

30 Geo. J. Legal Ethics 991

Georgetown Journal of Legal Ethics
Fall, 2017

Current Development 2016-2017

Nicole Russell^{a1}

Copyright © 2017 by Nicole Russell

*** Start Section

...

"TO FURTHER JUSTICE IN THE GREATER NATIVE

INTRODUCTION

The United States' long and fraught history with the native peoples who originally inhabited the land is largely considered one of exploitation, forced assimilation, and abandonment.¹ In light of past injustices, the federal government has come to employ a "government-to-government relationship with tribes and [has] recognized tribal jurisdiction."² To this end, and pursuant to the 1934 Indian Reorganization Act (IRA),³ Native American tribes have developed their own internal court systems and codes of justice to exercise their federally-recognized self-governance.⁴ While many scholars argue that state and federal courts have nevertheless doggedly persisted in the erosion of tribal sovereignty,⁵ on one issue the courts have remained indisputably reluctant to intervene. "A tribe's right to define its own membership for tribal purposes," the Supreme Court declared in 1978, "has long been recognized as central to its existence as an independent political community."⁶ However, a recent tidal wave of tribal *992 disenrollment across the nation has called into question not only the definition of sovereignty but also the ethical role of those attorneys who work within its confines. The polemic poses two central questions: (1) do advocates who represent tribal clients have ethical duties above and beyond those of their non-tribally employed peers, and, if so; (2) do these duties include an obligation to refrain from participation in disenrollment disputes?

There is no question that ethical requirements take on heightened dimensions when attorneys undertake to represent tribal clients; the National Native American Bar Association (NNABA) attests to this in its first formal opinion:

[M]uch like the duty of a public prosecutor is to "seek justice," so too do tribal advocates carry a duty to "seek justice." ... The Preamble of the Model Rules of Professional Conduct likewise states: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." The responsibility of a tribal advocate differs from that of the usual advocate; his or her duty is to further justice in the greater Native American community, not merely to win his or her case.⁷

However, the need for guidance is clear from recent tribal litigation efforts for legal malpractice and breach of fiduciary duty.⁸ Today, 5.2 million people within the United States self-identify as American Indian, Alaska Native, or one of the two in combination with other races.⁹ The National Directory of Tribal Justice Systems comprises more than 300 tribal courts,¹⁰ throughout which civil procedure, judicial norms, and codes of conduct range dramatically.¹¹ While several of these courts have adopted codes of conduct based largely upon federal or state codes,¹² there is evidence that tribes are trending away from the imposition of American-based jurisprudence within their own judiciaries.¹³ This *993 trend, coupled with increasing commercial exchanges¹⁴ and other interactions between members and nonmembers across reservation lines, mandates a closer look at the additional tribal ethical requirements.¹⁵

The question then becomes whether these additional requirements, variant or unstated as they may be, encompass a duty to refrain from hasty disenrollment proceedings. Gabriel Galanda, practicing attorney and member of the Round Valley Indian Tribes of California,¹⁶ argues that they do: "when lawyers advocate, cause or facilitate any disenrollment proceeding that lacks a good faith basis in law and fact, they are violating ethical rules or norms--and acting immorally."¹⁷ Others, such as NNABA, take a more nuanced view, maintaining that tribes should exercise complete discretion over their enrollment criteria while nevertheless cautioning against haphazard participation in disenrollment proceedings.¹⁸

This Note will explore the ethical challenges faced by attorneys¹⁹ when representing member clients in two contexts. Part I will examine the generally heightened ethical obligations facing attorneys in their representations of tribal clients. This section will provide an analysis of procedural and ethical requirements, *994 detail their variances, and point to recent attempts by tribal coalitions to develop a more coordinated code to guide nonmember representation. The discussion will necessarily involve the *Model Rules of Professional Conduct (Model Rules)*²⁰ and their state derivations because many tribes have used these codes as the foundation for their own standards. Part II will examine what has been termed the tribal "disenrollment epidemic"²¹ and interrogate the premise that tribal advocates have a duty to distance themselves from disenrollment proceedings. Ultimately, this Note posits that not only are tribal advocates held to more-- and sometimes higher--ethical standards than those put forth in the *Model Rules*, but that they are barred from representing tribes in many of the ongoing disenrollment proceedings which take place without the trappings of due process.

I. TRIBAL ATTORNEY ETHICS REQUIREMENTS

To discuss heightened ethical requirements on tribal attorneys is to acknowledge the incredible breadth and variety of the more than 550 Indian Nations within the United States today.²² The number of tribal courts-- estimated to be somewhere near 300²³--as well as the diversity of custom within them belie any uniform code of conduct that can be applied inter-jurisdictionally.²⁴ What's more, the dearth of Native American attorneys²⁵ increases the likelihood that nonmember attorneys will be called upon to represent member clients within their own tribal court systems, mandating a clearer understanding of the scope and variation within tribal codes of conduct.²⁶ Part I will establish (a) how tribal sovereignty interests are implicated in the understanding of tribal ethical diversity, (b) instances of that diversity in tribal jurisdictions today, (c) how current tribal case law speaks to the difficulties facing tribal attorneys, and (d) the enforcement mechanisms allotted the tribes to enforce the ethical codes they implement.

***995 A. THE IMPORTANCE OF RECOGNIZING TRIBAL VARIATION**

Universal concerns of tribal sovereignty and self-determination mean that any attorney representing a tribal client or appearing before a tribal court is faced with heightened ethical obligations to safeguard these concerns.²⁷ One scholar describes the importance of tribal sovereignty as

the life-blood of Indian nations Without self-rule, tribes do not exist as distinct political entities within the U.S. federal system [S]overeignty is a key lever that provides American Indian communities with institutions and practices that can protect and promote their citizens' interests and well-being.²⁸

While obligations to this concept of sovereignty may arise explicitly from tribal codes of conduct, more often they stem from nuanced readings of the *Model Rules*, state derivatives of the *Model Rules*, or unwritten tribal custom.²⁹

Varied as tribal courts may be in the ethical demands made of advocates and the extent to which they rely upon the *Model Rules*, they are alike in the baseline limitations imposed upon them by the 1968 Indian Civil Rights Act (ICRA).³⁰ Promulgated in reaction to complaints of civil rights abuses of members at the hands of tribal courts,³¹ ICRA echoes the Bill of Rights in its assurances of freedom of religion, freedom of speech, protection against double jeopardy, protection against self-incrimination, the right to a speedy and public trial, and freedom from bills of attainder, among others.³² Interestingly, while the aforementioned civil liberties represent causes of action within tribal courts themselves,³³ they remain largely unenforceable in federal courts.³⁴

***996** Although ICRA provides a questionably enforceable underlying standard meant to inform tribal courts' provision of internationally accepted civil liberties,³⁵ no such requirement guides inter-tribal codes of conduct.³⁶ Tribal courts are endowed with "broad authority to adopt their own procedures in civil cases," and while many "resolve disputes using the adversarial system common in state and federal courts, tribal custom and tradition are often utilized to resolve disputes."³⁷ Nowhere is this illustration as stark as in the lack of legal representation for accused criminals who cannot afford it.³⁸ One source notes that "[m]ostly absent from [the tribal] parallel justice system are public defenders--a luxury that many poor tribes say they cannot afford. The defense gap means that accused criminals often end up representing themselves."³⁹ This particular difference, reflective of underfunding, nevertheless speaks to the variations in civil, criminal, and cultural differences throughout tribal courts.⁴⁰ Attorneys are, of course, bound by their respective state bar's rules of professional responsibility,⁴¹ but the interpretation and execution of these rules as they pertain to tribal representation will certainly depend on the tribe.

***997** To this end, the remainder of Part I will explore the general differences between tribal courts rather than attempt to provide any unifying ethical underpinnings.

B. VARIATIONS WITHIN THE TRIBAL COURTS

Because in the absence of a tribal code of conduct, federal code may be applied,⁴² tribes are compelled to enact codes that reflect their own unique values and cultural norms.⁴³ To date, the National Indian Law Library (NILL) has posted

"TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

166 tribal justice codes,⁴⁴ many of which have used the *Model Rules* as a starting point, altering them as necessary in order to incorporate tribal values.⁴⁵ The Navajo Nation, for instance, adopted the *Model Rules* with several omissions and an amendment that provides for a five-year statute of limitations on constructive knowledge of unethical conduct.⁴⁶ The *Crow Tribal Rules of Professional Conduct* also mirror the *Model Rules*, but the tribe elected to expand on duties of competence and to add a section regarding the Special Responsibilities of a Tribal Prosecutor.⁴⁷ One commentator points to the sacrifices that are made when tribes adopt modified outside codes either in part or whole:

[A] fundamental advantage of tribal court is its flexibility and relative speed in reaching a resolution. To the extent tribal courts attempt to mirror their federal counterparts to have greater sentencing authority, the advantages generated through cultural differences and simplified case management would be irreparably lost Some tribes, seeing their tribal courts burdened with more complex litigation, have chosen to adopt the Federal Rules of Civil Procedure. While this makes sense as a stop-gap measure, the rules do not provide for the subtle nuances found in local rules, which lay out timing, formatting, and other requirements for pleadings and meetings of counsel.⁴⁸

Perhaps with these sacrifices in mind, the tentative trend in tribal formulation of professional codes has been to depart from any wholesale importation of *998 federal or state standards.⁴⁹ Nevertheless, when these tribes encounter the unavoidable difficulty of implementing unsettled common law or civil procedure, the tendency is to use American jurisprudence to fill in any gaps.⁵⁰

States' codes of ethics often provide the backbone for tribal codes of ethics. Many tribes adopt and customize their encompassing state's code, and sometimes carve out sections to address the attorney's dual ethical obligations to tribe and state. The state codes themselves track the *Model Rules*-- California the singular notable exception⁵¹--which in turn often inform the tribal codes.⁵² While tribal rules of professional conduct are typically nested comfortably within the state codes upon which they are based, some states address the possibility of conflict between the two. The Oregon Rules of Professional Conduct mandate that "[i]n the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy."⁵³ One Arizona ethics opinion states that a "member of both Arizona and Navajo Nation Bars [is] not subject to disciplinary action by [the] State Bar if he complies with Navajo Nation's ethical rules and court directives during representative appointment by [the] Navajo Nation."⁵⁴ The opinion later advances several factors to consider in the determination of which code of ethics should prevail:

(a) the needs of the interstate and international systems,

(b) the relevant policies of the forum,

*999 (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the law to be applied.⁵⁵

The Navajo Nation is rare in its identification of such a potential conflict, and rarer still in its clear articulation of balancing factors. The resulting ambiguity surrounding choice of ethical guidelines has compelled some coalitions to look to a unifying standard.

The National American Indian Judges Association (NAIJA) is one such coalition. In the hopes of fostering tribal self-governance, as well as a more explicit set of rules for attorneys⁵⁶ (both nonmember and member), NAIJA developed the *Model Code of Tribal Court Rules and Procedures (Model Code)* in 1978 as a means of guiding the inter-tribal dialogue. Almost thirty years later, the obstacle persisted, spurring the National Tribal Judicial Center (NJTC) to produce the *Sample Tribal Code of Judicial Conduct (Sample Code)*. The *Sample Code* acts as a concession to the desire for a uniform procedural ethics guide but also reformulates standards that may be unique to tribal courts.⁵⁷ Deviations from the *Sample Code* include allowances for non-attorney judges, gift-giving, and debatably ex-parte communications--all of which may play an integral role in tribal custom.⁵⁸ These small concessions illustrate a larger point: respect for tribal sovereignty and the preservation of cultural mores mandate that attorneys expand their understanding of binding non-tribal ethical obligations to include tribal variations.

While perhaps the implementation of an underlying tribal code of conduct throughout Native American courts would prove a boon for nonmember attorneys faced with variant and sometimes implicit procedural and ethical rules in tribal court, the maintenance of unique judicial customs remains a critical concern for tribes themselves.⁵⁹ "Self-government," the National Congress of American Indians notes, "is essential if tribal communities are to continue to protect their unique cultures and identities."⁶⁰

***1000** Regardless of a tribe's decision to abide by federal or state gap-filling codes, to collaborate with other tribes in the creation of a joint code of conduct, or to pursue an individual code that reflects specific values of the individual tribe,⁶¹ the variance reflected within individual tribal codes of ethics means that tribal legal representation is held to a more exacting standard than that of those who practice within the state at large. Rob Roy Smith acknowledges the additional ethical burdens imposed upon tribal attorneys when he notes that:

practicing in Indian Country and representing a tribal client, attorneys have another layer of professional responsibility [I]n addition to upholding the laws of the United States and the laws of the state ... [they] must also uphold the Constitution and laws of the Indian tribe.⁶²

This final layer--the irregular and sometimes unwritten tribal codes of conduct--can give pause to both attorneys and private parties prior to engaging in any sort of commercial or fiduciary relationship with the tribes or their members. Even as recently as 2016, plaintiffs' counsel in *Dollar Gen. Corp. v. Mississippi Band of Choctaw Indians* gave voice to such sentiments:

Tribal courts, the company argues, are poorly organized and badly run; lack independence from tribal governments; don't respect constitutional rights; and enforce “tribal law, custom, and traditions” rather than actual law. They aren't really courts at all. As Brendan Johnson, a former U.S. attorney and experienced Indian-law litigator, recently said, “The premise of *Dollar General's* case is that tribal courts are inherently incompetent and biased against nonmembers.”⁶³

Reticence to engage with tribal courts is not entirely unwarranted. The limited tribal case law, tribal codes of ethics, and explicit requirements of tribal sovereignty pose substantial challenges to attorneys who take on tribal clients. Tribal case law itself speaks to these challenges.

C. CASE LAW WITHIN TRIBAL COURTS

Tribal case law, limited as it may be,⁶⁴ references, and in many instances arises from, the nuanced ethical standards expected of tribal attorneys beyond baseline state or federal rules of professional conduct. The issues presented range from the *1001 unavailability of tribal common law and the aforementioned tribal codes of ethics to essential misunderstandings of the importance of tribal sovereignty. Further, misunderstandings of client scope or the extent of understood fiduciary duty can give rise to claims of fraud or misrepresentation before a tribal court; most common among them are cases regarding conflicts of interest, fees and expenses, and the right to withdraw from representation.⁶⁵ This section will use tribal case law as a vehicle to point out the primary ethical obstacles facing tribal attorneys: (1) lack of tribal common law, (2) lack of tribal codes of ethics, and (3) the ambiguous bounds of tribal sovereignty.

1. LACK OF COMMON LAW

Lack of tribal common law often provides what seems an insurmountable hurdle to tribal attorneys, particularly when the tribes rely on federal, state, or unwritten codes of professional responsibility and hold its attorneys to these imported or implicit standards.⁶⁶ In the *Gallaher v. Colville Confederated Tribes* decision, the tribal Appellate Panel sanctioned deputy prosecuting attorney Leslie Kuntz for failure to provide available case law favorable to her client.⁶⁷ Nowhere in the body of the opinion is any reference made to any code of ethics, but a footnote provides the applicable tribal rule and its parallel within the *Model Rules*: “DR 6-101(A)(2) ... has been adopted by the American Bar Association, the bar associations of the several states, and the federal government. It is, in our opinion, the legal equivalent of Rule 19(b) of our Interim Appellate Court Rules. Both rules are applicable in this instance.”⁶⁸

While in this case, available case law provided unambiguous evidence that Ms. Kuntz transgressed concurrent tribal and federal ethical boundaries, D. Michael McBride III of Crowe & Dunlevy asks what would happen in the event that case law on the topic were not available.⁶⁹ He then suggests that the gap be filled by "presentation of tribal law in a different fashion."⁷⁰ In the same vein, Professor *1002 Matthew Fletcher puts forth an argument for reliance upon tribal customary law, noting that "[t]ribal choice of law statutes (some of them codified into tribal constitutions) and court rules often require tribal court judges to seek and apply tribal customary law if possible. Even Congress intended for tribal courts to apply customary law in interpreting the provisions of the Indian Bill of Rights."⁷¹ He then points to H.L.A. Hart's taxonomy of "primary rules of obligation" and "secondary rules of recognition" as signposts for tribal judges in their application of such law:

Professor Hart conceived of primary rules as "imposing obligations ... [that] may be customary in origin." A rule could be construed as a primary rule when "human conduct is made in some sense non-optional or obligatory" The 'remedy' for [the defects inherent to primary rules] is the creation of secondary rules. These rules "specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined."⁷²

These proffered solutions, seemingly already in play, provide answers to the questions of tribal jurisprudence but may prove obscure and intangible for attorneys unfamiliar with the tribal community and its customs.⁷³ That attorneys, in representing their tribal clients, must undertake to "further justice in the greater Native American community"⁷⁴ means that they must possess a baseline understanding of the justice system in that community-- a costly effort when case law is sparse.

2. LACK OF CODES OF ETHICS

Just as a dearth of recorded tribal common law may prove a challenge for tribal attorneys, so too may the unstated wholesale importation of legal codes of ethics from outside the jurisdiction. When Chief Judge William McClammy denied Mary Cleland's application to practice as a lay counselor--despite her passage of the tribally administered bar exam--for the Fort Peck Tribal Court and Court of Appeals, he noted that while she acted in violation of several tribal laws, he was *1003 unable to point to any violations of a tribal code of ethics as it was nonexistent.⁷⁵ On appeal, the Fort Peck Court of Appeals asserted in strong language the presence of an unwritten yet binding code of ethics to which the behavior of tribal attorneys must conform.⁷⁶ In the absence of a tribal code, it explained, attorneys are bound by state and federal rules of professional conduct.⁷⁷

In many tribes, judicial reliance upon implicit custom and shared tradition is encouraged.⁷⁸ The Navajo, for instance, acknowledge the importance of retained tribal custom through the judiciary:

Navajo judges know that although the Navajo judicial code contains a set of ethics principles based on normative precepts, it has other unstated goals: (1) to encourage the judges to use traditional Navajo thinking when deciding cases; (2) to set forth foundational customary principles, including hózh, k'é, and k'éei, "talking things out," nályééh (restitution), naat'ááh (leadership), and consensus, for active and future judges to know, apply, and develop; (3) to instill in court employees important traditional values pertinent

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

to their work; and (4) to declare that Navajo common law, culture, spirituality, language, sense of place, and identity compose the foundation from which the entire Navajo Nation Court System operates.⁷⁹

The above cases illustrate the new characteristics that even state and federal rules of professional conduct may take on when cast in the light of tribal concerns.

3. PROTECTION OF TRIBAL SOVEREIGNTY

Understanding the bounds and requirements of tribal sovereignty, which informs both tribal common law and codes of ethics (explicit and implicit), is the ultimate underlying challenge facing attorneys who take on tribal clients. This section details one particularly noteworthy case that references the importance of sovereignty with respect to attorney behavior and judicial decision-making; importantly, the case indicates that while sovereignty is vital to the tribe's livelihood, its mandates and expanse remain unclear.

In 2011, the Supreme Court of the Navajo Nation *sua sponte* ordered the *1004 suspension of Frank Seanez⁸⁰ due to gross misconduct after Seanez allegedly abused his power as Chief Legal Advisor to the Navajo Nation Council.⁸¹ Pursuant to earlier amendments by the Council, “the legal advice of the Chief Legislative Counsel to our government through legal opinions has the legal effect of absolving any member of the government from liability for conduct taken in reasonable reliance upon the advice given in such an opinion.”⁸² Justice Yazzie of the Navajo Supreme Court reprimanded Seanez for leveraging such absolution as he drafted legal memoranda that defied Court judgments.⁸³ At stake here, the Court said, was tribal sovereignty: tribal sovereignty that necessarily entails the ability of “strong and independent tribal courts to enforce and apply the law.”⁸⁴ Seanez countered that he interpreted ambiguous judgments to the best of his ability, acknowledging that “[s]ometimes perhaps I don't get it right ... and when that occurs, I know the court will bring the matter forward and advise me when that is occurring.”⁸⁵ Five years later, Chief Justice Yazzie resigned after a bill calling for his removal cited the Seanez decision as a violation of separation of powers and due process.⁸⁶

Without the final chapter, this tangled history should act as a cautionary tale for nonmember attorneys such as Seanez⁸⁷ in advisory positions. Unfortunately, indications that Justice Yazzie overstepped his bounds further confuse the latitude allowed tribal legal representation. However, the importance of tribal sovereignty remains clear: despite Justice Yazzie's subsequent resignation, his strong reaction to any hint of encroachment upon tribal self-governance is not unique.⁸⁸

*1005 This case and many cases like it raise a series of questions regarding tribal sovereignty: is it something to be considered on its own, or should it be incorporated into tribal codes and statutes? Do attorneys have a duty to refrain from any action that might be construed to negatively impact tribal sovereignty? What, then, is the definition of tribal sovereignty? Does an attorney have the affirmative duty to pursue its protection? Many of these questions remain unanswered and hotly debated. Some read further into tribal attorneys' duties as they pertain to the maintenance of tribal sovereignty. Attorneys should not merely refrain from encroaching upon tribal sovereignty, they argue, but should also take an active role in preserving it. Kaighn Smith, Jr. suggests that the preamble to the *Model Rules*⁸⁹ creates a mandate for tribal attorneys to promote the tribal lawmaking process as a form of tribal sovereignty advocacy.⁹⁰ Kaighn argues that such advocacy by tribal attorneys will “stave off [the] negative perceptions of defensive tribal sovereignty”⁹¹ that

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

he asserts have arisen because the doctrine--as he defines it--“involves the use of sovereign immunity to shield tribes, tribal enterprises, and tribal officials from lawsuits or the invocation of legal doctrines to shield tribes, their reservation affairs, and their reservation enterprises from the imposition of state or federal authority.”⁹² Regardless of whether Kaighn is correct, his position illustrates the import and nuance vested in standards as generic as state or federal rules of professional conduct when applied to tribal representation.

D. TRIBAL ENFORCEMENT AND SANCTIONS

The consequences of disregarding tribal ethical standards are by no means inconsequential and can include sanctions, suspension, and disbarment, which may in turn spill over to other jurisdictions. Irrespective of whether the tribal code in question is imported from outside the tribe or entirely organic, it is grounded in principles of self-government and is designed to reinforce the sovereignty that undergirds the tribal court.⁹³ Should an attorney violate any of the *Model Rules*, he or she may be subject to sanctions ranging from admonition *1006 to disbarment as prescribed by Rule 10.⁹⁴ Tribes possess similar authority, and are entitled to

form their own governments; to make and enforce laws, both civil and criminal; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands ... [t]hrough their tribal governments, tribal members generally define conditions of membership, regulate domestic relations of members, prescribe rules of inheritance for reservation property not in trust status, levy taxes, regulate property under tribal jurisdiction, control the conduct of members by tribal ordinances, and administer justice. They also continue to utilize their traditional systems of self-government whenever and wherever possible.⁹⁵

Tribal courts are therefore well within their bounds to disbar or sanction members of the tribal bar.⁹⁶ Many tribes provide for such an eventuality within their own codes of judicial or professional ethics. The Jamestown tribe mandates that “[a]ny spokesperson violating the Spokesperson's Oath shall be subject to disbarment ... the decision of the tribal court shall be final.”⁹⁷ The Fort Peck Tribal Court similarly states that it “may disbar an attorney or lay counselor from practice before the courts, or impose suspension from practice ... The rules shall include significant violations of the Code of Ethics of the Assiniboine and Sioux Tribes of the Fort Peck Reservation as grounds for disbarment.”⁹⁸

Of course, while a disbarment in one jurisdiction does not necessitate disbarment in others,⁹⁹ many states--and tribes--will disbar attorneys based solely upon past disbarments. The Nez Perce, for instance, empower the Chief Judge to suspend or disbar any attorney that appears before the court who has been “suspen[ded] or disbar[red] from practice before any state, federal or tribal court.”¹⁰⁰

*1007 Tribal standards, at minimum, address--and often incorporate-- relevant state or federal codes of ethics. The nuance that must be read into these adopted codes based on implicit custom or shared understanding means heightened (or more specific) ethical standards to which tribal attorneys are held.¹⁰¹ When the wisdom of the tribal court or council with respect to matters of sovereignty is questioned, tribal advocates find themselves in a difficult ethical position. What happens when the advocate's understanding of tribal sovereignty conflicts with the sovereign tribe's definition?

II. THE DISENROLLMENT EPIDEMIC

"The right to self-determination includes, among other things, the right of a Native Nation to citizenship. And the right to define citizenship includes both a right to include individuals as citizens of the nation as well as to exclude individuals from being citizens of the nation." ¹⁰² In 2012, the Nooksack tribe of Bellingham, Washington, attempted to disenroll more than 300 of its members. ¹⁰³ These members were notified by mail that their membership was to be terminated, and they were afforded ten-minute phone calls to appeal in which they were not permitted to ask questions. ¹⁰⁴

In this process the Nooksack tribe is not alone; across the nation, Native American tribes have been plagued with this type of infighting and subsequent disenrollment that some attribute to wealth distribution disputes. ¹⁰⁵ This section will interrogate the two sides of the current disenrollment debate through the lens of tribal sovereignty in order to determine whether tribal attorneys' duty to hew to ***1008** the underlying tenets of tribal sovereignty prohibits them from taking part in disenrollment disputes like the one at hand.

A. HISTORY OF TRIBAL SOVEREIGNTY IN ENROLLMENT

The sovereignty concerns at the heart of the ongoing epidemic stem from the 1978 *Santa Clara Pueblo v. Martinez* Supreme Court ruling, wherein the Court upheld the pueblo's right to deny membership to the children of a member and nonmember parent. ¹⁰⁶ Now, "tribes have the inherent and sovereign right to determine their own membership using their own criteria." ¹⁰⁷ In the years since *Santa Clara*, tribes have employed blood quantum, descent, and-- rarely-- residency systems in order to determine enrollment eligibility. ¹⁰⁸

Tribes employing the blood quantum system mandate a certain threshold of parental 'blood contribution,' and often "ask applicants to obtain a Certificate of Degree of Indian Blood (CDIB), issued by the BIA. Those seeking a CDIB must provide the government with primary sources, such as birth certificates and marriage records, to prove their level of Native American ancestry." ¹⁰⁹ The CDIB will list the applicant's percentage of 'Indian blood,' which in turn determines whether the prospective member meets the minimum eligibility requirements. By contrast, under a descent enrollment system, "anyone who can prove that they have even a drop of Indian blood can gain membership, provided they can also demonstrate that they are directly descended from a member from a particular time period." ¹¹⁰ The Cherokee Nation provides a contemporary example of the descent enrollment system: if would-be members can point to an ancestor whose name was listed on the Dawes Roll, he or she is eligible for enrollment. ¹¹¹ Finally, the lesser-employed residency system "limits the membership to those within the community as established by a land base, who in turn help care for and maintain ***1009** that land base." ¹¹² Consequently, enrollment and membership are limited to those members who live upon the land allotted to the tribe by the federal government. Economic friction and modern advances in mobility make the residency system unduly restrictive and untenable for the sustainability of the tribe; to this end, the Cedarville Rancheria appears to be the only tribe to employ it. ¹¹³

While most tribes employ either the blood quantum or descendant system to limit membership, preserve tribal sovereignty, and ensure that federal benefits are received by their intended beneficiaries, ¹¹⁴ uncertainty persists in the determination of tribal ancestry. Much of this uncertainty is due to the federal government's interference with membership practices in the late eighteenth and early nineteenth centuries:

Efforts to define Native American identity date from the earliest days of the colonies. Before the arrival of white settlers, tribal boundaries were generally fluid; intermarriages and alliances were common. But as the new government's desire to expand into Indian territory grew, so, too, did the interest in defining who was and wasn't a "real Indian." Those definitions shifted as the colonial government's goals did. "Mixed blood" Indians, for example, were added to the rolls in hopes that assimilated Indians would be more likely to cede their land; later, after land claims were established, more restrictive definitions were adopted. In the 19th century, the government began relying heavily on blood quantum ... wagering that, over generations of intermarriage, tribes would be diluted to the point that earlier treaties would not have to be honored.¹¹⁵

The state-sponsored pushes to be at times over- and under-inclusive in tribal enrollment proceedings left in their wake a genealogical mess that persists in membership determinations. One illustrative anecdote involves a professor whose student--not technically a member of the Seminole tribe--approached him to be considered for a Native American legal scholarship: "She had brought her grandmother, a full blood Seminole with her to the interview ... [who] resisted enrollment and allotment because she believed tribal lands should remain in the hands of Indian tribal people ... The grandmother barely spoke *1010 English."¹¹⁶ The student was eventually denied eligibility for the scholarship because she could not trace her lineage to one of the members listed on the rolls.

The burgeoning disenrollment movement represents the inevitable clash between those members fighting against tribal dilution under the banner of tribal sovereignty and those ejected members fighting for tribal inclusion under that same banner.

B. THE DISENROLLMENT MOVEMENT

The seemingly summarily disenrolled "Nooksack 306" came to the tribe by way of one Annie George, who, born in 1875, was unlisted in any of the tribal rolls but determined to be the half-sister of one such listed member in 1983.¹¹⁷ Upon this determination, more family members applied for and were granted membership; soon thereafter, "the descendants of Annie George became an influential voting bloc, and their members were being elected to council seats and hired to run tribal offices."¹¹⁸ Bob Kelly, the Nooksack council chairman, likens some of the descendants to "Trojan Horses," and considers it his "sacred duty" to "protect the tribe from invasion by a group of people that ... weren't even Native Americans."¹¹⁹ Under Kelly's tenure, members of the council that no longer included the Annie George contingent (who had been excluded from the vote and preceding constitutionally mandated meetings) unanimously voted to pass the resolution disenrolling the 306.¹²⁰

Due to the *Santa Clara* holding, when the Nooksack tribal council notified the group of George descendants of their removal,¹²¹ it seemed that the state and federal courts lacked jurisdiction, thus leaving the dispute to the tribal court system.¹²² The Bureau of Indian Affairs, for its part, has stated that it "does not get involved in individual tribal matters [of disenrollment] unless the agency's participation is included in the tribal constitution;"¹²³ loss of membership is only *1011 fleetingly referenced within the Nooksack constitution.¹²⁴ When Gabriel Galanda, the attorney representing those disenrolled, won his case in front of the tribal court,¹²⁵ he was disbarred by the Nooksack tribal council promptly after it endowed itself with that power.¹²⁶ *Santa Clara* and the stance of the Bureau of Indian Affairs meant that the federal government was reluctant--and perhaps unable--to intervene.

C. ANALYSIS

What, then, is a tribal attorney faced with a disenrollment proceeding to do? Does he have an ethical obligation to refrain from participation? The ethical arguments surrounding Galanda's involvement with Nooksack tribal sovereignty as a tribal attorney arose on all sides. A spokesperson for the Nooksack tribal council alluded to ethical violations by Galanda with respect to his objection to the tribal council's sovereign decision-making,¹²⁷ while the NNABA issued a formal resolution denouncing tribal attorneys' participation in the disenrollment process.¹²⁸ Galanda himself asserts what he feels to be a duty to protect tribal sovereignty.¹²⁹

It seems, then, that a tribal lawyer's responsibilities with respect to tribal sovereignty depend largely upon how the term is defined. Here, the Nooksack tribe defines sovereignty as its *Santa Clara* right to define and act upon the terms of tribal membership;¹³⁰ the NNABA defines it as representing the interests of the current sovereign (and incorporates disenrolled members as part and parcel of *1012 that sovereign);¹³¹ and Galanda defines it as the rights of the disenrolled.¹³² He frames member disenrollments as an attack on tribal sovereignty:

It is time to find a cure to the disenrollment epidemic. Indeed, at this point, the very existence of tribal sovereignty has become endangered as a result of disenrollment ... Where citizenship abuses are habitually irremediable, tribal governance must either self-terminate or adopt some form of government outside of the realm of the popular sovereign. To a large extent, therefore, the sovereign that allows the destruction of citizenship rights also permits the diminution of its own power. And where the sovereign itself causes the abuses, seeking to hush dissidents and magnify its own clout, it triggers a vicious cycle of ever weakening sovereignty which, if left unrestrained, will ultimately discredit the polity.¹³³

Many go further to argue that sovereignty does not include the ability to disenroll; Ryan Seelau argues that

[t]he truth is that for the ancestors of most Native Nations, the idea of disenrollment would be countercultural and unthinkable because the social and community consequences it brings with it are devastating--not just to the individuals being disenrolled, but also to the body as a whole. To put it bluntly, disenrollment appears to be without Indigenous cultural precedent, which is unsurprising when one recalls that the idea of "tribal membership" was designed by the same United States government that sought to eliminate all Native peoples to begin with.¹³⁴

Debora Juarez, the first Native American citizen elected to the Seattle City Council, agrees, noting that "disenrollment is tantamount to the relinquishment of my birthright."¹³⁵

As it gains traction, the disenrollment issue grows more divisive and attracts outspoken advocates on all sides. For its part, the NNABA issued its first formal ethics opinion in June of 2015¹³⁶ to address the ethical implications of both tribal disenrollment and tribal attorneys' roles therein.¹³⁷ The opinion disclaimed *1013 supplanting any pre-existing tribal codes of ethics,¹³⁸ but stated that "NNABA has determined it is necessary and appropriate to address advocacy on disenrollment matters specifically, when such matters are more frequently arising, to remind lawyers and

"TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

any bar associations to which they belong that lawyers' ethical obligations to their licensing jurisdictions do not stop at reservation boundaries."¹³⁹ The opinion first decries the practice of disenrollment without due process and continues to note that tribal advocates have a duty to the greater Native American community, broader even than the duty to win their tribal client's case:

This is particularly true in the context of disenrollment cases in which a sovereign tribal government seeks to deny Native Americans who hold rights and recognition in their communities, as citizens, their rights to participate in their indigenous community in the future. This special duty exists in disenrollment cases because: (1) the tribal advocate who represents the sovereign (like a public prosecutor) should use restraint in the discretionary exercise of the governmental powers; and (2) positive tribal law, federal law, and international human rights law provide for rights to identity and culture that should not be taken away from an individual of indigenous heritage without due process of law.

The restraint urged by the NNABA would mean the advocate's refusal to participate in any disenrollment proceeding that lacked due process of law.

The internal strife highlighted by the disenrollment movement again proves challenging for advocates appearing in tribal courts for tribal clients. Difficult as it often is to respect traditional tribal notions of sovereignty when representing a tribal client, the problem is compounded when both parties argue for variant interpretations of tribal sovereignty as applied to the same tribe. Tribal codes of ethics, particularly those that comprise guidelines for attorneys, hold sacrosanct the importance of the maintenance of tribal sovereignty.¹⁴⁰ For tribal attorneys, the fact that these codes often fail to contemplate variant interpretations of what that sovereignty might mean¹⁴¹ poses an ethical quandary that they feel ill-equipped to answer.¹⁴²

*1014 CONCLUSION

The recent disenrollment trend sweeping the nation calls upon advocates not only to respect tribal sovereignty, but also to interrogate its meaning, its derivation, and its protectorate. In their consideration of sovereignty, tribal advocates are bound to higher and more specific ethical standards than those of their peers. Regardless of explicit or implicit variation throughout tribal codes, attorneys--be they members or nonmembers-- are called to seek and further justice. In the case of Native American tribes, the furtherance of justice necessitates a long view of a tumultuous history with the federal government and the inviolability of the limited sovereignty that remains. This sovereignty must inform the decisions and actions of every tribal advocate. This interrogation can lead advocates to only one conclusion: their heightened ethical burden requires them to refrain from participation in disenrollment actions unless due process is available.

Footnotes

^{a1} J.D. Georgetown University Law Center (expected May 2018); B.A. Virginia Polytechnic Institute and State University (2012). © 2017, Nicole Russell.

¹ See, e.g., Eric K. Yamamoto et al., *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 41 (2007); Matthew Atkinson, *Red Tape: How American Laws Ensnare Native American Lands, Resources, and People*, 23 OKLA. CITY U. L. REV. 379, 381 (1998).

"TO FURTHER JUSTICE IN THE GREATER NATIVE...., 30 Geo. J. Legal...

- 2 Clare Boronow, *Closing the Accountability Gap for Indian Tribes: Balancing the Right to Self-Determination with the Right to a Remedy*, 98 VA. L. REV. 1373, 1374 (2012).
- 3 25 U.S.C. § 1311 (2010).
- 4 See B.J. JONES, ROLE OF INDIAN TRIBAL COURTS IN THE JUSTICE SYSTEM 5 (2000); see also U.S. Bureau of Just. Stat., *Tribal Courts* (2015), http://www.bjs.gov/index.cfm?ty_tp&tid_29 [<https://perma.cc/Z8EC-XC9Q>] (“[s]ome tribes have developed a hybrid or blended judicial system, incorporating the dispute resolution elements of indigenous or Code of Federal Regulations [CFR] courts and a more modern focus to ensure due process”); see also Matthew L.M. Fletcher, *Indian Courts and Fundamental Fairness: Indian Courts and the Future Revisited*, 84 U. COLO. L. REV. 59, 60 (2013) (“These courts constitute a powerful exercise of tribal government authority in the modern era, statutorily cabined only by the Indian Civil Rights Act [‘ICRA’].”).
- 5 See OSCAR YALE LEWIS III, THE SHIFTING SANDS OF AMERICAN INDIAN POLICY, BEST PRACTICES FOR DEFENDING TRIBAL MEMBERSHIP CASES: LEADING LAWYERS ON NAVIGATING TRIBAL MEMBERSHIP ENROLLMENT ISSUES 10 (2013) (“The US Supreme Court has been chipping away at tribal sovereignty and sovereign immunity for the last twenty-five years or more. This trend seems likely to continue One of the scholars who first sounded the alarm was David Getches [, who] asserted that the Rehnquist Court was rewriting federal Indian law and that tribal interests were losing an estimated 80 percent of the cases argued before the Supreme Court.”).
- 6 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978).
- 7 Nat’l Native Am. Bar Ass’n, Formal Ethics Opinion No. 1, *Duties of Tribal Court Advocates to Ensure Due Process Afforded to All Individuals Targeted for Disenrollment* (2015) [hereinafter Formal Ethics Opinion].
- 8 See *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009) (holding that attorneys did not owe a fiduciary duty to Native American clients).
- 9 U.S. CENSUS BUREAU, THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010 (2012), <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf> [<https://perma.cc/HZ2B-Z9JN>].
- 10 See generally Nat’l Am. Indian Ct. Judges Ass’n, *National Directory of Tribal Justice Systems* (2016), <http://directory.naicja.org/directory> [<https://perma.cc/8R5Q-UG4C>].
- 11 See JONES, *supra* note 4, at 12 (“Indian tribal courts have broad leeway to adopt their own procedures to deal with civil cases heard in tribal courts, provided these procedures provide basic fairness to all parties.”); see also *Nevada v. Hicks*, 533 U.S. 353, 383 (2001) (Souter, J., concurring).
- 12 See Kristen A. Carpenter & Eli Wald, *Lawyering for Groups: The Case of American Indian Tribal Attorneys*, 81 FORDHAM L. REV. 3085, 3091-92 (2013).
- 13 See Fletcher, *supra* note 4, at 81 (“ICRA, along with the accompanying American law that tribal courts so often used to interpret and apply it, is slowly falling by the wayside as tribal courts, litigants, and tribal legislatures rediscover, adapt, and apply tribal customary and traditional law in tribal court cases.”).
- 14 See Matthew L.M. Fletcher, *Contract and (Tribal) Jurisdiction*, 126 YALE L.J. F. 1, 1-2 (2016) (“Indian energy revenue disbursements from the Interior Department topped \$1 billion for the first time in 2014, and much of that business depends upon non-Indian companies. Indian gaming is a nearly \$30 billion revenue source for Indian nations, and nearly all of that revenue is generated from non-Indians.”).
- 15 See Ed Finkel, *Economics and Culture Both Put Their Stamp on Ethics Rules in Tribal Courts*, A.B.A. J. (Mar. 1, 2011), http://www.abajournal.com/magazine/article/economics_and_culture_both_put_their_stamp_on_ethics_rules_in_tribal_courts [<https://perma.cc/U5PZ-VWN2>] (“Economic considerations are another reason for tribal courts to take a harder look at their ethics rules for lawyers and

“TO FURTHER JUSTICE IN THE GREATER NATIVE...”, 30 Geo. J. Legal...

judges. As some tribes have gained wealth--often in the form of casino revenue--their financial operations have become more complex and their commercial dealings with outside entities have grown.”).

- 16 Galanda Broadman, *Profile of Gabriel S. Galanda*, <http://www.galandabroadman.com/profiles/galanda/> [https://perma.cc/W3NN-TBRX] (last visited Jan. 9, 2017).
- 17 Gabriel S. Galanda, *Exposing Abramoff's Playbook: Exploiting, or Filling, the Ethical Void for Tribal Lawyers*, at 6 (16th Annual Indian Law Conference Nov. 2014), <http://static1.squarespace.com/static/55d8f102e4b090d16422c6e1/56104de6e4b06532b63c7894/56104e6ce4b06532b63c9502/1443909228542/Exposing-Abramoff%E2%80%99s-Playbook-Exploiting-or-Filling-the-Ethical-Void-for-Tribal-Lawyers.pdf?format=original> [https://perma.cc/YH7W-3W3G].
- 18 See Formal Ethics Opinion, *supra* note 7, at 2 (“[A] special duty exists in disenrollment cases because: (1) the tribal advocate who represents the sovereign (like a public prosecutor) should use restraint in the discretionary exercise of the governmental powers; and (2) positive tribal law, federal law, and international human rights law provide for rights to identity and culture that should not be taken away from an individual of indigenous heritage without due process of law.”).
- 19 See Frank Pommersheim, *The Contextual Legitimacy of Adjudication in Tribal Courts and the Role of the Tribal Bar as an Interpretive Community: An Essay*, 18 N.M. L. REV. 49, 63 (1988) (“Most tribal codes permit the admission of two quite different groups to the community of recognized practitioners, namely law trained individuals (i.e., Indian and non-Indians who are law school graduates and admitted to practice in some state or federal jurisdiction) and tribal advocates (i.e., tribal members admitted to tribal practice generally without any education or examination requirement).”). NNABA suggests that “tribal advocates” should take its guidance in determining their ethical duties within tribal jurisdictions; it defines these advocates as “attorneys, lay advocates, consultants, members of tribal bar associations, individuals presenting to tribal courts, tribal court judges, and advocates representing or appearing before any tribal bodies that exercise executive, legislative, judicial or quasi-judicial functions.” See Formal Ethics Opinion, *supra* note 7, at 2.
- 20 MODEL RULES OF PROF'L CONDUCT Preface (2016) [hereinafter MODEL RULES].
- 21 See generally Gabriel S. Galanda & Ryan D. Dreveskracht, *Curing the Tribal Disenrollment Epidemic: In Search of a Remedy*, 57 ARIZ. L. REV. 383, 385 (2015).
- 22 Nat'l Cong. Of Am. Indians, *Tribal Nations and the United States: An Introduction*, at 11, http://www.ncai.org/attachments/PolicyPaper_VmQazPEqbvZDMeaDvbupWTSZLmzyzBKOknQRXnUy_Tribal%20Nations%C20and%C20the%C20United%20States_An%20Introduction.pdf [https://perma.cc/52UGS2S2] (last visited May 9, 2017).
- 23 See Nat'l Am. Indian Ct. Judges Ass'n, *supra* note 10.
- 24 See JONES, *supra* note 4, at 12.
- 25 Meta J. Mereday, *Patty Ferguson-Bohnee: Bringing Reflection and Purpose to the National Native American Bar Association*, MULTICULTURAL L. REV. (2011) (“We do not yet have a critical mass of Native American attorneys to influence a shift in changes or to advocate for inclusion of Native American attorneys.”).
- 26 See Carpenter & Wald, *supra* note 12, at 3108 (“As we write in 2013, the practice of Indian law is still growing and changing. NARF, along with the ILRC, legal services organizations, and dozens of law firms, both large and small, are providing legal counsel directly to tribes--in tribal, state, federal, and international matters.”).
- 27 See generally Tracy N. Zlock, *The Native American Tribe as a Client: An Ethical Analysis*, 10 GEO. J. LEGAL ETHICS 159, 179-80 (1996).
- 28 Joseph P. Kalt & Joseph William Singer, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule* 4 (KSG Working Paper No. RWP04-16., 2004), https://ssrn.com/abstract_529084 [https://perma.cc/C6Y6-P62Q].

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

- 29 See generally Kaighn Smith Jr., Ethical “Obligations” and Affirmative Tribal Sovereignty: Some Considerations for Tribal Attorneys, 31st Ann. Fed. Bar Ass’n Indian L. Conf.: Active Sovereignty in the 21st Century (April 5-7, 2006) (“If a tribal attorney, in accordance with the preamble to the ABA Model Rules of Professional Responsibility, has a duty to ‘seek improvement of the law, access to the legal system, [and] the administration of justice,’ then he or she should be advocating for active tribal lawmaking in those areas.”).
- 30 See generally 25 U.S.C. §§ 1301-1303 (2012).
- 31 Christian M. Freitag, *Putting Martinez to the Test: Tribal Court Disposition of Due Process*, 72 IND. L.J. 831, 831-32 (1997).
- 32 See generally 25 U.S.C. §§ 1301-1303. Notably, the Act excluded the right to legal counsel and the right to trial by jury in civil cases.
- 33 See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 81-82 (1978).
- 34 Kristen A. Carpenter, *Considering Individual Religious Freedoms Under Tribal Constitutional Law*, 14-SPG KAN. J.L. & PUB. POL’Y 561 (2005) (“[T]he only federal remedy ICRA provides is a habeas corpus petition for individuals held in custody by a tribal government.”).
- 35 See *In Defense of Tribal Sovereign Immunity*, 95 HARV. L. REV. 1058, 1063 (1982) (“The Supreme Court in *Santa Clara Pueblo v. Martinez* ... unambiguously reaffirm[ed] the tribal immunity doctrine. In holding that the ICRA was not a general waiver of tribal immunity, the Court recognized that Congress purposely limited the waiver in the ICRA.”).
- 36 For discussion, see Bill Kockenmeister, *Tribal Courts in Nevada Alive and Well*, 26 NEV. LAW. 26, 28. (2011) (“The old adage ‘If you’ve seen one you’ve seen them all’ certainly does not pertain to tribal courts in Nevada. Some courtrooms are set up to look like a courtroom in state court; other tribes hold court in small rooms in the tribal headquarters building. Some tribal courts are in session on a daily basis, some weekly or bi-weekly, some monthly, and some on an intermittent basis. A few tribal courts employ licensed attorneys as full-time prosecutors and provide for the appointment of counsel for indigent defendants in criminal proceedings and in child welfare cases. These tribal courts are very much like state courts. Other tribal courts employ prosecutors and advocates with minimal legal training. Some courts do not provide advocates in any matters. In these courts, tribal judges have to be very sensitive to due process rights of the parties and must ensure that a thorough and complete record is developed in order to render a fair and impartial decision.”).
- 37 *Id.* at 28. Those tribes that have not adopted their own codes are subject to federal Courts of Indian Offenses, listed at 25 C.F.R. § 11.100.
- 38 While the 2010 Tribal Law and Order Act amended the Indian Civil Rights Act of 1968 and tied expanded tribal jurisdiction to the provision of indigent defense by the tribe in criminal trials, many tribes remain underfunded and thus incapable of (1) providing the defense and (2) subsequently acting with expanded jurisdiction. Whether the lack of representation presents an ethical dilemma for nonmember ABA-certified attorneys is another question; the Preamble of the *Model Rules* exhorts attorneys to “seek improvement of the law, access to the legal system, [and] the administration of justice.” MODEL RULES pmb1.
- 39 Gary Fields, *Native Americans on Trial Often Go Without Counsel*, PITTSBURGH POST-GAZETTE (Feb. 1, 2007), <http://www.post-gazette.com/life/lifestyle/2007/02/01/Native-Americans-on-trial-often-go-without-counsel/stories/200702010357> [https://perma.cc/MQD9-MUQV].
- 40 See generally NATIVE AM. RTS. FUND, *Peacemaking Tribal Codes and Models*, <http://peacemaking.narf.org/models/laws/> [https://perma.cc/EKT4-82SJ] (last visited Oct. 6, 2016).
- 41 See, e.g., TRIBAL CT. BLUE LAKE RANCHERIA, *Rules of Admission and Professional Conduct Governing the Practice of Attorneys in the Tribal Court of the Blue Rancheria 1* (April 1, 2007), http://www.bluelakerancheriansn.gov/BLR_Tribal_Court_Attorney_Conduct_Rules01.pdf [https://perma.cc/5N9D-DV42] (“Nothing in these rules shall be deemed

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

to create, augment, diminish or eliminate any substantive legal duty imposed upon any lawyer or the consequences of violating such a duty imposed by any other federal, state or tribal law.”).

42 Maylinn Smith, *Enhancing Tribal Governance: Codes of Ethics*, S.D. INDIAN BUS. ALL. 5, <http://www.sdibaonline.org/Archive/EnhancingTribalGovernance.pdf> [<https://perma.cc/D34E-TJVH>].

43 *Id.* at 3.

44 Nat'l Indian L. Libr., *Tribal Law Gateway* (2016), <http://www.narf.org/nill/triballaw/index.html> [<https://perma.cc/SH34-4UTP>].

45 These norms often go unarticulated, requiring a working knowledge of the tribe's customary proceedings. *See* JONES, *supra* note 4, at 12 (“Some tribal codes, however, go by tribal custom law, which is oftentimes not defined in the tribal code and requires some knowledge of the practices and customs of the tribe to understand.”). Furthermore, it is not uncommon for tribes to keep their laws from public availability due to budgetary constraints or fear of immutability. *See generally* Bonnie Shucha, “*Whatever Tribal Precedent There May Be*”: *The (Un)availability of Tribal Law*, 106 L. LIBR. J. 199, 201 (2014).

46 *In Re: The Model Rules of Professional Conduct*, NAVAJO REP. A-CV-41-92 (1993).

47 RULES OF PROFESSIONAL CONDUCT, § 1.1-1.36 (CROW TRIBAL CT. 2005).

48 Rob Roy Smith, *Understanding and Respecting the Process of Trying Cases in Tribal Courts: What Attorneys Need to Know*, in NAVIGATING TRIBAL LAW: LEADING LAWYERS TO UNDERSTAND THE UNIQUE PROCEDURES, INTRICACIES, AND CHALLENGES INVOLVED WITH TRIBAL CASES 4 (2012).

49 Fletcher, *supra* note 4, at 76.

50 Fletcher describes this as a “necessary crutch,” on the road to “establishing a tribal common law that effectively guarantees fundamental fairness to litigants in Indian courts as tribes continue to reestablish and adapt their customs and traditions to meet modern needs.” *Id.*

51 ABA CTR. FOR PROF. RESP., *State Adoption of Model Rules* (2016), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html [<https://perma.cc/Y27C-KRW5>] (“To date, California is the only state that does not have professional conduct rules that follow the format of the ABA Model Rules of Professional Conduct.”).

52 *Compare* TRIBAL COUNCIL CODE OF ETHICS FOR THE DEL. TRIBE OF INDIANS (2016), *with* DEL. LAWYERS' RULES OF PROF'L CONDUCT (2010).

53 OR. RULES OF PROF'L CONDUCT R. 1.2 (d) (OR. BAR ASS'N. 2015).

54 State Bar of Ariz., Formal Ethics Op. 90-19 (Dec. 1990). Regarding the Navajo Nation's requirement that Navajo attorneys represent indigent criminal defendants:

If the situation presented by the inquiring lawyer occurred in Arizona, but outside the Navajo Reservation, the attorney would most likely be excused from the appointment based on ER 1.13(a), ER 1.7(a) and ER 6.2 of the [Arizona Rules of Professional Conduct](#). ER 1.13(a) provides that, when an attorney is retained or employed by a governmental organization, the attorney's client is that organization, in this instance, the Navajo Nation. If the lawyer then simultaneously undertook to represent a Navajo citizen being prosecuted by the Navajo Nation, that representation would be in direct conflict with the lawyer's representation of the Navajo Nation and would be prohibited under ER 1.7(a) [However,] there may be limitations on the binding force of the Arizona Rules on such a lawyer when the lawyer is licensed to practice in another jurisdiction whose ethical rules impose obligations which conflict with Arizona's Rules.

Id.

55 *Id.*

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

- 56 Hon. Michael F. Cavanagh, Mich. Supreme Court Justice, Remarks at the Michigan Indian Judicial Ass'n: The First Tribal/ State Court Forum and the Creation of [MCR 2.615](#) (Oct. 29, 2007).
- 57 Finkel, *supra* note 15.
- 58 SAMPLE TRIBAL CODE OF JUDICIAL CONDUCT: A TEMPLATE (Christine Folsom-Smith ed., The Nat'l Tribal Jud. Ctr. 2007).
- 59 See Fletcher, *supra* note 4, at 59 (“One might ask why it is important that Indian courts begin to develop their own jurisprudence and discard American law where possible. American constitutional law derives from a text to which Indian tribes are not, and cannot, be a party.”).
- 60 NAT'L CONGRESS OF AM. INDIANS, *Tribal Governance* (2016), <http://www.ncai.org/policy-issues/tribalgovernance> [<https://perma.cc/27VE-H2GG>].
- 61 Matthew Fletcher puts forth a similar taxonomy of tribes based upon their reliance upon federal and state codes: “[1] courts that apply ICRA's provisions ... but partially reject American jurisprudence in favor of tribal custom and tradition unless a gap exists ... [(2)] applied ICRA but eventually rejected it and now rel[y] exclusively on tribal customary and traditional law [, and (3)] rejects ICRA altogether” Fletcher, *supra* note 4, at 81.
- 62 Rob Roy Smith, *supra* note 48.
- 63 Garrett Epps, *Who Can Tribal Courts Try?*, ATLANTIC (Dec. 7, 2015), <https://www.theatlantic.com/politics/archive/2015/12/who-can-tribal-courts-try/419037/> [<https://perma.cc/AH3C-5XMJ>].
- 64 See generally Shucha, *supra* note 45, at 199-206.
- 65 NAT'L INDIAN L. LIBR., *Tribal Court Cases Related to Attorney Ethics and Professional Responsibility* (2016), <http://www.narf.org/nill/ilr/attorney.html> [<https://perma.cc/844K-5X6J>].
- 66 Alternatively, the ingenuity required to develop novel legal strategies without case law may prove beneficial to both the nonmember attorney and the member client. “[M]uch tribal court litigation involves cases in which there is no controlling authority. This alone suggests the possibility for innovative and creative lawyering, which, as a necessary byproduct, can help to forge a meaningful and enduring tribal jurisprudence.” Frank Pommersheim & Sherman Marshall, *Liberation, Dreams, and Hard Work: An Essay on Tribal Court Jurisprudence*, 1992 WIS. L. REV. 411 (1992).
- 67 [Gallaher v. Colville Confederated Tribes](#), Case No. AP98-014, 3 CTR 27, 27 ILR 6099 (Colville Confederated Tribes Ct. App. Mar. 7, 2000).
- 68 *Id.* at 39 n.20.
- 69 D. Michael McBride, III, Dir., Crowe & Dunlevy, Presentation at the 20th Annual Tribal Law and Government Conference: Ethical Considerations when Representing Tribal Nations (Mar. 11, 2016), https://law.ku.edu/sites/law.ku.edu/files/docs/tribal_law_conference/mcbride-materials.pdf [<https://perma.cc/6MMF-EDQR>].
- 70 *Id.*
- 71 Matthew L.M. Fletcher, *Rethinking Customary Law in Tribal Court Jurisprudence*, 13 MICH. J. RACE & L. 57 (2007).
- 72 *Id.* at 63-64.
- 73 See Christine Zuni Cruz, *Tribal Law as Indigenous Social Reality and Separate Consciousness-[Re]Incorporating Customs and Traditions into Tribal Law*, 1 N.M. TRIBAL L. J. (2000), http://lawschool.unm.edu/tlj/tribal-law-journal/articles/volume_1/zuni_cruz/index.php [<https://perma.cc/22ZU-ZF7R>] (“Where enacted law is imported law from outside the tribe, even where internal and imported law coincide, those responsible for creating the law should state the foundation of the internal law upon

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

which the imported law is laid. This provides tribal court judges guidance, provides tribal and non-tribal members with notice as to what tribal norms govern their behavior, and how they are different or similar to non-tribal norms.”).

74 Formal Ethics Opinion, *supra* note 7, at 2.

75 Mary Cleland v. Fort Peck Tribal Court, Fort Peck Ct. App. No. 004, <http://indianlaw.mt.gov/Portals/127/fortpeck/decisions/000s/004.pdf> [<https://perma.cc/C52W-MEXU>] (“With respect to the second question of whether there were any standards of legal ethics to which Lay Counselors and Attorneys admitted to practice in the Tribal Court and the Court of Appeals were subject, in the absence of any code of legal ethics having been adopted by the Fort peck Assiniboiné and Sioux Tribes, the short answer is, ‘Yes.’”).

76 *Id.*

77 *Id.*

78 *See generally id.*

79 RAYMOND D. AUSTIN & ROBERT A. WILLIAMS, INDIGENOUS AMERICAS: NAVAJO COURTS AND NAVAJO COMMON LAW: A TRADITION OF TRIBAL SELF-GOVERNANCE 97 (2009).

80 Initially, Seanez was disbarred, but the Court later reconsidered the matter and reduced the disbarment to a suspension. *See generally In re Seanez, Case No. SC-CV-58-10 (Navajo 2011)*, <http://www.navajocourts.org/NNSC2011/02InreSeanez.pdf> [<https://perma.cc/S3TB-6F84>]. One year later, however, Seanez was disbarred for practicing during the interim. *See* INDIAN COUNTRY NEWS, *Navajo Court Reinstates Disbarment for Attorney* (Jan. 28, 2011), <http://www.indiancountrynews.com/index.php/news/crime-justice-courts-and-lawsuits/10975-navajo-court-reinstates-disbarment-for-attorney> [<https://perma.cc/ER9L-MM9Q>].

81 *Id.*

82 *Id.*

83 The Court cited two instances of misconduct: (1) when Seanez advised the Council of its “unquestion-able” right to enact legislation restructuring the Navajo government despite the Court’s judgment to the contrary and (2) when Seanez informed the Council that it could dissolve a Court-restored commission. *See* Felicia Fonseca, *Navajo High Court Disbars Legislative Attorney*, USA TODAY (Oct. 22, 2010), http://usatoday30.usatoday.com/news/nation/states/arizona/2010-10-22-1576541982_x.htm [<https://perma.cc/WP8J-FJF8>].

84 Order and Writ of Prohibition, *In re Seanez, Case No. SC-CV-58-10*, at 5 (Navajo 2010).

85 *Id.*

86 *See* Alastair Lee Bitsoi, *Law and Order Recommends Removal of Chief Justice*, NAVAJO TIMES (May 5, 2016), <http://navajotimes.com/rezpolitics/law-and-order-recommends-removal-of-chief-justice/> [<https://perma.cc/E59Y-29DW>]; *see also* Noel Lyn Smith, *Bill Calls for Removal of Navajo Nation Chief Justice*, ALBUQUERQUE J. (Mar. 26, 2015), <https://www.abqjournal.com/560355/bill-calls-for-removal-of-navajo-nation-chief-justice.html> [<https://perma.cc/4NPN-XMC8>].

87 Noel Lyn Smith, *supra* note 86.

88 *See, e.g.,* Snowden v. Saginaw Chippewa Indian Tribe, No. 04-CA-1017 at 3 (App. Ct. for the Saginaw Chippewa Indian Tribe of Mich. Jan. 7, 2005) (“This case is not just about the meaning of the Saginaw Chippewa Tribal Constitution of 1986, but it is also a story about a People and a Tribe enmeshed in the coils of an unknowing and meddlesome Bureau of Indian Affairs and Federal Government.”).

89 The preamble in relevant part mandates that “[a]s a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.” MODEL RULES pmbl.

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

- 90 Kaighn Smith, *supra* note 29, at 4.
- 91 *Id.*
- 92 *Id.* at 3.
- 93 See, e.g., NOTTAWESEPPH HURON BAND OF THE POTAWATOMI CONST., art. II, § 2 (“The jurisdiction and sovereign powers of the Band shall, consistent with applicable federal law, extend and be exercised to the fullest extent consistent with tribal self-determination, including without limitation, to all of the Band’s territory as set forth in Section 1 of this Article, to all natural resources located within the Band’s territory, to any and all persons within the Band’s territory and to all activities and matters within the Band’s territory.”).
- 94 MODEL RULES R. 10.
- 95 U.S. DEP’T OF THE INTERIOR: INDIAN AFFAIRS, *Frequently Asked Questions* (Nov. 21, 2016), <http://www.bia.gov/FAQs/> [<https://perma.cc/UWU7-TZMP>].
- 96 See, e.g., *In re Ronald A. Hodge*, No. 060 (Fort Peck Ct. App. Dec. 28, 1988) (finding defendant in violation of Canon 16 and suspending him only to purge the violation following a formal apology); NEZ PERCE TRIBAL CODE §1-1-37 (“The chief judge may suspend or disbar any attorney from practice before the courts of the Nez Perce Tribe after due notice and a hearing if such attorney shall be found guilty of the following: (1) a violation of his oath to the Court; (2) suspension or disbarment from practice before any state, federal or tribal court; (3) a violation of the rules of professional conduct of any state bar to which he is a member; and (4) the conviction of a felonious act.”); UTE INDIAN TRIBE LAW AND ORDER CODE §1-5-5 (“All suspensions from practicing before the Courts of the Ute Indian Tribe shall be for an indefinite period unless the Judge specifically orders otherwise.”).
- 97 JAMESTOWN S’KLALLAM TRIBAL CODE tit. 13, §13.09.06.
- 98 FORT PECK TRIBAL COURT COMPREHENSIVE CODE OF JUSTICE, tit. II, Chap. 5, §504.
- 99 Andrine Redstir, *Can You Practice Again if You Are Disbarred?* CHRON, <http://work.chron.com/can-practice-again-disbarred-21622.html> [<https://perma.cc/XZP9-4VZB>] (last visited Jan. 10, 2017).
- 100 NEZ PERCE TRIBAL CODE § 1-1-37.
- 101 The same applies to explicit, organic tribal codes of ethics, which tend to incorporate the same principles.
- 102 Ryan Seelau, *Disenrollment Demands Serious Attention by All Sovereign Nations*, INDIAN COUNTRY MEDIA NETWORK (Dec. 10, 2013), <https://indiancountrymedianetwork.com/news/opinions/disenrollment-demands-serious-attention-by-all-sovereign-nations/> [<https://perma.cc/D8NE-YAJA>].
- 103 Nina Shapiro, *Native Lawyer Takes on Tribes that Kick Members Out*, SEATTLE TIMES (Dec. 19, 2015), <http://www.seattletimes.com/seattle-news/northwest/native-lawyer-takes-on-tribes-that-kick-members-out/> [<https://perma.cc/75XE-63KA>].
- 104 See Ben Goldfarb, *In Washington, the Nooksack 306 Fight to Stay in Their Tribe*, HIGH COUNTRY NEWS (Apr. 17, 2016), <http://www.hcn.org/articles/will-the-nooksack-306-stave-off-disenrollment> [<https://perma.cc/ZM28-MQUQ>].
- 105 Galanda, a disbarred-then-reinstated attorney defending those members who were disenrolled, describes the disenrollment taking place in tribes across the country as an epidemic, pointing to tribes which “include the Snoqualmie Tribe, where a controversy over disenrollment and banishment erupted seven years ago; the Cherokee Nation, embroiled in a long-running court battle after trying to kick out descendants of slaves owned by the tribe, and dozens of California tribes.” *Id.* In fact, tribes in seventeen states have undertaken the disenrollment process. See Andrew Westney, *Lawyers Must Guide Against Tribal Enrollment Abuses*, LAW360 (Apr. 27, 2015), <https://www.law360.com/articles/644804/lawyers-must-guard-against-tribal->

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

disenrollment-abuses [https://perma.cc/F38V-UV52]. *But see* James Dao, *In California, Indians with Casino Money Cast Off Members*, N.Y. TIMES (Dec. 12, 2011), <http://www.nytimes.com/2011/12/13/us/california-indian-tribes-eject-thousands-of-members.html> [https://perma.cc/K7GQ-VEV7] (“In almost all of these cases, tribal governments--exercising authority recognized by the federal government--have determined that ousted Indians did not have the proper ancestry.”).

106 *See generally* [Santa Clara Pueblo v. Martinez](#), 436 U.S. 49 (1978).

107 Jessica Bardill, *Tribal Sovereignty and Enrollment Determinations*, AM. INDIAN & ALASKA NATIVE GENETICS RES. CTR., NAT'L CONGRESS OF AM. INDIANS, <http://genetics.ncai.org/tribal-sovereignty-and-enrollment-determinations.cfm> [https://perma.cc/T3V6-22BW] (last visited May 9, 2017). This principle is supported by Article 33 of the United Nations Declaration of the Rights of Indigenous Peoples, to which the United States is a signatory. *Id.* (“Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions [and] ... the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.”).

108 *See generally id.*

109 Brendan Koerner, *How Do You Join an Indian Tribe?*, SLATE (Feb. 24, 2004), http://www.slate.com/articles/news_and_politics/explainer/2004/02/how_do_you_join_an_indian_tribe.html [https://perma.cc/3NWF-ZQEN].

110 *Id.*

111 *Id.* Many identify the Dawes Roll as a relic of the assimilationist movement on the part of the United States government to achieve domestic homogeneity; the Dawes Act, which created the Roll, encouraged Native Americans to become citizens should they renounce their “tribal relationship and [adopt] the habits of civilization.” CLAUS M. NASKE & HERMAN E. SLOTNICK, *ALASKA: A HISTORY* 149 (Univ. of Okla. Press, 3rd ed. 2014).

112 Bardill, *supra* note 107.

113 *Id.*

114 As recently as 2016, the Department of the Interior and Bureau of Indian Affairs were accused by the Ione Band of Miwok Indians of “supporting a ‘mock’ California tribe that is allegedly genealogically and historically inaccurate and thereby interfering with the so-called genuine tribe's self-determination.” Christine Powell, *BIA Accused of Creating ‘Imposter’ Calif. Tribe*, LAW360 (Mar. 10, 2016), <https://www.law360.com/articles/769782/bia-accused-of-creating-imposter-calif-tribe> [https://perma.cc/CB3E-EJ2M]. The tribe argued that BIA's regional administrator had improperly used her power to allow membership to unqualified applicants so that they might receive federal benefits intended for tribal members. *Id.*

115 Brooke Jarvis, *Who Decides Who Counts as Native American?*, N.Y. TIMES MAG. (Jan. 18, 2017), <https://www.nytimes.com/2017/01/18/magazine/who-decides-who-counts-as-native-american.html> [https://perma.cc/87A8-ACTH].

116 Rennard Strickland, *Things Not Spoken: The Burial of Native American History*, *Law and Culture*, 13 ST. THOMAS L. REV. 11, 15 (2000).

117 Jarvis, *supra* note 115.

118 *Id.*

119 *Id.*

120 *Id.* Thirty-seven of those disenrolled were elders. While disenrollments are more common where per capita shares of casino revenues are involved, the Nooksacks maintain only one casino and reap no per capita distribution.

121 *See* Goldfarb, *supra* note 104.

- 122 “After *Santa Clara*, disenrollment became a robust and unreviewable tool to settle political scores or to give expression to racism or to simply acquire a greater share of limited tribal resources.” Steve Russell, *Disappearing Indians, Part II: The Hypocrisy of Race in Deciding Who's Enrolled*, INDIAN COUNTRY MEDIA NETWORK (July 28, 2015), <https://indiancountrytodaymedianetwork.com/2015/07/28/disappearing-indians-part-ii-hypocrisy-race-deciding-whos-enrolled-161197> [<https://perma.cc/Q8P4-T79G>].
- 123 Gabriel S. Galanda, *Disenrollment IS a Federal Action*, INDIAN COUNTRY MEDIA NETWORK (Mar. 10, 2015), <http://indiancountrytodaymedianetwork.com/2015/03/10/disenrollment-federal-action> [<https://perma.cc/BN2D-WXP6>]. Here, the BIA has refused to recognize any action taken by the Council following March of 2016 when the meetings and elections required by the Nooksack constitutional bylaws were ignored. Samantha Wohlfeil, *Nooksack Tribe's Actions Not Recognized by Feds in 'Exceedingly Rare' Case*, BELLINGHAM HERALD, (Oct. 16, 2016), http://www.bellinghamherald.com/news/local/article109070267.html#storylink_cpy [<https://perma.cc/PQ88-4343>].
- 124 CONSTITUTION AND BYLAWS OF THE NOOKSACK INDIAN TRIBE OF WASHINGTON (Aug. 2, 2013), http://www.nooksacktribe.org/wp-content/uploads/2011/11/2016_02_04_11_28_33.pdf [<https://perma.cc/HG36-JZAS>] (“The Tribal Council shall have the power to enact ordinances in conformity with this constitution, subject to the approval of the Secretary of the Interior, governing future membership in the tribe, including adoptions and loss of membership.”).
- 125 See Nina Shapiro, *Nooksack Leaders Disbar Lawyer Fighting Tribal Disenrollments*, SEATTLE TIMES (Mar. 16, 2016), <http://www.seattletimes.com/seattle-news/nooksack-leaders-disbar-lawyer-fighting-disenrollments/> [<https://perma.cc/NVK2-WNXD>]. The Nooksack 306 hired Galanda because he was credentialed: he had represented members of the Confederated Tribes of the Grand Ronde who were disenrolled after their shared ancestor, Chief Tumulth, was discovered missing from the official roll. It was subsequently discovered that Chief Tumulth signed one of the treaties that resulted in the creation of the reservation but was hanged a year before the roll by the U.S. army. Jarvis, *supra* note 115.
- 126 *Id.*
- 127 See generally Galanda & Dreveskracht, *supra* note 21, at 383-474.
- 128 See generally Formal Ethics Opinion, *supra* note 7.
- 129 See generally Galanda & Dreveskracht, *supra* note 21.
- 130 Galanda, *supra* note 123 (“[I]n reference to the Nooksack Tribe's disenrollment ‘rules and regulations’--which the BIA recently approved as required by the Tribe's Constitution--the agency cited *Santa Clara* as justification, explaining that a ‘tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence.’”).
- 131 See Formal Ethics Opinion, *supra* note 7, at 3 (“Native Americans' right of tribal citizenship is being increasingly divested or restricted without equal protection at law or due process of law, or any effective remedy for the violation of such rights, most commonly through a tribal process known as ‘disenrollment.’ This cannot stand.”).
- 132 See generally Galanda & Dreveskracht, *supra* note 21.
- 133 *Id.* at 443.
- 134 See Seelau, *supra* note 102.
- 135 Debora Juarez, *Disenrollment is Not Sovereignty*, <http://lastrealindians.com/debora-juarez-disenrollment-is-not-sovereignty/> [<https://perma.cc/89P7-RDPK>] (last visited Jan. 9, 2017).
- 136 The National Native American Bar Association was established in 1973. Nat'l Native Am. Bar Ass'n, *The Mission of NNABA* (2014), <http://www.nativeamericanbar.org/the-mission-of-nnaba/> [<https://perma.cc/M7JF-5ZFQ>].
- 137 See generally Formal Ethics Opinion, *supra* note 7.

“TO FURTHER JUSTICE IN THE GREATER NATIVE..., 30 Geo. J. Legal...

138 *Id.* at 2.

139 *Id.*

140 *See, e.g.*, POARCH BAND OF CREEK INDIANS CODE OF ORDINANCES §§ 1-1-1, 7-1-2 (“It is the purpose and intent of the Poarch Band of Creek Indians in adopting this Tribal Code and all amendments thereto to continue, maintain, and preserve the sovereign rights of self-government of the Poarch Band of Creek Indians.”).

141 *See, e.g., id.* (“This Tribal Code of the Poarch Band of Creek Indians and all amendments thereto represent the principles of independence, self-government, and sovereignty of the Poarch Band of Creek Indians.”).

142 While the NNABA states that “it is immoral and unethical for any lawyer to advocate for or contribute to the divestment or restriction of the American indigenous right of tribal citizenship, without equal protection at law or due process of law or an effective remedy for the violation of such rights,” cases such as *Albert Alto, et al. v. Sally Jewl, et al.* show federal deference to the tribal entities tasked with disenrollments: “[a]lthough the appellants may not like the tribe’s constitution, it is the law governing the secretary’s actions in this matter, and the secretary was obligated to apply the tribe’s law in a manner that gives deference to the tribe’s reasonable interpretation of that law.” Jack Newsham, *Family Fighting Disenrollment Say Tribe Is No Amicus*, LAW360 (Apr. 11, 2016), <http://www.law360.com/articles/783199/family-fighting-disenrollment-say-tribe-is-no-amicus> [<https://perma.cc/M8NS-V4HQ>].

30 GEOJLE 991

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

...