


NOOKSACK TRIBAL COURT
NOOKSACK INDIAN TRIBE
JUN 15 2016
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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, BOB KELLY, BOB
SOLOMON, RICK GEORGE, AGRIPINA
SMITH, LONA JOHNSON, and KATHERINE
CANETE, in their official and personal
capacities,

Defendants.

NO. 2016-CI-CL-002

MOTION FOR PARTIAL SUMMARY
JUDGMENT

I. INTRODUCTION

Pro se Plaintiffs Anthony S. Broadman and Ryan D. Dreveskracht (“Plaintiffs”), individually and on their own behalf, petition the Court for an order declaring that their disbarment¹ was illegal and invalid.

There are no issues of material fact and Plaintiffs are entitled to judgment as a matter of law: Plaintiffs’ secret disbarment should be declared illegal and invalid because it violates Plaintiffs’ due process rights.

The sole fact question related to this motion was resolved permanently in the Court’s

¹ Having not yet received Resolution No. 16-28, Plaintiffs still do not know exactly what action Defendants have taken against them—i.e., whether they were disbarred, or something else. Plaintiffs reserve all rights, accordingly.

1 Order Re: Resolution #16-28 and Due Process; Order Granting Motion for Judicial Notice Filed
2 by Pro Se Plaintiff Michelle Joan Roberts; Order Re. Nooksack Business License, *Belmont v.*
3 *Kelley*, No. 2014-CI-CL-007, 4-5 (March 21, 2016) (“Order Re: Resolution #16-28 and Due
4 Process”), which held:

5 Defendants delegated to themselves authority for disciplining advocates in the
6 Tribal Court and then, without providing notice and opportunity to be heard, they
disbarred attorneys representing their adversaries in litigation.

7 *Id.* at 12 (emphasis added).

8 Nothing in this Motion should be construed as the practice of law before the Nooksack
9 Tribal Court or the transaction of business at Nooksack. Plaintiffs each appear only on their own
10 respective behalf, without counsel, as explicitly authorized by the Court.² Indeed, Plaintiffs do
11 not intend to practice law or otherwise transact business before the Tribal Court until or unless the
12 firm of Galanda Broadman PLLC is licensed to *do business* by the Nooksack Tribe. The rejection
13 of the firm’s business license application will be the subject of a June 30, 2016, hearing. That
14 hearing is separate from the apparent disbarment of Plaintiffs. This Motion deals solely with the
15 disbarment of Broadman and Dreveskracht as a matter of their ability to *practice law*.

16 II. FACTS

17 A. Plaintiff Anthony S. Broadman

18 Broadman applied for admission to the Nooksack Tribal Court bar on March 4, 2013, and
19 on May 16, 2013, was administered the Nooksack Tribal Court Advocate’s Oath, in person, by
20 then Chief Judge Raquel Montoya-Lewis. Broadman complied strictly with N.T.C. §§
21 10.030.030 and .040 by (1) applying in writing for permission to appear; (2) paying the admission
22

23 ² Order Re: Resolution #16-28 and Due Process, *Belmont v. Kelley*, No. 2014-CI-CL-007 (March 21, 2016), *14,
24 n.3. An unsigned April 1, 2016, letter purportedly issued by the Nooksack Tribal Court and the Tribe’s defense
25 lawyers indicating that “a lawyer who is acting pro se is ‘practicing in tribal court,’” is incorrect and contradicts the
Court’s March 21, 2016, Order. *Id.*

1 fee; (3) reading the Constitution and the ordinances of the Nooksack Tribe, and the Rules of the
2 Nooksack Tribal Court; and (4) being certified by the Court as qualified to appear. Declaration of
3 Anthony S. Broadman in Support of Motion for Partial Summary Judgment (“Broadman Decl.”)
4 **Exs. A-B.** Broadman stated the oath required by N.T.C. §10.020.040 before Judge Montoya-
5 Lewis on May 16, 2013. Broadman Decl. ¶ 4. The Court, therefore, admitted to practice in the
6 Nooksack Tribal Court on May 16, 2013, by N.T.C. §§ 10.030.030 and .040

7 The only order provided to Broadman from the hearing on May 16, 2013, reflects that
8 Broadman “appeared” as an attorney before the Court. Broadman Decl. **Ex. C.**

9 On August 14, 2013, Broadman argued the Emergency Motion For Temporary
10 Restraining Order of Michelle Joan Roberts, Rudy St. Germain, and Robert James Rabang, Sr.
11 The only order served by the Court following this hearing states, “Plaintiffs . . . appeared,
12 represented by Anthony Broadman and Gabe Galanda.” *Id.* **Ex. D.**

13 In March 2016, Plaintiffs were given copies of two lists of attorneys admitted to practice
14 before the Court. A bar list dated March 2015 suggests that Broadman’s admission was
15 “pending” despite his having been admitted in on May 16, 2013. *Id.* **Ex. E.** A bar list dated
16 March 3, 2016, does not include Broadman. *Id.* **Ex. F.**

17 **B. Plaintiff Ryan D. Dreveskracht**

18 On March 8, 2013, Dreveskracht was admitted to practice law in the Nooksack Tribal
19 Court. *Id.* **Ex. E.** Since then, Dreveskracht appeared in the Nooksack Tribal Court to argue at
20 least the following motions:

- 21 • *Roberts v. Kelly*, No. 2013-CI-CL-003 (Feb. 26, 2015) (Order Granting Plaintiffs’
22 Motion for Injunction).
- 23 • *St. Germain v. Kelly*, No. 2013-CI-CL-005 (Jun. 24, 2014) (Order Granting
24 Defendants’ Motion to Dismiss and Denying Plaintiffs’ Motion for Summary Judgment).

1 • *Adams v. Kelly*, No. 2014-CI-CL-006 (Jun. 26, 2014) (Order Granting Defendants’
2 Motion to Dismiss).

3 • *Belmont v. Kelly*, No. 2014-CI-CL-007 (Jun. 12, 2014) (Order Granting Plaintiffs’
4 Motion for Preliminary Injunction).

5 • *St. Germain v. Kelly*, No. 2013-CI-CL-005 (Feb. 7, 2014) (Order On Motion for
6 Order to Show Cause Re: Contempt).

7 • *Adams v. Kelly*, No. 2014-CI-CL-006 (Feb. 7, 2014) (Order Denying Plaintiffs’
8 Motion for Preliminary Injunction).

9 • *St. Germain v. Kelly*, No. 2013-CI-CL-005 (Dec. 18, 2013) (Order Granting
10 Motion for Temporary Restraining Order).

11 In March 2016, Plaintiffs were given copies of two lists of attorneys admitted to practice
12 before the Court. A bar list dated March 2015 suggests that Dreveskracht was admitted.
13 Broadman Decl. *Id.* Ex. E. A bar list dated March 3, 2016, does not include Dreveskracht,
14 however. *Id.* Ex. F.

15 **C. Facts Common To Plaintiffs**

16 On February 24, 2016, the Nooksack Tribal Council enacted Resolution No. 16-28,
17 barring attorneys “in the Galanda Broadman law firm,” apparently including Dreveskracht and
18 Broadman, from practicing law in this Court. Order Re: Resolution #16-28 and Due Process, at 1.

19 Plaintiffs were given no notice, hearing, or opportunity to present evidence in opposition
20 to their being barred or disbarred, which apparently became final through the issuance of
21 Resolution No. 16-28. *Id.* at 5. Despite repeated requests, and this Court’s March 21, 2016,
22 Order in *Belmont v. Kelly*, No. 2014-CI-CL-007 directing Defendants to produce Resolution No.
23 16-28, Defendants have yet to do so. Plaintiffs have yet to see Resolution No. 16-28.

24 Indeed, as of February 24, 2016, when Resolution No. 16-28 was apparently passed,
25

1 Plaintiffs had no knowledge whatsoever that proceedings to bar or disbar them were being
2 conducted. Were it not for this Court’s March 7, 2016, Order in *Belmont v. Kelly*, No. 2014-CI-
3 CL-007, Plaintiffs would not have known that Resolution No. 16-28 even existed.

4 Per Washington State Court Rules, Plaintiffs had a duty to report the Nooksack Tribal
5 Council’s secret disbarment proceedings to the Washington State Bar Association. WA. ST. R.
6 ENFORCEMENT LAW. COND., § 9.2(a). Broadman also had to report the secret disbarment
7 proceedings to the Oregon State Bar Association.

8 Plaintiffs are unaware of the allegations against them that could conceivably give rise to
9 disbarment. Broadman Decl. ¶ 10. Plaintiffs have never been disciplined by this Court or any
10 other Tribal, state, or federal court. *Id.*

11 Defendants’ apparent accusation that Broadman was not admitted to practice is legally
12 incorrect and pretext for the attempted strategic disqualification of the attorneys for 331 enrolled
13 Nooksack Tribal Members being targeted by the Kelly Faction, which members include but are
14 not limited to the “Nooksack 306.” Plaintiffs have no knowledge of specific acts they are alleged
15 to have committed or not committed; Plaintiffs have been given no notice or opportunity to be
16 heard. Order Re: Resolution #16-28 and Due Process, at 12.

17 III. ARGUMENT

18 A. The Court Possesses Jurisdiction Over This Complaint And This Motion.

19 This Court possesses jurisdiction per the Tribe’s Constitution and N.T.C. §§ 10.00.050,
20 10.00.90, and 10.00.100(b), which waives any sovereign immunity of certain officers/employees
21 of the Tribe for official capacity suits. *See also Lomeli v. Kelly*, No. 2013-CI-APL-002 at 11, 13-
22 14 (Nooksack Ct. App. Jan. 15, 2013). Plaintiffs are seeking declaratory relief.

23 B. Plaintiffs’ Apparent Disbarment Is Illegal.

24 It appears from the two bar lists that Plaintiffs have been disbarred. Broadman Decl., **Exs.**
25

1 **E, F.** Again, one list includes their names. *Id.*, **Ex. E.** The latter list does not. *Id.*, **Ex. F.** The
2 issuance of the second list on or about March 3, 2016, without their names, has the practical effect
3 for other jurisdictions to which Plaintiffs must report, of disbarring Plaintiffs. *See* Broadman
4 Decl., **Exs. E, F.**

5 Plaintiffs have never received formal notice, formal information, an opportunity to be
6 heard, or an opportunity to confront witnesses in connection with their apparent disbarment. *Id.*
7 ¶ 11; Order Re: Resolution #16-28 and Due Process, at 12. Plaintiffs have never received
8 information about why they were apparently disbarred. *Id.* Not only were Plaintiffs not
9 provided an opportunity to be heard in advance of their apparent disbarment. *See id.* But
10 Plaintiffs have not been provided an opportunity to be heard now over three months *after*
11 apparently being disbarred. *See id.*

12 Plaintiffs' disbarment plainly violates the Nooksack Constitution and should be declared
13 invalid because they have not been provided any process, let alone due process.

14 **(1) Plaintiffs Were Entitled to Due Process.**

15 A law license is a liberty interest that cannot be denied without due process of law.
16 *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963); *Schwartz v. Board of Bar*
17 *Examiners*, 353 U.S. 232 (1957).³ Non-member attorneys practicing before the Court are entitled
18 to due process. *See* Order Re: Resolution #16-28 and Due Process, *Belmont v. Kelley*, No. 2014-
19 CI-CL-007, 4-5 (March 21, 2016) (“Galanda Broadman was not afforded due process of any
20 kind[.]”; “[T]his Court is unwilling to review Resolution #16-28 without affording Galanda
21 Broadman due process, which means notice and an opportunity to be heard.”) (citing *Mullane v.*

22
23 ³ The Court has previously relied on cases decided by the Supreme Court of the United States to determine whether
24 the Tribe and its purported agents have provided litigants due process. *See, e.g.*, Order Re: Resolution #16-28 and
25 Due Process, *Belmont v. Kelley*, No. 2014-CI-CL-007, at 5 (applying *Mullane v. Central Hanover Bank & Trust*
Co., 229 U.S. 306, 314 (1950)).

1 *Central Hanover Bank & Trust Co.*, 229 U.S. 306, 314 (1950)). In addition, here, the ability to
2 practice law at Nooksack is tied up with and implicates Plaintiffs' profound liberty interests in
3 their licenses to practice law in Washington and, for Broadman, Oregon. *See, e.g.*, WA. ST. R.
4 ENFORCEMENT LAW. COND., § 9.2(a).

5 Therefore, Plaintiffs have suffered a deprivation of liberty that triggers due process
6 protections. Individuals at a minimum must be provided notice and an opportunity to rebut
7 evidence *before* being deprived of such a liberty. *Cleveland Bd. of Education v. Loudermill*, 470
8 U.S. 532, 542 (1985).

9 *Prior* to an attorney's disbarment, he or she is entitled to notice of the charges made and
10 an opportunity to explain or defend unless extreme misconduct occurs in open court, in the
11 presence of the judge. *In re Ruffalo*, 390 U.S. 544, 550; *Theard v. United States*, 354 U.S. 278,
12 282 (1957) ("Disbarment being the very serious business that it is, ample opportunity must be
13 afforded to show cause why an accused practitioner should not be disbarred."); *Ex parte*
14 *Robinson*, 86 U.S. 505, 511 (1873) ("Before a judgment disbaring an attorney is rendered he
15 should have notice of the grounds of complaint against him and ample opportunity of explanation
16 and defence."); *Ex parte Garland*, 71 U.S. 333, 378 (1866) ("They hold their office during good
17 behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment
18 of the court after opportunity to be heard has been afforded."). *See also* *Burkett v. Chandler*, 505
19 F.2d 217, 222, n. 5 (10th Cir.1974), *cert denied*, 423 U.S. 876 (1975) (disbarment proceeding
20 void due to absence of prior notice or opportunity to be heard notwithstanding provision in local
21 rule for review of disbarment judgment).

22 Terminating Plaintiffs' ability to practice law is illegal if they are not provided due
23 process.

1 **(2) Plaintiffs Have Not Been Provided Due Process.**

2 Plaintiffs have been provided *no* process, let alone *due* process. They were sworn in to
3 practice law before the Nooksack Tribal Court; allowed to sign and file papers as attorneys; and
4 then subjected to a secret disbarment. On one day, apparently, their names appeared on the list of
5 attorneys licensed to practice law at Nooksack. On some subsequent day, without their
6 knowledge, let alone an opportunity to be heard, their names disappeared from that list.

7 **(3) Plaintiffs Were Not Provided Notice.**

8 Plaintiffs have only learned of their disbarment after the fact, through rumor and what
9 appears to be the list of attorneys licensed to practice at Nooksack. That list does not include their
10 names. Plaintiffs have never viewed the document that purportedly disbars them, nor have they
11 been informed of the reasons for disbarment, if any.

12 **(4) Plaintiffs Were Not Provided An Opportunity To Be Heard.**

13 Plaintiffs have not been provided any hearings, let alone pre-revocation hearings. *See*
14 Order Re: Resolution #16-28 and Due Process, at 12. Defendants, in violation of the Court's and
15 the Nooksack Court of Appeals' orders, will not accept any documents signed or filed by
16 Plaintiffs.

17 **(5) Plaintiffs Were Not Provided A Pre-Termination Hearing.**

18 A post-termination hearing cannot satisfy the requirements of due process except when it
19 is coupled with pre-termination notice and pre-termination opportunity to respond. *Clements v.*
20 *Airport Authority of Washoe County*, 69 F.3d 321, 333-334 (9th Cir.1995); *see also Goldberg v.*
21 *Kelly*, 397 U.S. 254 (1970) (heightened interests require pre-termination hearing).

22 Because no notice or opportunity to respond has been proffered, a pre-termination, or pre-
23 disbarment hearing was required. Plaintiffs have had no hearing, notice, or even direct
24 communication regarding their disbarment. *See* Order Re: Resolution #16-28 and Due Process, at
25

1 12.

2 **(6) Plaintiffs Were Not Provided An Opportunity To Confront And Cross-**
3 **Examine Witnesses.**

4 In the case of a denial of a license to practice law, due process requires the opportunity to
5 confront and cross-examine the witnesses whose conduct led to such denial; the opportunity for
6 confrontation is a necessary element of due process. *Willner*, 373 U.S. at 104. Plaintiffs are
7 unaware of who said what regarding their disbarment. They have been given no opportunity to
8 confront or cross-examine their accusers. *See* Order Re: Resolution #16-28 and Due Process, at
9 12.

10 **(7) There Is No Colorable Basis For Disbarment.**

11 Part of due process includes an actual basis for a government taking an action—not a
12 concocted pretext. There is no colorable basis for Plaintiffs’ disbarment. As the Court has
13 observed: “Defendants delegated to themselves authority for disciplining advocates in the Tribal
14 Court and then, without providing notice and opportunity to be heard, they disbarred attorneys
15 representing their adversaries in litigation.” Order Re: Resolution #16-28 and Due Process, at 12.
16 Given this fact, which has not been appealed or objected to, the true basis for Plaintiffs’
17 disbarment is clear; it has nothing to do with how Plaintiffs have represented clients before the
18 Court, but rather whom Plaintiffs represent.

19 **(8) Whatever Forum Exists Is Plainly Biased.**

20 Due process requires an impartial decision maker. *Goldberg*, 397 U.S. at 271. Even if
21 Plaintiffs were provided a forum by Defendants, it would violate due process since the Kelly
22 Faction is not impartial; as the Court has already held, “the administrative body is biased or has
23 predetermined the issue.” *See* Order Re: Resolution #16-28 and Due Process, at 7.

24 **C. Declaratory Judgment Is Appropriate.**

25 This matter comes before the Court in similar procedural posture to *Lomeli v. Kelly*, No.

1 2013-CI-APL-002 and *Roberts v. Kelly*, No. 2013-CI-CL-003. Defendants have violated the
2 Nooksack Constitution and are currently injuring Plaintiffs.

3 Sovereign immunity does not protect suits against officers, employees, or agents of the
4 Tribe acting in their official capacity “based on the allegation [they] were enforcing or threatening
5 to enforce laws and policies that violate the Nooksack Constitution.” *Lomeli*, No. 2013-CI-APL-
6 002, at 14. The Nooksack Court of Appeals has held that when a tribal member properly pleads
7 under this exception, this Court possesses a “constitutional grant of jurisdiction.” *Id.* at 12.

8 The Nooksack Constitution’s incorporation of ICRA provides a similar avenue for
9 Plaintiffs who are non-Indians. ICRA protects Indians and non-Indians. *See Bugenig v. Hoopa*
10 *Valley Tribe*, 266 F.3d 1201, 1223 (9th Cir.2001) (*citing United States v. Mazurie*, 419 U.S. 544,
11 558 n.12 (1975)). The Tribe is limited by “any federal laws that may be applicable.”
12 Constitution, Art. VI(1). ICRA is “applicable” on its face: “No Indian tribe in exercising powers
13 of self-government shall . . . deny to any person within its jurisdiction the equal protection of its
14 laws or deprive any person of liberty or property without due process of law.” 25 U.S.C.A. §
15 1302(8); *see also* Order Re: Resolution #16-28 and Due Process at 4 (“The Court leaves for
16 another day Defendants’ apparent position that a tribal constitution may override the ICRA
17 mandate that ‘[n]o Indian tribe in exercising powers of self-government shall . . . deny to any
18 person within its jurisdiction the equal protection of its laws or deprive any person of liberty of
19 property without due process of law. . . .’ 25 U.S.C. § 1302(a)(8).”) (emphasis in original).

20 Also, the Court has jurisdiction under the Constitution, Art. VI, Sec. 2(a)(3) and (4) over
21 all civil matters concerning Nooksack Tribal members; all matters concerning the establishment
22 and functions of tribal government; and over all cases between Indians and non-Indians to which
23 the non-Indians (like Plaintiffs) have agreed. *See* First Amended Complaint (May 24, 2016), at 3
24 (Plaintiffs Broadman and Dreveskracht each thereby “stipulate[d] to bring this particular civil
25

1 action before this Court.”).

2 Further, pursuant to N.T.C. § 10.00.100(b), “any officer, employee or agent of the
3 Nooksack Indian Tribe [besides Tribal council officers] may be sued in this court to compel
4 him/her to perform his/her non-discretionary duties under the laws of the Nooksack Indian Tribe
5 and the United States [for] declaratory or prospective injunctive relief.” ICRA, as applied, is such
6 a law of the Tribe and the United States giving rise to declaratory relief.

7 Finally, and most critically, the Court has “the power to use reasonable means to protect
8 and carry out its jurisdictions. If the means to enforce its jurisdiction are not spelled out in these
9 rules or in the Tribal Code, the [C]ourt may use any appropriate procedure that is fair and
10 consistent with the spirit and intent of the tribal law being applied.” N.T.C. § 10.030.040(b). The
11 Court has inherent authority over the Plaintiffs as attorneys, who are “deemed officers of the
12 Court for purposes of their representation of a party and shall be subject to the disciplinary
13 authority of the Court in all matters relating to their advocate capacity.” N.T.C. § 10.030.020.
14 Despite Defendants’ serial revisions to N.T.C. Ch. 10, *et seq.*, “[k]ey among the inherent powers
15 incidental to all courts is the authority to control admission to its bar and to discipline attorneys
16 who appear before it.” *United States v. Johnson*, 327 F.3d 554, 560-61 (7th Cir. 2003) (citing
17 *Chambers v. NASCO*, 501 U.S. 32, 43 (1991); *Ex parte Burr*, 22 (9 Wheat.) 529 (1824)).

18 So long as the Court’s inherent powers are exercised in harmony with applicable statutory
19 or constitutional alternatives, then the latter need not displace the former. *G. Heileman Brewing*
20 *Co. v. Joseph Oat Corp.*, 871 F.2d 648, 652 (7th Cir.1989) (en banc). Here, given the utter dearth
21 of process in connection with Plaintiffs’ apparent disbarment, there is no conflict between the
22 Court’s exercise of its inherent authority over the Tribal Court bar and the failure by Defendants
23 to adequately exercise *any* valid authority over the Tribal Court bar. The Court is empowered to
24 control its own bar, especially where Defendants have failed so completely to do so legally.

1 **IV. RELIEF REQUESTED**

2 Plaintiffs respectfully request that the Court declare their disbarment illegal and invalid.

3 DATED this 15th day of June, 2016.

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6 _____
7 Anthony S. Broadman, *Pro se*
8 Email: anthony@galandabroadman.com

9 

10 _____
11 Ryan D. Dreveskracht, *Pro se*
12 Email: ryan@galandabroadman.com

DECLARATION OF SERVICE

I, Molly Jones, say:

1. I am over eighteen years of age and am competent to testify, and have personal knowledge of the facts set forth herein.

2. Today, I caused the foregoing, to be served via U.S. mail, upon:

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