

**UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO**

SHOSHONE-BANNOCK TRIBES, and FORT  
HALL BUSINESS COUNCIL,

Plaintiffs,

vs.

VANIR CONSTRUCTION MANAGEMENT,  
INC.,

Defendant.

Case No. 4:23-cv-00160-REP

**AMENDED ORDER STAYING  
CONSIDERATION OF  
DEFENDANT’S MOTION TO  
DISMISS (Dkt. 3) AND  
DEFENDANT’S MOTION TO  
DISQUALIFY COUNSEL (Dkt. 6)**

Before the Court is Plaintiffs Shoshone Bannock Tribes and Fort Hall Business Council’s request to stay consideration of Defendant’s Motion to Dismiss (Dkt. 3) and Motion to Disqualify Counsel (Dkt. 6) pending resolution of Plaintiffs’ Motion to Remand (Dkt. 7). The Court has reviewed the record and the briefs and finds that the facts and legal arguments are adequately presented. Accordingly, to avoid delay, and because the Court finds that the decisional process would not be significantly aided by oral argument, the Court will decide the Motion without oral argument. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B). For the reasons stated below, the Court will stay consideration of Defendants’ Motions until it resolves Plaintiff’s Motion to Remand.

Plaintiffs argue that this Court lacks subject matter jurisdiction over this case and, as a result, should stay consideration of Defendant’s pending motions because doing so would “save considerable resources for both the Court and the parties.” Mot. for Remand at 12 (Dkt. 7).

Defendant opposes this request, arguing that the Court must resolve the Motion to Disqualify<sup>1</sup> first because doing so is “key to safeguard notions of fundamental fairness and basic professional ethics.” Resp. to Mot. to Stay (Dkt. 11). Defendant contends that this Court may rule on the Motion to Disqualify pursuant to its inherent authority to regulate the conduct of attorneys appearing before it, even if the Court ultimately determines that it lacks subject matter jurisdiction. *Id.* at 3-5.

The Court is not persuaded by Defendant’s arguments and will stay consideration of the Motion to Dismiss and Motion to Disqualify until after Plaintiff’s Motion for Remand is resolved. Defendant correctly points out that “the Supreme Court and the Ninth Circuit have yet to address the sequence in which a district court should rule on a jurisdictional motion versus a motion to disqualify counsel[.]” *Id.* at 4. However, there is district court case law directly on point that states “[a]lthough our court of appeals has never addressed the sequence in which a district court should rule on a jurisdictional motion versus a motion to disqualify counsel, every district court that has faced the issue has ruled on the jurisdictional issue first.” *Grancare, LLC v. Thrower*, Nos. C 15-05362 WHA, C 15-05575 WHA, 2016 WL 1082780, at \*5 (N.D. Cal. Mar. 21, 2016) (emphasis added).<sup>2</sup> The Court sees no reason to depart from what appears to be the consistent approach among district courts to consider jurisdictional motions before motions to disqualify.<sup>3</sup>

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<sup>1</sup> Defendant does not offer any opposition to the request to stay consideration of their Motion to Dismiss (Dkt. 3).

<sup>2</sup> While coincidence is possible, it appears that Defendant – in its response – selectively lifted the first part of this quote from *Grancare* without citing the case.

<sup>3</sup> Moreover, if district courts did not resolve jurisdictional motions before motions to disqualify, it could lead to an absurd scenario where a court exercises inherent authority to sanction an attorney – who has not voluntarily appeared before the court – only to remand the matter to a different tribunal with jurisdiction over the case. Federal courts are not ordinarily called upon to police attorney ethics matters that could, and should, be resolved in another forum.

More importantly, as explained in *Grancare* and other cases, this Court's duty to ensure that it has subject matter jurisdiction outweighs the risk that potentially disqualifiable attorneys may represent Plaintiffs for the limited purpose of the Motion to Remand. *See Grancare*, 2016 WL 1082780, at \*6. While the Court is conscious of Defendant's serious concerns regarding Plaintiffs' attorneys, it finds that Defendants face little risk of prejudice if the Court resolves the jurisdictional question first. Even if this Court were to assume that Plaintiffs' attorneys had conflicts of interest relating to the substance of this matter, the Motion to Remand raises purely procedural questions separate and apart from the merits of the case. By considering jurisdiction first, the Court would not be depriving Defendant of an ability to defend itself against any unethical conduct undertaken by Plaintiffs' attorneys. Irrespective of whether the Motion to Remand is granted or denied, a competent tribunal with jurisdiction over the case – either the Shoshone Bannock Tribal Court for the Fort Hall Reservation or this Court – will be able to consider the merits of the Motion to Disqualify.

Consequently, the Court will stay consideration of Defendant's Motion to Dismiss and Motion to Disqualify until after a ruling on Plaintiff's Motion for Remand. After the Motion for Remand is resolved, the Court will reset deadlines for Plaintiffs to file their responses to those Motions.

### **ORDER**

ACCORDINGLY, IT IS ORDERED THAT:

1. Consideration of Defendant's Motion to Dismiss (Dkt. 3) is STAYED pending adjudication of Plaintiffs' Motion for Remand (Dkt. 7).

2. Consideration of Defendant's Motion to Disqualify (Dkt. 6) is STAYED pending adjudication of Plaintiffs' Motion for Remand (Dkt. 7).



DATED: May 12, 2023

A handwritten signature in black ink, reading "Raymond E. Patricco". The signature is written in a cursive style and is positioned above a horizontal line.

Raymond E. Patricco  
Chief U.S. Magistrate Judge