

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES RAYMOND ACRES,  
Plaintiff,  
v.  
BLUE LAKE RANCHERIA, et al.,  
Defendants.

Case No. [16-cv-05391-WHO](#)

**ORDER GRANTING LIMITED  
DISCOVERY RE BAD FAITH  
EXCEPTION AND ISSUING  
PROTECTIVE ORDER**

As outlined at the hearing on December 7, 2016, the parties will engage in limited discovery on issues related to plaintiff’s assertion that the bad faith exception should apply to this case because Judge Marston allegedly misrepresented his legal relationship with the Blue Lake Rancheria Tribe to plaintiff in the underlying Tribal Court case, and in his declaration to this court.

**I. SCOPE AND TIMING OF DISCOVERY**

**A. Production of Documents**

Judge Marston is ordered to produce to plaintiff, by January 3, 2016, documents within his or his law firm’s possession, custody, or control, that are responsive to the following categories:

1. Any billing records from the Rapport & Marston law firm related to representations, from the past four years, of either the Blue Lake Rancheria Tribe, or the Blue Lake Rancheria Casino.
2. Any billing records associated with *Blue Lake Rancheria v. Shiimoto*, No. CV140799, pending in the Superior Court of the State of California, County of Humboldt.
3. The judicial services contract between Judge Marston and the Tribe, and any billing records associated with his work as Chief Tribal Judge in the last four years.

United States District Court  
Northern District of California

1 Judge Marston is ordered to produce to plaintiff, or, at Judge Marston's option, make  
2 available for copying, by January 3, 2016, documents within his or his law firm's possession,  
3 custody, or control, that are responsive to the following category:

- 4 4. Any pleadings or publically filed documents from cases in which Judge Marston  
5 has acted as an attorney for the Blue Lake Rancheria Tribe, or the Blue Lake  
6 Rancheria Casino, or has appeared as an attorney of record on behalf of those  
7 parties within the last four years, including but not limited to *Blue Lake Rancheria*  
8 *v. Shiimoto*, No. CV140799, Superior Court of the State of California, County of  
9 Humboldt.

10 Any privileged material contained in documents responsive to these categories may be  
11 redacted prior to production.

12 **B. Deposition**

13 If requested by plaintiff Acres, Judge Marston shall appear for deposition, not to exceed  
14 three hours in length, on an agreed upon date and time on or before January 24, 2016. If the  
15 parties are unable to agree, the deposition shall take place at the location of plaintiff's court  
16 reporter on January 24, 2017 at 10 a.m. The scope of the deposition is limited to the following  
17 subject:

- 18 1. Judge Marston's legal relationship with and receipt of compensation from the Blue  
19 Lake Rancheria Tribe and the Blue Lake Rancheria Casino, his role as an attorney  
20 for these parties during his tenure as Chief Judge of the Blue Lake Tribal Court,  
21 and any advocacy work for the Tribe undertaken while Chief Judge.

22 **II. PROTECTIVE ORDER**

23 As the above ordered discovery is likely to require production of confidential, sensitive, or  
24 private information, this court issues the following protective order:

25 Scope

26 This Order applies to (1) all documents and information produced through the above  
27 ordered discovery, (2) any copies, excerpts, or summaries of the produced materials, and (3) any  
28 testimony related to the produced materials. However, this order does not apply to (1) information

1 in the public domain prior to production, or (2) information that becomes part of the public  
2 domain after production.

3 Duration

4 This Order applies indefinitely or until this court orders otherwise.

5 Use of Produced Materials

6 Plaintiff may use the materials produced in response to the above discovery order only in  
7 connection with this litigation for the purpose of determining and litigating whether the bad faith  
8 exception applies to this case. Any produced materials may only be disclosed to the following  
9 categories of people:

- 10 (1) Plaintiff's counsel of record, should he choose to retain counsel;  
11 (2) this court and its personnel;  
12 (3) court reporters and their staff and professional vendors to whom disclosure is  
13 reasonably necessary for this litigation;  
14 (4) opposing counsel, and their employees.

15 This Order does not prohibit plaintiff and the parties from publically filing, with this court,  
16 produced documents necessary to litigating and briefing the issue of whether the bad faith  
17 exception applies to this case.

18 **III. BRIEFING SCHEDULE**

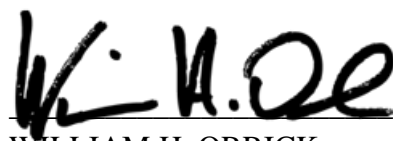
19 The parties should file any pertinent documents, records, and supplemental briefing  
20 relevant to whether the bad faith exception applies to this case by February 8, 2016.

21 The court will hear additional argument on this issue at 2:00 p.m. on February 22, 2016.

22 Nothing in this Order should be read to alter or impact the underlying proceedings in the  
23 Tribal Court, including Judge Marston's discovery order and deadlines.

24 **IT IS SO ORDERED.**

25 Dated: December 8, 2016

26 

27 WILLIAM H. ORRICK  
28 United States District Judge