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

GABRIEL S. GALANDA'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Pro se Plaintiff Gabriel S. Galanda ("Plaintiff"), individually and on his own behalf, petitions the Court for an order declaring that his disbarment was illegal and invalid.[1]

There are no issues of material fact; Plaintiff is entitled to judgment as a matter of law. Plaintiff's disbarment should be declared illegal and invalid because it violates Plaintiff's due process rights and was undertaken in violation of Nooksack law.

Nothing in this Motion should be construed as the practice of law before the Nooksack Tribal Court or the transaction of business at Nooksack. Plaintiff appears only on his own behalf,

[1] Having not yet received Resolution No. 16-28 (Feb. 24, 2016) despite the Tribal Court instruction that it be produced in March 2016, Plaintiff still does not know exactly what action Defendants have taken against him—i.e., whether he was disbarred, banished, or something else. Plaintiff reserves all rights, accordingly.

without counsel, as explicitly authorized by the Court.[2]

Many of these arguments appeared in Plaintiff's previously filed Motion for Injunction and in his co-Plaintiffs' Motion for Partial Summary Judgment.

II. FACTS

On May 17, 2016, Plaintiff received an unsigned and undated Notice giving him an opportunity to present evidence as to why he should not be disbarred from practicing law in this Court and excluded from Nooksack Tribal lands. Declaration of Gabriel S. Galanda in Support of Motion for Partial Summary Judgment, Ex. A. The Notice contains several false statements and set a 60-minute telephonic hearing before the former Nooksack Tribal Council on June 9, 2016, with a written response due June 3, 2016. *Id.* ¶ 3. Plaintiff selected Jacob M. Downs, a Washington State Bar Association-licensed attorney, to represent him at this hearing. *Id.* ¶ 4. Mr. Downs was prevented from representing Plaintiff at the hearing. *Id.* ¶ 5; *see also id.*, Ex. B

The hearing was held on June 9, 2016. *Id.* ¶ 6. During the hearing, Chairman Bob Kelly promised to provide Plaintiff a recording of the hearing and stated that a decision on Plaintiff's banishment or disbarment would be forthcoming. *Id.* ¶ 7. Now, nearly ninety days following the hearing, Plaintiff has not been provided any information regarding the status of his banishment or disbarment.[3] *Id.*; *see also id.*, Ex. B.

III. ARGUMENT

A. The Court Has Authority To Declare Plaintiff's Disbarment Illegal And Invalid.

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

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[2] *Belmont v. Kelley*, No. 2014-CI-CL-007, Order Re: Resolution #16-28 and Due Process (March 21, 2016) ("Due Process Order"), *14 n.3. An unsigned April 1, 2016, letter purportedly issued by the "Nooksack Tribal Court," but attributed on its face to the Tribe's in-house counsel, who at the time were Ray Dodge and Rickie Armstrong, indicating that "a lawyer who is acting pro se is 'practicing in tribal court,'" is incorrect and contradicts the Tribal Court's March 21, 2016, Order. *Id.* Today Mr. Dodge is Chief Judge of this Court. He has yet to recuse himself.

[3] Plaintiff's 331 clients have now been without counsel of their choosing for over seven months, in violation of NTC § 10.02.010 and ICRA-guaranteed due process rights. *Roberts v. Kelly*, 12 NICS App. 33, 41 (Nooksack Ct. App. Mar. 18, 2014) (citing *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970)).

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

Sovereign immunity does not protect suits against officers, employees, or agents of the Tribe acting in their official capacity "based on the allegation [they] were enforcing or threatening to enforce laws and policies that violate the Nooksack Constitution." *Lomeli*, No. 2013-CI-APL-002, at 14. The Nooksack Court of Appeals has held that when a tribal member properly pleads under this exception, this Court possesses a "constitutional grant of jurisdiction." *Id.* at 12. Plaintiff is a tribal member. But even if he were not, the Nooksack Constitution's incorporation of ICRA provides a similar avenue for litigants who are non-Indians. ICRA protects Indians and non-Indians. *See Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1223 (9th Cir.2001) (*citing United States v. Mazurie*, 419 U.S. 544, 558 n.12 (1975)). The Tribe is limited by "any federal laws that may be applicable." Constitution, Art. VI(1). ICRA is "applicable" on its face: "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.A. § 1302(8); *see also* Due Process Order, at 4 ("The Court leaves for another day Defendants' apparent position that a tribal constitution may override the ICRA mandate that '[n]o Indian tribe in exercising powers of self-government shall … deny to <u>any person</u> within its jurisdiction the equal protection of its laws or deprive <u>any person</u> of liberty of property without due process of law. . . .' 25 U.S.C. § 1302(a)(8).") (emphasis in original).

Also, the Court has jurisdiction under the Constitution, Art. VI, Sec. 2(a)(3) and (4) over all civil matters concerning Nooksack Tribal members; all matters concerning the establishment and functions of tribal government; and over all cases between Indians and non-Indians to which the non-Indians (like Plaintiff if he were non-Indian) have agreed. *See* First Amended Complaint (May 24, 2016), at 3 (Broadman and Dreveskracht "stipulate[d] to bring this particular civil action before this Court.").

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

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

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

B. Plaintiff's Disbarment And Banishment Violate His Due Process Rights.

Title II of the Civil Rights Act of 1968, incorporated into the Nooksack Indian Tribe's Constitution via Title IX, prohibits any "Indian tribe in exercising powers of self-government" from "deny[ing] to ***any person*** within its jurisdiction the equal protection of its laws or depriv[ing] ***any person*** of liberty or property without due process of law." 25 U.S.C. § 1302(a)(8) (emphasis added).

1. Plaintiff Was Entitled To Due Process.

A law license is a liberty interest that cannot be denied without due process of law. *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).[4] Non-member attorneys practicing before the Court are entitled to due process. *See* Order Re: Resolution #16-28 and Due Process, *Belmont v. Kelley*, No. 2014-CI-CL-007, 4-5 (March 21, 2016) ("Galanda Broadman was not afforded due process of any kind[.]"; "[T]his Court is unwilling to review Resolution #16-28 without affording Galanda Broadman due process, which means notice and an opportunity to be heard.") (citing *Mullane v. Central Hanover Bank & Trust Co.*, 229 U.S. 306, 314 (1950)). In addition, here, the ability to practice law at Nooksack is tied up with and implicates Plaintiff's profound liberty interest in his license to practice law in Washington. WA. ST. R. ENFORCEMENT LAW. COND., § 9.2(a).

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

Prior to an attorney's disbarment, he or she is entitled to notice of the charges made and

[4] The Court has previously relied on cases decided by the U.S. Supreme Court to determine whether the Tribe and its purported agents have provided litigants due process. *See, e.g.,* Due Process Order, at 5 (applying *Mullane v. Central Hanover Bank & Trust Co.*, 229 U.S. 306, 314 (1950)).

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

In sum, terminating Plaintiff's ability to practice law is illegal if he is not provided due process.

2. Defendants Failed To Finish Banishing Or Disbarring Plaintiff.

Whatever Defendants were doing to Plaintiff seems to have stalled or stopped. Plaintiff was entitled to rely upon Mr. Kelly's statement that some entity would be making a decision regarding Plaintiff's banishment or disenrollment. Ninety days have passed without action from anyone. Plaintiff is entitled to an order reflecting that Defendants' process is complete and ineffective.

3. Plaintiff Was Not Provided An Opportunity To Confront And Cross-Examine Witnesses.

In the case of a denial of a license to practice law, due process requires the opportunity to confront and cross-examine the witnesses whose conduct led to such denial; the opportunity for confrontation is a necessary element of due process. *Willner*, 373 U.S. at 104. Plaintiff is

unaware of who said what regarding his disbarment. He has been given no opportunity to confront or cross-examine his accusers. *See* Due Process Order, at 12. Plaintiff's disbarment or banishment therefore violates his due process rights.

4. The Tribunal Is "Plainly Biased."

A touchstone of due process is an unbiased tribunal. *See In re Murchison*, 349 U.S. 133, 136 (1955) ("[A] fair trial in a fair tribunal is a basic requirement of due process."); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."); *S. Dakota v. U.S. Dep't of Interior*, 775 F. Supp. 2d 1129, 1136 (D.S.D. 2011) ("A fair and unbiased tribunal is a fundamental requirement of the Due Process Clause."); *All Am. Check Cashing, Inc. v. Corley*, No. 16-0055, 2016 WL 1173120, at *11 (S.D. Miss. Mar. 22, 2016) ("[W]hen structural infirmities create inherent bias on the part of the adjudicator, due process is compromised.") (citing cases); *State ex rel. Kalt v. Bd. of Fire & Police Comm'rs for City of Milwaukee*, N.W.2d 408, 412 (Ct. App. 1988) ("[A]n unbiased tribunal is a constitutional necessity in a quasi-judicial hearing and that the denial of such a tribunal is the denial of due process.").

Here, the Nooksack Tribal Court has already determined that Defendants are "plainly biased" against Plaintiff. *Belmont*, No. 2014-CI-CL-007, at 8. Thus, the adjudication or non-adjudication of Plaintiff's disbarment or banishment violates due process.

5. N.T.C. § 10.02.070 Is Unconstitutionally Vague.

"[D]ue process of law . . . ensures that the individual need not 'speculate as to the meaning of penal statutes' and is 'entitled to be informed as to what the State commands or forbids.'" *Thibodeau v. Portuondo*, 486 F.3d 61, 65 (2d Cir. 2007) (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)). This "void-for-vagueness" doctrine "incorporates notions of fair notice or warning" and "requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory

enforcement." *Smith v. Goguen*, 415 U.S. 566, 572-73 (1974); *see also Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926) ("[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."). Plaintiff believes that N.T.C. § 10.02.070 now reads, in relevant part:

> 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 . . . proceeding before the Nooksack Tribal Court.

It is for the Tribal Court itself to administer justice. An advocate's behavior or practice has no role in how the Tribal Court's administration of justice is perceived. A Tribal Court's order should speak for itself. Further, even assuming that N.T.C. § 10.02.070 refers to an advocate's behavior or practice in some other capacity, the statute does not hint as to what types of behavior or practices are prohibited.[5] Arguably, publishing statements that critique the manner in which the Tribal Court administers justice might "reflect so poorly" upon the Court's administration of justice, but in that case the statute would have to be narrowly construed as to not chill free speech. *See, e.g., Wis. Right To Life, Inc. v. Barland,* 751 F.3d 804, 836 (7th Cir. 2014) ("[A] statute will be struck down as facially overbroad if it 'punishes a substantial amount of protected free speech . . . .'") (quoting *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003)). In 1875, the U.S. Supreme Court aptly explained the reasoning of the void-for-vagueness doctrine:

[5] It does not, for instance, prohibit conduct that is "prejudicial to the administration of justice"—a term that "is universally found throughout the legal and judicial system" as meaning "injurious, hurtful and detrimental to the orderly trial of the case before the court." *Howell v. State*, 559 S.W.2d 432, 436 (Tex. Civ. App. 1977). Ironically, the Nooksack Court of Appeals has recently noted that Messrs. Dodge and Armstrong are likely in violation of this ethical term. *Galanda v. Nooksack Tribal Court*, No. 2016-CI-CL-003, 2 n.2 (Nooksack Ct. App. May. 27, 2016) (citing Wash. RPC 8.4(d)). Both Messrs. Dodge and Armstrong are currently under WSBA investigation.

> It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of government.

United States v. Reese, 92 U.S. 214, 221(1875). Here, though, that is exactly what has occurred—but on another, more disturbing level. Not only has the Tribal Council set a "net large enough" to catch every advocate who represents political dissidents, but it has named itself as the entity to "say who could be rightfully detained, and who should be set at large." *Id.* The Tribal Council has armed itself with a statute so nebulous that every advocate admitted to the Nooksack Tribal Bar—whether practicing before the Nooksack Tribal Court or not—is subject to discipline. This is not due process.

6. Resolution No. 16-28 Is An Illegal *Ex Post Facto* Law.

Title II of the Indian Civil Rights Act of 1968, incorporated into the Nooksack Indian Tribe's Constitution via Title IX, prohibits tribes from "pass[ing] any bill of attainder or *ex post facto* law." 25 U.S.C. § 1302(a)(9). As described by the U.S. Supreme Court:

> The presumption against the retroactive application of new laws is an essential thread in the mantle of protection that the law affords the individual citizen. . . . The constitutional prohibition and the judicial interpretation of [the *ex post facto* doctrine] rest upon the notion that laws, whatever their form, which purport to make innocent acts criminal after the event, or to aggravate an offense, are harsh and oppressive, and that the criminal quality attributable to an act, either by the legal definition of the offense or by the nature or amount of the punishment imposed for its commission, should not be altered by legislative enactment, after the fact, to the disadvantage of the accused. . . . To fall within the *ex post facto* prohibition, a law must be retrospective—that is, it must apply to events occurring before its enactment—and it must disadvantage the offender affected by it by altering the definition of criminal conduct or increasing the punishment . . . .

Lynce v. Mathis, 519 U.S. 433, 439-41 (1997) (citation and quotation omitted).

Here, Resolution No. 16-28 is an *ex post facto* law because it applies N.T.C. § 10.02.070 "to events occurring before its effective date" of February 27, 2016. *United States v. MacDonald*, 607 F. Supp. 1183, 1186 (E.D.N.C. 1985).

7. Plaintiff Was Not Given Adequate Notice.

Due process requires an opportunity to know what charges and what penalty are being leveled against a person. *Fasheun v. Morgan*, 211 F.3d 1268 (6th Cir. 2000); *see also United States v. Nunez-Rodriguez*, No. 10-3713, 2012 WL 3527889, at *5 (S.D. Tex. Aug. 14, 2012) ("A defendant has a right to know the charges against him and to have adequate information from which to prepare his defense."); *United States v. Bencent*, No. 93-10093, 1995 WL 311747, at *1 (D. Kan. May 11, 1995) ("Due process requires, at a minimum, that the defendant know what charges have been brought against him and the penalties he faces if convicted, and that the defendant have such information in a timely enough fashion that he can make meaningful decisions about how to proceed with his case."). This right exists so that Plaintiff "may have a reasonable opportunity to prepare and present a defense." *Usher v. Vasquez*, 974 F.2d 1344 (9th Cir. 1992).

Plaintiff has not been provided the Resolution purportedly "barring [me] from Tribal lands and Tribal Court." *Belmont*, No. No. 2014-CI-CL-007, at 14; *see* Galanda Decl., Ex. A. Defendants have refused to provide Plaintiff with any notice of what penalty he faces.

8. Plaintiff Was Denied Representation And Counsel.

"[P]rohibiting a [person] from being represented at the proceeding violates due process." *Roberts v. Kelly*, 12 NICS App. 33, 41 (Nooksack Ct. App. Mar. 18, 2014) (citing *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970)); *see also* NTC § 10.02.010. Indeed, according to the U.S. Supreme Court in *Goldberg*, the "fundamental requisite of due process of law is the opportunity to be heard." 397 U.S. at 267. This right to be heard "would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." *Id.* An individual "*must* be allowed to retain an attorney if he so desires." *Id.* (emphasis supplied).

Before Plaintiff's hearing, Defendants refused to provide Plaintiff's attorney with a business license. Immediately following Plaintiff's hearing, Defendants provided Plaintiff's attorney with a business license.

IV. RELIEF REQUESTED

Plaintiff respectfully requests that the Court declare his disbarment illegal and invalid.

DATED this 7th day of September, 2016.

Gabriel S. Galanda, *Pro se*
Email: gabe@galandabroadman.com

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2016, I served the foregoing Motion for Partial Summary Judgment and accompanying Declaration of Gabriel S. Galanda by causing them to be mailed, postage prepaid, one copy to the following individuals

Betty Leathers
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The foregoing statement is made under penalty of perjury under the laws of the Nooksack Tribe and the State of Washington and is true and correct.

Alice Hall