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Nooksack Indian Tribe

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Betty Leathers

IN THE NOOKSACK TRIBAL COURT

GABRIEL S. GALANDA, ANTHONY S.
BROADMAN, and RYAN D.
DREVESKRACHT,

Pro Se Plaintiffs,

v.

CHARITY BERNARD, BETTY LEATHERS,
and JOHN and JANE DOES NOS. 1-5, in their
official capacities,

Defendants.

NO. 2016-CI-CL- 002⁸³

MOTION FOR INJUNCTIVE AND
DECLARATORY RELIEF

I. INTRODUCTION

Defendants are violating and will violate the Indian Civil Rights Act, the Nooksack Indian Tribe's Constitution, and other Nooksack and federal laws. Defendants have attempted to bar or disbar Plaintiffs pursuant to an unlawful Tribal Council Resolution, and, by doing so, Defendants are acting unlawfully. Defendants have also attempted to exclude or expel Plaintiffs from conducting business at Nooksack by acting and threatening to act in furtherance of an unlawful business licensure policy, and, by doing so, Defendants are also acting unlawfully. Plaintiffs have been denied, and are being denied, due process and equal protection. Plaintiffs have been harmed, and continue to be harmed. Unless and until Defendants are enjoined from acting unlawfully and declaratory relief is issued, Plaintiffs will continue to be harmed.

II. FACTUAL SUMMARY¹

The operative facts in this matter have been reviewed elsewhere, and the Court and the Parties are well aware of the details surrounding this dispute. To summarize:

- **February 24, 2016:** The Nooksack Tribal Council enacted Resolution No. 16-28, titled: “BARRING GABRIEL GALANDA and ANY OTHER ATTORNEYS WORKING AT THE FIRM OF GALANDA BROADMAN, WHO ADMITTED [sic] AND PRACTICE IN THE NOOKSACK TRIBAL COURT FROM (1) ENGAGING IN BUSINESS ACTIVITIES WITHIN THE NOOKSACK TRIBAL LAND and (2) PRACTICING IN THE TRIBAL COURT.”² Moments later, the Nooksack Tribal Council enacted Resolution No. 16-27, adding the following text to N.T.C. § 10.02.070:

Whenever the Tribal Council becomes aware that any advocates’ 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 necessary to ensure that such behavior and/or practices are proven; or, as may be necessary to correct past behavior and/or practices.³

- **February 25, 2016:** Defendant Bernard sent a memorandum to the Court stating that “no person is to be admitted to the Tribal Bar as an advocate without a Nooksack Indian Tribe Business License unless they are an employee of the Tribal government or if this person is

¹ Plaintiffs also incorporate the facts as laid out in this Court’s March 7, 2016, Case Management Order; the Orders issued on March 21, 2016; and the Complaint and its Appendixes in this action.

² Plaintiffs have yet to be provided a copy of Resolution No. 16-28. Complaint, at 5. From what they have been learned from published opinions and Orders of this Court, as well as evidence informally provided by clients and various media outlets, however, Plaintiffs have gleaned enough to be sure that it (a) does exist, and (b) violates the law.

³ “In a facial challenge, a statute is unconstitutionally vague if it ‘fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.’” *United States v. Harris*, 705 F.3d 929, 932 (9th Cir. 2013) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)). In addition to this Resolution No. 16-27 being enacted under suspicious circumstances—circumstances that reek of equal protection violations, a prime example of a provision that “encourages seriously discriminatory enforcement”—it is unconstitutionally vague as enacted and must be declared unconstitutional. *Id.*

1 contracted with the Tribal government.” Thereafter, Defendant Bernard and Defendant Leathers
2 removed Plaintiffs, and Plaintiffs only, from the list of advocates admitted to practice in this
3 Court.⁴

4 • **February 26, 2016:** Having informally learned that they had been barred or
5 disbarred, Plaintiffs sought to obtain a business license, and remitted a \$100.00 check for any
6 license fee, so that they might “remain in good standing at Nooksack.”⁵

7 • **March 2, 2016:** Plaintiffs received a letter from Joseph P. Mace, the Tribe’s
8 Chief Financial Officer, returning the \$100.00 check stating that the Tribe is “not able to issue
9 the requested license,” with no further explanation.⁶

10 • **March 7, 2016:** This Court acknowledged that by operation of Resolution No. 16-
11 27, Plaintiffs have been (1) barred or disbarred from practicing law in the Nooksack Tribal
12 Court, and (2) excluded from engaging in business at Nooksack.⁷

13 • **March 8, 2016 - Present:** Plaintiffs remain barred or disbarred from practicing
14 law at Nooksack, and are deprived of their business relationship with nearly 300 clients, who
15 remain unrepresented at Nooksack.⁸ Plaintiffs have reported the Nooksack Tribal Council’s
16 disbarment proceedings to the Washington and Oregon State Bar Associations and their
17 insurance carrier.⁹ Plaintiffs are harmed, and continue to be harmed, economically and
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20 ⁴ Complaint, Appendixes A-B; *Belmont v. Kelly*, No. 2014-CI-CL-007, at 4 (Nooksack Tribal Ct., Mar. 21, 2016)
21 [hereinafter “Mar. 21 Order”] (“Following the February 25th memorandum, Ms. Bernard assisted the Court Clerk to
winnow the list down to a handful of advocates.”).

22 ⁵ *Belmont v. Kelly*, No. 2014-CI-CL-007, Fourth Declaration of Michelle Roberts (Mar. 4, 2016), Ex.A.

23 ⁶ *Id.*

24 ⁷ *Belmont v. Kelly*, No. 2014-CI-CL-007, at 1-2 (Nooksack Tribal Ct. Mar. 7, 2016) [hereinafter “Mar. 7 Order”].

25 ⁸ *Id.*; see also Mar. 21 Order.

⁹ The Washington State Supreme Court will likely now order Plaintiffs “to show cause . . . why it should not impose
the identical discipline or disability inactive status.” WASH. ST. ENFORCEMENT. L. COND., § 9.2(c); see e.g. *In re:*
Mark Gene Boert, No. 201, 100-4 (Wash. Jan. 10, 2013).

reputationally due to Resolution No. 16-28 and the false and defamatory public statements made in relation to its issuance.¹⁰

III. LAW AND ARGUMENT

A. Standard For Issuance Of A Permanent Injunction

The standard for granting a permanent injunction is essentially the same as for granting a preliminary injunction, except that a party seeking a permanent injunction must prove actual success on the merits as opposed to merely showing a likelihood of success on the merits. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987). Therefore, a plaintiff seeking a permanent injunction must demonstrate:

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006); *see also Geertson Seed Farms v. Johanns*, 570 F.3d 1130, 1136 (9th Cir. 2009) (applying the four-part test for permanent injunctive relief). “The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court.” *eBay Inc.*, 547 U.S. at 391.

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¹⁰ See e.g. *Belmont v. Kelly*, No. 2014-CI-CL-007, Declaration of Sue Gearhart, at 1-7 (Mar. 11, 2015) (replete with false ethical accusations); Andrew Westney, *Tribe Disbarred Firm As Move In Membership Row, Atty Says*, LAW 360, Mar. 9, 2016, available at <http://www.law360.com/articles/769568/tribe-disbarred-firm-as-move-in-membership-row-atty-says>; Samantha Wohlfeil, *Nooksack Tribe Bars Lawyer for ‘306’ Facing Disenrollment*, BELLINGHAM HERALD, Mar. 8, 2016, available at <http://www.bellinghamherald.com/news/local/article64889637.html> (stating that Plaintiffs cited a “void opinion as precedence [sic]” in a pleading filed with this Court and otherwise “either intentionally or negligently ma[de] misleading statements to the Court and knowingly ma[de] false accusations in a pleading against opposing counsel”). These statements are false and defamatory. Insofar as such statements were made or published beyond Nooksack lands, they will be redressed elsewhere. *Powell v. Farris*, 94 Wn.2d 782, 787 (Wash. 1980); *Maxa v. Yakima Petroleum*, 83 Wn. App. 763, 769-70 (Wash. App. 1996).

B. Plaintiffs Have Suffered Irreparable Injury.

1. Resolution No. 16-28 Is Unconstitutional Because Plaintiffs' Disbarment Lacked Any Semblance Of Procedural Due Process.

Section 1302 of the Indian Civil Rights Act ("ICRA") states, in relevant part: "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 (emphasis added).

Here, Plaintiffs have been deprived of "property without due process of law." *Id.* Where the law "bestow[s] a right that cannot properly be eliminated except for cause, that right constitutes property protected by procedural due process." *Plaza Health Laboratories v. Perales*, 878 F.2d 577, 581 (2d Cir. 1989). This includes the right to practice law. As this Court has expressed:

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."

Mar. 7 Order, at 4 (quoting *In re Ruffalo*, 390 U.S. 544, 550 (1968); citing additional authority).

The Court of Appeals for the D.C. Circuit has stated likewise:

The privilege of practicing law is not a matter of grace and favor; on the contrary, . . . we have always viewed an attorneys license to practice as a right which cannot lightly or capriciously be taken from him. We have, too, remained advertent to the Supreme Court's admonition that the power to withdraw that right ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct, which affect the standing and character of the party as an attorney.

Charlton v. F.T.C., 543 F.2d 903, 906 (D.C. Cir. 1976) (quotation omitted).

Here, as this Court has already correctly concluded, Plaintiffs were "not afforded due process of any kind in connection with enactment of Resolution #16-28." Mar. 21 Order, at 4;

1 *see also id.* at 12 (the Tribal Council delegated to itself “authority for disciplining advocates in
2 the Tribal Court and then, without providing notice and opportunity to be heard, they disbarred
3 attorneys representing their adversaries in litigation”). Indeed, Plaintiffs were afforded no
4 process whatsoever.¹¹ There can be no doubt: Resolution No. 16-28 has deprived Plaintiffs of
5 property without due process of law, in violation of the ICRA.

6 2. Resolution No. 16-28 Is Unconstitutional Because Plaintiffs’ Exclusion Lacked
7 Any Semblance Of Procedural Due Process.

8 As noted above, Section 1302 of the ICRA prohibits the Tribe from “deny[ing] to any
9 person within its jurisdiction the equal protection of its laws” 25 U.S.C. § 1302 (emphasis
10 added). Equal protection in the context of law enforcement means that a decision to enforce a
11 particular statute “may not be deliberately based upon an unjustifiable standard such as race,
12 religion, or other arbitrary classification, including the exercise of protected statutory and
13 constitutional rights.” *Wayte v. United States*, 470 U.S. 598, 608 (1985). This requires a
14 showing that (1) “the passive enforcement system had a discriminatory effect,” and (2) “that it
15 was motivated by a discriminatory purpose.” *Id.* As to (1):

16 To show discriminatory effect, a defendant must show that similarly situated
17 individuals were not prosecuted. A “similarly situated” person for selective
18 prosecution purposes is one who engaged in the same type of conduct, which
19 means that the comparator committed the same basic crime in substantially the
20 same manner as the defendant—so that any prosecution of that individual would
21 have the same deterrence value and would be related in the same way to the
22 Government’s enforcement priorities and enforcement plan—and against whom
23 the evidence was as strong or stronger than that against the defendant.

24 *United States v. Brown*, 862 F. Supp. 2d 1276, 1286 (N.D. Ala. 2012), *aff’d*, 516 F. App’x 872
25 (11th Cir. 2013) (citing *Wayte*, 470 U.S. 598). As to (2): “To show discriminatory purpose, a
26 plaintiff must establish that the decision-maker selected or reaffirmed a particular course of

27 ¹¹ See generally n.7, *supra*, and accompanying text.

1 action at least in part because of, not merely in spite of, its adverse effect” on the targeted person
2 or persons. *Rosenbaum v. San Francisco*, 484 F.3d 1142, 1153 (9th Cir. 2007).

3 Here, Plaintiffs clearly prevail on both elements. As noted by this Court: “historically,”
4 the Tribe’s business license requirement “has not been enforced against advocates.” March 21
5 Order, at 10. In fact, to Plaintiffs’ knowledge, none of the attorneys on the list of advocates
6 admitted to practice in this Court have *ever* been in possession of a Nooksack business license.
7 ¹²Yet Plaintiffs, and Plaintiffs only, have been removed from that list because of their lack of
8 business license. The only reason for this is that the Tribal Council, who ordered Plaintiffs’
9 removal from that list vis-à-vis Resolution No. 16-28, are “plainly biased” against Plaintiffs and
10 their clients. *Id.* at 8. No other attorneys have been removed from the list of advocates allowed
11 to practice law at Nooksack; no other attorneys have been excluded from conducting business at
12 Nooksack; and no other attorneys have been targeted by the Tribal Council by way of a Tribal
13 Council Resolution.

14 3. Plaintiffs’ Injuries Are Irreparable.

15 As this Court foresaw, Plaintiffs have “face[d] significant jeopardy in their legal practice
16 and careers as a result of Resolution #16-28.” Mar. 21 Order, at 5. Plaintiffs have been
17 disbarred from practicing law at Nooksack and have been partially deprived of their business
18 relationship with nearly 300 clients. Plaintiffs have had to report the Nooksack Tribal Council’s
19 disbarment proceedings to the Washington and Oregon State Bar Associations and their
20 insurance carrier. Plaintiffs’ reputations and goodwill have been harmed.

21 All all such harm is irreparable. *See e.g. Medicine Shoppe Intern., Inc. v. S.B.S. Pill Dr.,*
22 *Inc.*, 336 F.3d 801, 805 (8th Cir.2003) (“Loss of intangible assets such as reputation and

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24 ¹² See Complaint, Appendix B.

1 goodwill can constitute irreparable injury.”); *Pappan Enters., Inc. v. Hardee's Food Sys., Inc.*,
2 143 F.3d 800, 805 (3d Cir. 1998) (“Grounds for irreparable injury include loss of control of
3 reputation, loss of trade, and loss of goodwill.”); *Atl. City Coin & Slot Serv. Co. v. IGT*, 14 F.
4 Supp. 2d 644, 667 (D.N.J. 1998) (“termination of a long-standing business relationship can result
5 in irreparable harm.”) (citing *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197 (2d Cir.
6 1970)).

7 **C. Plaintiffs Do Not Have An Adequate Remedy At Law.**

8 “Although considered distinct factors, the inquiries into irreparable injury and inadequate
9 remedy are closely related” *C & N Corp. v. Kane*, No. 12-C-0257, 2013 WL 6001074, at
10 *3 (E.D. Wis. Nov. 12, 2013), *aff’d sub nom.*, 756 F.3d 1024 (7th Cir. 2014). This is because,
11 generally, when “irreparable injury to Plaintiffs’ character and reputation” are at issue “money
12 damages cannot adequately compensate” the harm inflicted. *Oakley, Inc. v. McWilliams*, 890 F.
13 Supp. 2d 1240, 1242 (C.D. Cal. 2012). Here, that is surely the case. Plaintiffs do not have an
14 adequate remedy at law. Resolution No. 16-28 has permanently and irreparably harmed them.

15 **D. Considering The Balance Of Hardships Between Plaintiffs And Defendants, A**
16 **Remedy In Equity Is Warranted—The Public Interest Would Not Be Disserved By**
A Permanent Injunction.

17 As this Court has noted, the disbarring of lawyers is “designed to protect the public, the
18 courts and the legal profession, to maintain high professional standards, and to preserve public
19 trust in the legal profession.” *In re Stanley*, 917 F.2d 28 (9th Cir. 1990); Mar. 7 Order, at 4.
20 While surely there is surely a public interest in disbarment for those purposes, “[t]he public’s
21 interest in prompt, fair, and accurate accrediting information is not served if the accrediting
22 agency does not observe a [lawyer]’s due process rights” *W. State Univ. of S. California v.*
23 *Am. Bar Ass’n*, 301 F. Supp. 2d 1129, 1138 (C.D. Cal. 2004). On the other hand, as discussed
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1 above, “loss of reputation and good will resulting from the loss of accreditation could be very
2 damaging” to an attorney. *Id.*

3 While “courts are free to adopt their own local rules defining grounds for disbarment and
4 suspension and the procedures to be followed[,] these rules must meet the essential requirements
5 of due process.” *In re Ming*, 469 F.2d 1352, 1355 (7th Cir. 1972). Here, Plaintiffs were “not
6 afforded due process of any kind in connection with enactment of Resolution #16-28.” Mar. 21
7 Order, at 4. The public has no interest in such haphazard and arbitrary application of law.

8 IV. CONCLUSION

9 Plaintiffs respectfully request that this Court: (1) issue a permanent injunction barring
10 Defendants, in their official capacities, from acting in furtherance of Resolution Nos. 16-27 and
11 16-28; (2) issue a judgment declaring Resolution Nos. 16-27 and 16-28 null and void; (3) award
12 Plaintiffs reasonable *pro se* fees and costs for having to bring this action and the instant motion;
13 and (4) issue such other relief as the Court may deem just and equitable.

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1 DATED this 24th day of March, 2016.

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