant, made an oral association of counsel with Ms. Donna Ray, for the limited purpose of handling the initial hearing. Ms. Ray spoke with the Minor and the Minor's parents, obtained their consent to participate on the Minor's behalf at the hearing and advised the Court that she was present in Appellant's stead. In addition, and importantly, the Court proceeded with the initial hearing with Ms. Ray as counsel for the Minor at that hearing. Notwithstanding the presence of Ms. Ray, the court issued an Order to Show Cause and subsequently found Appellant in contempt of court.

We acknowledge, that the Community courts have broad discretion to find an individual in contempt for failing to appear at a proceeding when the individual cannot demonstrate good cause for failing to appear; and we caution counsel that repeated practice of substituting counsel may trigger an Order to Show Cause hearing. However, in the specific facts presented by this case, we rely on the Community Court's Administrative Order No. 11-001 (Amended) which provides that counsel of record may associate with another advocate or attorney for a specific hearing and which does not by its terms require good cause to be demonstrated for such association. Ms. Ray's statement to the Court when asked where Appellant was: "I am here in his stead" and her subsequent statement that she was "fill[ing] in today for him," is sufficient to meet the requirements of Administrative Order No. 11-0001.

For the reasons stated above, this Court finds for Appellant Vincent Barraza and reverses the Court's finding of contempt. The contempt fine is reversed.

ISSUED this 8 day of April, 2016

Electronically approved 4/8/2016

Denise Hosay, Justice

Electronically approved 4/8/2016

Judith Dworkin, Justice

Electronically approved 4/8/2016

Siera Russell, Justice

Electronically approved 4/8/2016

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