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IN THE NOOKSACK TRIBAL COURT  
NOOKSACK INDIAN TRIBE  
DEMING, WASHINGTON

ELEANOR J. BELMONT, et al., )  
 )  
 ) No. 2014-CI-CL-007  
 )  
 Plaintiffs and )  
 Counterclaim Defendants, )  
 )  
 vs. ) CASE MANAGEMENT ORDER RE.  
 ) MOTION FOR JUDICIAL NOTICE  
 ) FILED BY PRO SE PLAINTIFF  
 ) MICHELLE JOAN ROBERTS  
 ROBERT KELLY, Chairman of the )  
 Nooksack Tribal Council, et al., )  
 )  
 Defendants and Counterclaimants. )  
 )  
 )

On February 24, 2016,<sup>1/</sup> the Nooksack Tribal Council enacted Resolution #16-27, amending Nooksack Tribal Code, Title 10, Disbarment and Discipline, and adopting an Advocates Code of Conduct. The amendment added the following text to NTC § 10.02.070, after the text already appearing in the section.

Whenever the Tribal Council becomes aware that any advocate's behavior and/or practices reflect so poorly upon the proper administration of justice before the Nooksack Tribal Court of the Nooksack Indian Tribe, the Tribal Council may revoke any privileges provided to such person(s) and bar them from further practice in any administrative tribunal before the Nooksack Indian Tribe or proceeding before the Nooksack Tribal Court. Tribal Council may hold such hearings as necessary to ensure that such behavior and/or practices are proven; or, as may be necessary to correct such past behavior and/or practices.

On the same date, February 24, 2016, the Nooksack Tribal Council enacted Resolution #16-28, barring Gabriel Galanda and other attorneys in the Galanda Broadman law firm from practicing in the Nooksack Tribal Court and from engaging in business on Nooksack Tribal lands.

At the time, Mr. Galanda and his law firm were representing 272 named Plaintiffs in this lawsuit, all or most of whom are subject to pending disenrollment proceedings. As a result of

the Council's actions, Plaintiffs were instantly transformed, at least for the time being, into 272 pro se litigants.

On March 4, 2016, Mr. Galanda's law firm emailed three documents to the Court: (1) Declaration of Gabriel S. Galanda, with Exhibits 1 and 2 attached; (2) Fourth Declaration of Michelle Roberts, with Exhibit A attached; (3) Motion for Judicial Notice and Note for Motion for Judicial Notice. The items under (3) were signed by Mr. Galanda on behalf of Galanda Broadman as "Attorneys for Plaintiffs" and by individual Plaintiff Michelle Joan Roberts, as "Spokesperson for Plaintiffs or, Alternatively, Pro Se Plaintiff."

Later in the day on March 4, 2016, the Court was copied on an email from Ms. Roberts to Mr. Galanda, reporting that she had attempted to file documents at the courthouse, but the Court was closed. Indeed, the Court was closed on the afternoon of March 4, 2016, due to staff illness. Ms. Roberts also reported that she served a set of the documents upon Raymond Dodge, Office of Tribal Attorney. Attached to Ms. Roberts' email were the items listed above, except for Mr. Galanda's declaration. This set of documents was signed by Ms. Roberts only, again identifying herself as "Spokesperson for Plaintiffs or, Alternatively, Pro Se Plaintiff." On March 7, 2016, Ms. Roberts revisited the courthouse and filed the documents attached to her email.

In view of Resolution #16-28, the Court may not, at this time, file documents signed by Mr. Galanda or other attorneys at Galanda Broadman or respond to their communications pertaining to their representation of Plaintiffs. The Court may, however, file documents signed and submitted by Ms. Roberts, who is now a self-representing Plaintiff in this lawsuit.<sup>2/</sup> Ms. Roberts may not serve as spokesperson for other Plaintiffs unless and until she obtains admission to practice as an advocate in this Court, pursuant to Title 10, Chapter 10.02, and unless and until she files one or more notices of appearance signed by Plaintiffs signifying their intent to be represented by Ms. Roberts.

In sum, with respect to Ms. Roberts only, the Court has filed and will entertain the Motion for Judicial Notice signed by Ms. Roberts only, the Notice of Motion signed by Ms. Roberts only, and the Fourth Declaration of Michelle Roberts, with Exhibit A attached. The Court has not filed and will not consider the Declaration of Gabriel S. Galanda, with Exhibits 1 and 2 attached, or any other documents signed by Mr. Galanda.

In her Motion for Judicial Notice, Ms. Roberts requests that this Court take judicial notice and direct Court staff to provide her with copies of (1) the two Council resolutions discussed above; (2) any resolution amending NTC Title 10 since December 19, 2015, along with the amended Title 10; (3) any resolution amending NTC Title 60, along with the amended Title 60; (4) any resolution, along with any amended NTC Title, "impact[ing] Plaintiffs' due process rights at bar."

In her Note for Motion, Ms. Roberts' notices the matter for March 15, 2016, without oral argument. NTC 10.05.050(e) provides that "the moving party shall serve and file all civil motion documents no later than six court days before the date the party wishes the motion to be considered." Ms. Roberts served Defendants' counsel on March 4, 2016, and attempted to file the documents the same day. She was unable to do so through no fault of her own. Due to the urgency of the matter and due to counsel being served six Court days prior to March 15, 2016 (taking into account weekends and the Tribal holiday on March 9, 2016), the Court will maintain the March 15<sup>th</sup> date. Thus, Defendants' response<sup>3/</sup> is due by noon, March 11, 2016, and Plaintiff Roberts' reply, if any, is due by noon, March 14, 2016.

Among other things, Ms. Roberts seeks judicial notice and a copy of "[a]ny Resolutions or other laws passed on February 23, 24, or March 2, 2016, to ban, exclude, or expel Plaintiffs' counsel of record, Galanda Broadman, PLLC." Exhibit A, attached to Ms. Roberts' declaration, includes copies of communications in which Mr. Galanda frantically sought information from Defendants' counsel, Tribal administration, and this Court regarding rumored action by the Tribal Council against him and his law firm. The fact that Ms. Roberts makes the request and that Mr. Galanda made the inquiries suggests a lack of notice and opportunity to be heard in connection with Resolution #16-28 barring Mr. Galanda and other attorneys at Galanda Broadman from practicing in the Nooksack Tribal Court and from engaging in business on Nooksack Tribal lands.

The Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. § 1301 et seq., provides: "No Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law . . .

." 25 U.S.C. § 1302(a)(8). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citations omitted).

The ICRA guarantee of due process protects all persons having dealings with an Indian tribe, including non-members and non-Indians. See *Schantz v. White Lightning*, 502 F.2d 67, 70 n.5 (8<sup>th</sup> Cir. 1974); *Dodge v. Nakai*, 298 F. Supp. 17, 24-25 (1968), 298 F. Supp. 26, 31-32 (D. Ariz. 1969); S. Pevar, *The Rights of Indians and Tribes* 280 (3d ed. 2002). The ICRA guarantee of due process applies to tribal council proceedings. S. Deer & C. Garrow, *Tribal Criminal Law and Procedure* 207 (2d ed. 2004) (ICRA "applies to all tribal government activities and it limits how those activities may be carried on. So tribal councils, courts, police, administrative offices, social agencies and so forth, all have to comply with the requirements of ICRA.")

The United States Supreme Court has held:

Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. . . . He is accordingly entitled to procedural due process, which includes fair notice of the charge. . . . It was said in *Randall v. Brigham*, 7 Wall. 523, 540, that, when proceedings for disbarment are "not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence."

*In re Ruffalo*, 390 U.S. 544, 550 (1968) (citations omitted). See also Fondacaro & Stolle, *Revoking Motor Vehicle and Professional Licenses for Purposes of Child Support Enforcement: Constitutional Challenges and Policy Implications*, 5 Cornell J.L. & Pub. Pol'y 355, 363 (1996) ("The United States Supreme Court has clearly recognized the issuance of both professional and motor vehicle licenses as creating important property or liberty interests requiring due process protection. (citations omitted)"); American Bar Association Model Rules for Lawyer Disciplinary Enforcement (2002), providing for notice and opportunity to be heard.

Along with their response to the Motion for Judicial Notice, Defendants shall submit an affidavit describing the due process afforded Mr. Galanda and other attorneys in the Galanda Broadman law firm in connection with enactment by the Tribal Council of Resolution #16-28. At this time, the Court is not interested in argument on precisely what process is due or on the accuracy or adequacy of allegations in Resolution #16-28. At this time, the Court simply wishes to know, factually, what notice and opportunity to be heard were afforded Mr. Galanda and other attorneys in the Galanda Broadman law firm in connection with enactment by the Tribal Council of Resolution #16-28.

Finally, the Court must address another matter, which concerns contacts made with this judge of late. The Nooksack Tribal Code briefly addresses "Contacts Outside of Court" under NTC § 10.03.050. Subsection (a) provides: "Except in open court, a judge shall not discuss a case or any judicial business related to a case, which the judge is assigned to with a party in that case, a party's advocate or any person who has an interest in the case, unless all parties are present." Subsection (b) pertains to a judge's effort to seek advice or opinions from persons, judges, or attorneys outside the case.

The American Bar Association Model Code of Judicial Conduct (2011) provides more detail regarding contacts outside of court. Of particular application here, Rule 2.9(B) provides: "If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond."

The recent contacts have taken various forms.

On the afternoon of March 2, 2016, a member of the Tribal Council who is apparently not a party to this case approached this judge for information on the case. She was respectful, and she asked whether the contact could create a conflict. The Court explained a judge's limitations and pointed out that she already knew everything the Court knows, having attended the hearing in which the matter arose.

On the evening of March 4, 2016, Mr. Galanda sent an email directly to this judge. It was not an ex parte contact; Mr.

Galanda copied the email to Defendants' counsel. Mr. Galanda sought information regarding the status of his law firm before the Tribal Court. He had exhausted all other avenues and, for the most part, had been stonewalled. The Court was not offended that Mr. Galanda contacted this judge as a last resort, in the interests of diligent representation of his clients, although the Court did not respond to his email.

The contact that the Court feels obliged to disclose occurred on the afternoon of March 5, 2016. A member of Tribal administration, who is also a Tribal Council member and a Defendant in this lawsuit, sent the following email to this judge and the Court Clerks: "Please know that anyone who is requesting copies of the council resolutions or documents MUST request those copies from the Council office per the Council records policy. Do not distribute copies from your office to anybody. Thank you." (Emphasis in original.)

The Court has received communications from Tribal administration regarding the status of Mr. Galanda and other attorneys in the Galanda Broadman law firm since enactment of Resolution #16-28. The communications simply reiterated the resolution or reflected the natural result of the resolution, i.e., the Court cannot accept filings or respond to inquiries by Mr. Galanda or other Galanda Broadman attorneys acting on behalf of clients.

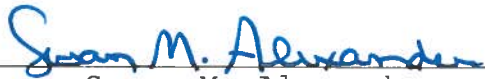
But the contact on March 5, 2016, quoted above, was of an entirely different nature. It was an ex parte communication by a party to pending litigation, who is represented by counsel, directly to the judge on the case, addressing an issue before the court. In her Motion for Judicial Notice, Ms. Roberts seeks copies of Council resolutions from the Court. Perhaps the sender of the email was not aware of the motion, but the motion was served upon the Office of Tribal Attorney the day before and would have been filed already had the Court been open. The email appears to mandate the Court's decision on the matter, now formally pending before the Court.

An appropriate approach would be for Defendants' counsel to discuss the Council records policy in their response to the Motion for Judicial Notice and to append a copy of the policy to their response. At the same time, Defendants' counsel should engage in client control, explaining to Defendants their

limitations and the Court's limitations with respect to ongoing litigation.

This judge has worked in Indian Country for more than twenty years and is well aware that the separation between the Tribal executive/legislative branch and the Tribal judicial branch is sometimes razor-thin. As is the case with many tribes, the Nooksack Indian Tribe has a "legislative court," created by the Tribal Council via statute, and not a "constitutional court" with formal separation of powers. Moreover, at Nooksack, the Chief Judge is simply a Tribal employee, without a term or contract. Nonetheless, in order to operate a properly independent, neutral, and fair Tribal Court, and in the interests of sovereignty and effective self-governance, it is essential to maintain separation, particularly where members of the executive/legislative branch are litigants in the Court.

SO ORDERED this 7<sup>th</sup> day of March, 2016.

  
\_\_\_\_\_  
Susan M. Alexander  
Chief Judge

**FOOTNOTES**

1/ Resolution #16-27 is dated February 27, 2016, at the top of the first page, but the certification and signatures on the second page are dated February 24, 2016.

2/ Although the view is not universal, federal courts and many state courts and bar associations forbid the practice of "ghostwriting." See, e.g., *Duran v. Carris*, 238 F.3d 1268, 1272 (10<sup>th</sup> Cir. 2001) ("Ethics requires that a lawyer acknowledge the giving of his advice by the signing of his name. Besides the imprimatur of professional competence such a signature carries, its absence requires us to construe matters differently for the litigant, as we give pro se litigants liberal treatment, precisely because they do not have lawyers." (Citation omitted)).

Quite obviously, the documents filed by Ms. Roberts, acting pro se, were drafted by the attorneys at Galanda Broadman. The documents are nearly identical to the alternate set of documents containing Mr. Galanda's signature. There has been no effort to hide the fact, and the documents were likely drafted at a time when Galanda Broadman had not been officially informed of the action against them.

There is apparently no law or policy on "ghostwriting" in this jurisdiction, let alone by attorneys who have been disbarred. Under these circumstances, however, where 272 Plaintiffs have suddenly been thrust into pro se status in complex litigation and where the Court is not yet satisfied that Mr. Galanda and other attorneys at the Galanda Broadman law firm were afforded due process in connection with enactment of Resolution #16-28, the Court will accept filings from Plaintiffs acting pro se or from a non-attorney advocate representing Plaintiffs, where assistance has been provided by Galanda Broadman in the background.

3/ In footnote 5 of her Motion for Judicial Notice, Ms. Roberts points out that, in the present circumstances of 272 individual pro se Plaintiffs, Defendants are obliged to serve each and every Plaintiff with Defendants' filings. In fact, the same applies to Ms. Roberts. See NTC § 10.05.040(d). And the same is true of the Court. See NTC § 10.05.040(g). At present, the Court does not have funds or staff to do so, let alone contact information for every individual Plaintiff. Because Defendant Tribal Council members have control of the Tribal purse and, presumably, contact information for the individual Plaintiffs through the Enrollment Department, the Court awaits word from Council on their plans for handling the service problem, which was readily predictable at the time they enacted Resolution #16-28. In the meantime, the Court will serve the lead Plaintiffs, Eleanor J. Belmont and Olive T. Oshiro, any Plaintiff who is actively self-representing, and any advocate or attorney representing Plaintiffs, other than Galanda Broadman.