

IN THE SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

JAY ANTOINE and NANNETTE
ANTOINE,
Plaintiffs/Appellees

v.

CHERRY-TODD ELECTRIC
COOPERATIVE and THE BOARD OF
DIRECTORS FOR CHERRY-TODD
ELECTRIC COOPERATIVE, J.R. REAGLE,
PRESIDENT; DICK SCHNEIDER, VICE-
PRESIDENT; CLAUDIA SHARKEY,
SECRETARY; LONNIE LENSEN,
TREASURER; BOARD MEMBERS JIM
EPKE, LOREN BUETTNER, ROD J.
BORDEAUX, WHITNEY MEEK, and
TIM GRABLANDER, MANAGER, in their
official capacities,
Defendants/Appellants.

Case No. Civil 10-155

CA12-04

MEMORANDUM OPINION
AND ORDER

Per curiam (Chief Justice Patrick Donovan and Associate Justices Charles Abourezk and Frank Pommersheim)

I. Introduction

This case involves a lawsuit about a routine billing dispute between the plaintiffs, Jay and Nanette Antoine, and defendants, Cherry-Todd Electric Cooperative (Cherry-Todd) and its officers. In essence, the plaintiffs claim that they were 'overcharged' by Cherry-Todd for electrical service that went to a third party, namely Alltel, Inc.. The amount in dispute is approximately \$3,000.

Plaintiff/appellee, Nanette Antoine, is a member of the Klamath Nation, a federally-recognized tribe located in the state of Oregon. Plaintiff/appellee, Jay Antoine, is a member of the Rosebud Sioux Tribe and is married to Nanette Antoine. They formerly resided together

along with their minor child, Jay Jr., at 125 North Blanch Street, Mission, South Dakota. Their former residence is located on fee land within the Rosebud Sioux Reservation and is owned by Big Dakota Land and Properties, an LLP organized under South Dakota state law. The defendant/appellant, Cherry-Todd, is a non-profit, rural electric cooperative organized under the state laws of South Dakota. Cherry-Todd also applied for and was granted a business license by the Rosebud Sioux Tribe. It is the *sole* provider of electrical services on the Rosebud Sioux Reservation. Nanette Antoine is a 'member' of the Cooperative.¹ Jay Antoine is not.

This presumably routine billing dispute has not yet been adjudicated on the *merits* in the Rosebud Sioux Tribal Court as it has been subject to both personal and subject matter jurisdiction challenges. These motions to dismiss were heard before Special Judge Warren Argenbreit and they were denied in a memorandum opinion and order dated February 14, 2012.

A timely notice of appeal was filed by the defendant/appellant Cherry-Todd. The plaintiffs/appellees subsequently filed a motion with this Court to dismiss the appeal for its failure to comply with Rule 2² of this Court's Rules of Appellate Procedure as it pertains to requesting an interlocutory appeal. The defendant/appellant Cherry-Todd filed a subsequent motion with this Court, which it believes complies with Rule 2. The plaintiffs/appellees filed an answer in opposition to this request for an interlocutory appeal. Both parties also filed briefs on the subject matter and personal jurisdiction issues.

Oral argument was heard before this Court on February 15, 2013.

¹ 'Member' is the designated term for someone who applies for and is accepted for membership in the Cooperative, which is a necessary condition for receiving electrical services from Cherry-Todd.

² Rule 2 provides:

No interlocutory appeals shall be allowed in either criminal or civil matters unless expressly authorized by the Presiding Justice. The decision of whether or not to accept interlocutory appeals shall be based on the finding[s] of fact, conclusions of law and ruling entered by the Tribal Judge upon the Appellant's motion to file [an] interlocutory appeal.

II. Issues

This appeal raises two issues, namely: (A) Whether defendants/appellants are entitled to an interlocutory appeal in this matter and (B) if so, whether the Tribal court has subject matter jurisdiction over the billing dispute in accordance with *Montana v. United States*, 420 U.S. 544 (1981), and its progeny.

Each issue will be discussed in turn.

III. Discussion

A. Interlocutory Appeal

The initial inquiry is whether an interlocutory appeal is permissible under Rosebud Sioux Tribal Law and if so, what are the procedural requirements necessary to pursue the appeal and what are the appropriate substantive grounds upon which such an appeal may be granted. It is important to note as a preliminary matter that interlocutory appeals are uniformly understood as *exceptions* to the basic black letter rule that appeals are permitted only from final judgments.³ It is further understood that the denial of motions to dismiss for lack of (subject matter or personal) jurisdiction are not final orders or judgments. The United States Supreme Court has defined an order or judgment as final if it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”⁴

The final judgment rule is more than a mere procedural formality. It advances important values and substantive benefits. It promotes judicial efficiency, expedites resolution of cases on the merits, and provides the reviewing court with a fully developed record, including the reasoning and conclusions of the lower court judge.⁵ This last ground is particularly significant in the field of Indian law. For example, with one exception, every case in the modern era that

³ See, e.g. ERWIN CHEMERINSKY, FEDERAL JURISDICTION 682-704 (6th ed. 2012).

⁴ *Catlin v. United States*, 324 U.S. 229, 233 (1945).

⁵ CHEMERINSKY, *supra* note 3, at 683.

has gone to the Supreme Court concerning tribal court jurisdiction over non-Indians has reached the Court via an interlocutory appeal in tribal court. Therefore all of these cases reached the Supreme Court without any tribal court adjudication on the merits.⁶ These cases include *Montana v. United States*,⁷ *South Dakota v. Bourland*,⁸ *Strait v. A-1 Contractors*,⁹ *Nevada v. Hicks*,¹⁰ and *Atkinson Trading Co. v. Shirley*.¹¹ All these cases denied tribal court jurisdiction. The lone exception to this interlocutory pattern is *Plains Commerce Bank v. Long Family Land & Cattle Co.*¹² This pattern involving the absence of any tribal court adjudication on the *merits* appears to put tribal court jurisdiction at undue risk before the bar of the United States Supreme Court.

Appellants nevertheless argue that interlocutory review is appropriate in this case on two grounds, namely because of the collateral order doctrine and in the alternative, that the appellants

⁶ In accordance with the 'exhaustion' requirement announced in *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985), once a tribal appellate court rules on the jurisdiction issue, the jurisdictional challenge may be taken directly to *federal* court without any tribal court consideration on the *merits* of the plaintiff's case.

⁷ 450 U.S. 544 (1981).

⁸ 508 U.S. 679 (1993).

⁹ 520 U.S. 438 (1997).

¹⁰ 533 U.S. 353 (2001).

¹¹ 532 U.S. 645 (2001).

¹² 554 U.S. 316 (2008). This case, which included a jury trial and full adjudication on the merits in tribal court, is significant for several different reasons. The petitioner, Plains Commerce Bank, did not pursue any of its due process/fairness assertions in its petition for certiorari (the Bank lost on these claims before the Cheyenne River Sioux Tribal Court, Cheyenne River Sioux Tribal Court of Appeals, federal District Court, and the Eighth Circuit Court of Appeals). The Supreme Court decision was a narrow 5-4 vote in favor of the Bank as compared to the wide margins in the other recent cases *Montana*, 6-3; *Strait*, 9-0; *Bourland*, 7-2; *Hicks*, 9-0; *Shirley*, 9-0).

Justice Ginsburg who wrote the Court's unanimous opinion in *Strait* with its tart observation that the non-Indian defendant need not "defend against this commonplace state highway accident claim in an *unfamiliar* court." 520 U.S. at 459 (emphasis added), wrote the dissent in *Plains Commerce Bank* and approvingly quoted from the Cheyenne River Sioux Tribal Court of Appeals decision:

"With regard to checks against discrimination, as the Tribal Court of Appeals observed, 'there is a direct and laudable convergence of federal, state, and tribal concern'." at 2732, n.3 (Ginsburg, J., dissenting).

Apparently, the full tribal court record in *Plains Commerce Bank* allayed her concerns about what an 'unfamiliar court' might do.

See also the zoning case, *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408 (1989), in which the Court said yes to tribal zoning authority over non-Indian fee land described as a 'closed area' and no to tribal zoning on non-Indian fee land described as an 'open area.' The badly fractured plurality opinions are generally understood to be limited to the unique facts of the case and the case has very little precedential force.

have complied with Rule 2 of the Rosebud Sioux Supreme Court's Appellate Rules which authorizes interlocutory appeals.

1. Collateral Order Doctrine

The collateral order doctrine is a well-established judicially created rule within federal courts' jurisprudence. It refers to the authority of a *federal* appellate court to review a ruling of a federal district court that is unrelated to the merits of the case and that allegedly threatens an important right.¹³ It goes without saying that this judicially created doctrine is not binding on tribal courts as a matter of federal Indian law and therefore this is a question of first impression for the Rosebud Sioux Supreme Court.

The seminal case involving this doctrine is *Cohen v. Beneficial Industry Loan Corp.*, 337 U.S. 541 (1949). The Supreme Court stated that there is a "small class [of cases] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.* at 546. The Supreme Court itself has emphasized that the collateral order doctrine is a very narrow exception.¹⁴ The denial of a motion to dismiss for lack of personal or subject matter jurisdiction will always be effectively preserved for appellate review should the challenging party not prevail on the merits.

Cherry-Todd appellants cite two tribal court opinions as persuasive authority to support their argument for the adoption and application of collateral order doctrine. These cases are *One Hundred Eight Employees of the Crow Tribe of Indians v. Crow Tribe of Indians*, 2001 Crow 10 (#89-230) and *In the Matter of the Custody of Mariah Watchman, a minor Indian child*, 1996 NAFFP.0000004. Both of these cases are factually distinguishable and doctrinally contrary to the

¹³ CHEMERINSKY, *supra* note 3, at 700.

¹⁴ *Id.*

case at bar. The *One Hundred Eight Employees* case involved a claim for unpaid wages against the *Crow Tribe* and the Tribe's defense of sovereign immunity. The Crow Court of Appeals held that the defense of Tribal sovereign immunity satisfied the basic ingredients of the collateral order doctrine in that the order denying the defense of (tribal) sovereign immunity did "conclusively determine the disputed question, resolve an important issue completely separate from the merits of action, and be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesong*, 437 U.S. 463, 468 (1978).

The instant case does not involve a claim for unpaid wages and more importantly, does not involve the Tribal defense of sovereign immunity. Such a case involving the defense of tribal sovereignty is very unlikely to be subject to federal court review in that it does not raise any federal question and it does not in any way challenge tribal court competence or threaten its dignity.¹⁵

The *In the Matter of the Custody of Mariah Watchman* case is even further afield. The core issues in that case involved a routine custody dispute in which the Fort Peck Court of Appeals of the Assiniboine and Sioux Tribes confronted the quintessential family law issue of what kind of custody orders are 'final' orders and hence appealable and which kind of custody orders are interlocutory and not appealable. This necessary and important determination does not in any meaningful way invoke the collateral order doctrine as established in Supreme Court jurisprudence.

It is further true that neither of these Tribes enacted any Rule to provide direction or guidance in the matter of interlocutory appeals. In this Court, however, there is the guidance and direction of Rule 2 to which we must closely adhere.

¹⁵ See also discussion *infra* at pp. 7-8.

The blanket extension of the collateral order doctrine to jurisdictional challenges in Tribal court would needlessly facilitate attempts to circumvent tribal court determinations on the merits. Such an approach would also constitute an affront to the dignity and competence of tribal courts. To be clear, rejection of the collateral order doctrine in the context of challenges to tribal court jurisdiction does not arbitrarily foreclose interlocutory review. See the discussion of Rule 2 *infra* at Part IIIA(2).

The collateral order doctrine in federal courts is unitary in that it was created by federal courts to manage a particular aspect of their own docket. It begins and ends in federal court. To incorporate it into tribal court jurisprudence would create a binary structure as it necessarily *transfers* tribal court jurisdictional challenges to the federal courts at a very early stage in the proceedings. It begins in tribal court, but ends in federal court and therefore raises issues of dignity and perceptions of tribal court competence. There is also the not insignificant cost to the Tribe in potentially having to defend such jurisdictional challenges in federal court.¹⁶ This is even more quirky and disturbing when the substantive claims, as in this case, are often routine commercial and tort matters in which the Tribe is not even a litigant!¹⁷

This situation is not analogous in any way to *Ex Parte Young*, 209 U.S. 123 (1908), because here the tribal judge cannot be acting in an unconstitutional manner, but at most, acting in violation of federal common law. *National Farmers Union*, 471 U.S. at 850-53. Finally, the basic principle of Tribal sovereign immunity has also apparently disappeared in this curious Supreme Court jurisprudential mishmash that makes no reference to any waiver of tribal

¹⁶ In many jurisdictional cases, the tribe, tribal court, and/or the tribal judge are named as defendants in the *federal* proceeding challenging tribal court jurisdiction even when the underlying substantive lawsuit in tribal court does not involve the Tribe as a party. See e.g., *National Farmers Union v. Crow Tribe of Indians*, *Strait v. A-1 Contractors*, and *Nevada v. Hicks*.

¹⁷ The usual federal-state practice is to permit private state court litigants (in limited circumstances) to seek jurisdictional and injunctive relief in federal court, but without having the state judge or state court as a defendant. See e.g. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) (in which such relief was denied on the comity and 'our federalism' principles of *Younger v. Harris*, 401 U.S. 37 (1971)).

sovereign immunity. For all of these reasons this Court therefore holds that the collateral order doctrine is not available to seek interlocutory review of the Tribal trial court's denial of a motion to dismiss for lack of personal or subject matter jurisdiction.

2. Rosebud Sioux Supreme Court Appellate Rule 2

Rule 2 of the Rosebud Sioux Supreme Court Rules of Appellate Procedure expressly authorizes interlocutory appeals. The relevant text states:

No interlocutory appeals shall be allowed in either criminal or civil matters unless expressly authorized by the Presiding Justice. The decision of whether or not to accept interlocutory appeals shall be based on the finding[s] of fact, conclusions of law and ruling entered by the Tribal Judge upon the Appellant's motion to file [an] interlocutory appeal.

The text of Rule 2 sets forth the *procedural* requirements to request permission to file an interlocutory appeal, but it appears silent as to the potential *substantive* grounds upon which to grant an interlocutory appeal. As with the collateral order doctrine, the interpretation of Rule 2 presents a case of first impression for the Rosebud Sioux Supreme Court.

a. Procedure

The procedure involving Rule 2 is quite straightforward. The appellant must file a motion for an interlocutory appeal to the Tribal trial judge handling the case. The motion must assert any and all grounds upon which the appellant believes an interlocutory appeal should be granted. The trial judge should then schedule a prompt hearing on the motion and hear legal argument from both sides. Evidence, if any, as to matters of fact should be minimal because interlocutory appeals are about questions of law and not of fact.

The trial judge shall file his written findings and ruling on the motion within ten (10) days and transmit same to the Presiding (i.e. Chief) Justice of the Rosebud Sioux Supreme Court. The Presiding Justice shall issue a written order granting or denying the motion for an interlocutory appeal within ten (10) days.

If the motion is granted, the Court shall forthwith issue a written briefing schedule on the relevant substantive issues. If the motion is denied, the case shall be remanded to the trial court for a prompt trial on the merits. The granting or denying of the motion for an interlocutory appeal is wholly discretionary and non-reviewable. Inasmuch as appellant Cherry-Todd did not file its original motion for an interlocutory appeal with the Tribal *trial* judge in this matter, it failed to comply with the procedural requirements of Rule 2.

b. Substance

Despite Rule 2's clarity as to its procedural requirements, it provides no guidance as to possible substantive grounds upon which to grant an interlocutory appeal. When there is such a gap in Rosebud Sioux Tribal law, it is permissible to look to federal law for guidance. See Sec. 4-2-8 of Rosebud Sioux Tribal Law and Order Code which expressly authorizes such a procedure:

The Court shall apply the applicable laws of the Rosebud Sioux Tribe and the United States in actions before it. Any matter not covered by applicable tribal or federal laws shall be decided according to the customs and usages of the Tribe. Where doubt arises as to custom and usages of the Tribe, the Court may request the advice of persons generally recognized in the community as being familiar with such customs and usages. In any matter in which the rule of law is not supplied by any of the above, the Tribal Court may look to the law of any tribe or state which is consistent with the policies under tribal law, custom and usages.

This approach makes particular sense in this case as the Rosebud Sioux Rules of Civil Procedure closely parallel the Federal Rules of Civil Procedure. *See, e.g.* this Court's recent decision in the case of *Sicangu Wicoti Awanyakapi Corp. v. Kills In Sight* (December 2012).

The relevant federal law on interlocutory appeals is found at 28 U.S.C. § 1292. The pertinent portion of the statute is § 1292(b) which provides:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order.

Interlocutory appeals pursuant to 28 U.S.C. § 1292(b) are discretionary and not a matter of right. This is the plain meaning of the text. The Court of Appeals “*may* thereupon, in its *discretion*, permit an appeal to be taken from such order” (emphasis added) of the district judge’s order recommending an interlocutory appeal. Given their wholly discretionary nature, the denial of a motion for an interlocutory appeal is not appealable.

As a matter of substance, § 1292(b) identifies three requisites for such a discretionary appeal. There must be “a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Federal courts often (but not always¹⁸) find personal and subject matter jurisdiction challenges within the purview of § 1292(b). *See, e.g. Dayton Independent School Dist. v. U.S. Mineral Products Co.*,¹⁹ *Wilson v. Humphreys (Cayman) Ltd.*,²⁰

¹⁸ *See, e.g. Department of Economic Development v. Arthur Anderson and Co. (U.S.A.)*, 683 F.Supp 1463 (NY 1988).

¹⁹ 906 F.2d 1059 (5th Cir. 1990). In a consolidated action, the defendants filed various motions to dismiss, all based on lack of subject matter jurisdiction for failing to state a claim under an environmental statute. The district court denied all of the motions but certified the orders to the Fifth Circuit under 1292(b). The Fifth Circuit granted the appeals and reviewed the merits of the defendants’ claims.

²⁰ 916 F.2d 1239 (7th Cir. 1990). In a contract and tort case, the defendants moved to dismiss the claims on the grounds of lack of subject matter jurisdiction, lack of personal jurisdiction, and inconvenient forum. All motions were denied by the district court but certified to the Seventh Circuit. The Seventh Circuit accepted the appeal and ruled on the merits of these claims.

Ministry of Defense of the Islamic Republic of Iran v. Gould, Inc.,²¹ *Alexander & Alexander Services, Inc. v. Lloyd's Syndicate* 317.²²

Examples of cases denying § 1292(b) appeals include *Department of Economic Development v. Arthur Andersen & Co. (U.S.A.)*,²³ *Ahrenholz v. Board of Trustees of University of Illinois*,²⁴ *Casey v. Long Island Rail Company*,²⁵ and *Langford v. Norris*.²⁶

In sum, § 1292(b) interlocutory appeals are both wholly discretionary and rare.

As noted by the Seventh Circuit in the *Ahrenholz* case:

Since the beginning of 1999, the Court has received 31 petitions for interlocutory appeals under 28 U.S.C. § 1292(b) and has granted only six of them. The majority have been denied or dismissed for jurisdictional reasons but seven have been denied even though the district judge had certified that the order sought to be appealed “involved a controlling question of law as to which there is substantial ground for difference of opinion that an immediate appeal from the order may materially advance the ultimate termination of the litigation” which is the statutory standard. 219 F.3d 674, 675 (7th Cir. 2000).

²¹ 887 F.2d 1257 (9th Cir. 1989). Defendant filed motion to dismiss for lack of subject matter jurisdiction on three grounds – foreign nation not recognized by U.S. therefore it could not maintain a suit in federal court, an international agreement was not self-executing, and the tribunal officiating the dispute did not follow an applicable international agreement. The district court granted the motion in part and denied in part. Both the defendant and plaintiff moved for interlocutory appeal under 1292(b). The Ninth Circuit agreed to hear the interlocutory appeal.

²² 925 F.2d 44 (2d Cir. 1991). Third party defendant contested personal jurisdiction but the district court denied the defendant’s motion to dismiss. The district court certified the issue under 1292(b) and the Second Circuit accepted the issue for review, finding the issue dispositive.

²³ 683 F. Supp. 1463 (S.D.N.Y. 1988). After denying defendant’s motion to dismiss for lack of subject matter jurisdiction, the district court also denied certifying the issue under § 1292(b). The district court reasoned that there was no ground for disagreement in denying the motion to dismiss, rather only a factual analysis. Because the issue was so fact-dependent, and also because further discovery may have revealed more facts pertaining to subject matter jurisdiction, the district court rejected certifying the order under § 1292(b).

²⁴ 219 F.3d 674 (7th Cir. 2000). Defendant appealed a denial of summary judgment through 1292(b). The Seventh Circuit denied review, stating “Section 1292(b) was not intended to make denials of summary judgment routinely appealable” According to the Seventh Circuit, an question of whether a party raised a genuine issue of material fact is not a question of law as required by § 1292(b) and the court rejected any notion of “hunting through the record” for a § 1292(b) appeal.

²⁵ 406 F.3d 142 (2d Cir. 2005). The Second Circuit denied § 1292(b) review when plaintiff asked the appellate court to review the district court’s order suspending a favorable jury verdict for the plaintiff. The Second Circuit reasoned that reviewing whether verdict was supported by evidence introduced at trial was not a question of law.

²⁶ 614 F.3d 445 (8th Cir. 2010). District denied defendants’ request for certification under § 1292(b) because there was a genuine issue of fact yet to be resolved by the jury and the defendants failed to identify any other question of law that would have warranted interlocutory appeal.

They are rarer still in the tribal court context. There does not appear to be a single tribal court decision that invokes or discusses § 1292(b). As discussed *supra* at pp. 5-7, interlocutory appeals and subsequent federal review raise serious issues of potential burdensome financial cost to the Tribe, potential denigration of (Tribal) sovereign immunity, and potential challenges to Tribal court dignity and competence. All of these reasons – none of which exist in federal courts practice *per se* – urge Tribal court restraint and caution in this area of the law, as much more is at risk than in the § 1292(b) situation involving federal courts.

To be sure, Rule 2 of the Rosebud Sioux Supreme Court Rules of Appellate Procedure authorizes discretionary interlocutory appeals. Therefore this Court must interpret and apply Rule 2, not ignore it. In the absence of substantive guidelines in Rule 2, this Court cautiously adopts the substantive guidelines of § 1292(b) namely: (1) that there be a controlling question of law; (2) substantial grounds for difference of opinion; and (3) an immediate appeal may materially advance the ultimate termination of the litigation.

In the case at bar, the Court does not have to apply these substantive guidelines because the Cherry-Todd appellants have not complied with the *procedural* requirements of Rule 2 as discussed *supra* at pp. 8-9. The failure to comply with the procedural requirements of Rule 2 by not filing any request with the Tribal trial court judge for an interlocutory appeal requires this Court to deny the request for an interlocutory appeal and to remand this case for an immediate trial on the merits of plaintiffs' complaint.²⁷

The Court further notes that its ruling preserves Cherry-Todd's jurisdictional challenge for appeal to this Court should it not prevail on the merits in the Tribal trial court. And finally, this Court's denial of an interlocutory appeal does *not* "exhaust" tribal court remedies and does

²⁷ Inasmuch as the request for an interlocutory appeal is denied, any discussion, at this time, of the *merits* of the jurisdictional challenge (Issue II.B.) is premature.

not permit immediate federal court review inasmuch our decision is wholly discretionary and does not constitute a (federally) reviewable final order or judgment.

IV. Conclusion

For all the above-stated reasons, the application for an interlocutory appeal is denied and the case is remanded to the Tribal trial court for an immediate trial on the merits.

IT IS SO ORDERED.

FOR THE COURT

A handwritten signature in cursive script, appearing to read "Frank Pommersheim".

Associate Justice Frank Pommersheim

Dated this 2 day of April, 2013.