

EXHIBIT B



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby
Senior Disciplinary Counsel

direct line: (206) 733-5998
email: scottb@wsba.org

April 10, 2018

Gabriel S. Galanda
Galanda Broadman, PLLC
8606 35th Ave NE Apt Lw1
Seattle, WA 98115-3677

Re: Grievance of Gabriel S. Galanda against Connie Sue M. Martin
ODC File No. 17-01776

Dear Mr. Galanda:

This letter is to advise you that we have completed our investigation of your grievance against lawyer Connie Sue M. Martin and to advise you of our decision. The purpose of our review has been to determine whether sufficient evidence exists on which to base a disciplinary proceeding. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only on a showing by a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct (RPC). This standard of proof is more stringent than the standard applied in civil cases.

Based on the information we have received, insufficient evidence exists to prove by a clear preponderance of the evidence that Ms. Martin violated the RPC in this matter. Therefore, we are dismissing the grievance. Our decision to dismiss the grievance is based on a review of your original grievance received on November 1, 2017, Ms. Martin's November 20, 2017 response, the additional materials we received from you on December 5, 2017, and the additional materials we received from Ms. Martin on December 11, 2017.

Beginning in late 2012, the Nooksack Tribal Council undertook efforts to disenroll about 300 members of the Nooksack Tribe. You and other lawyers in your firm represented members of the Tribe seeking to prevent disenrollment in proceedings before the Nooksack Tribal Court.

In February 2016, the Tribal Council enacted Resolution #16-27, which amended the Nooksack Tribal Code to allow the Tribal Council to bar an advocate from practice before the Nooksack Tribal Court if the Tribal Council determined that the advocate's conduct "reflect[ed] . . . poorly

upon the proper administration of justice.”¹ On the same day that Resolution #16-27 was enacted, the Tribal Council also enacted Resolution #16-28, which barred you and other lawyers in your firm from practicing before the Nooksack Tribal Court and engaging in any business activities within Nooksack tribal land.

Subsequently, you attempted to file *pro se* pleadings in the Nooksack Tribal Court challenging the Tribal Council’s actions. The Court Clerk refused to accept your pleadings on the grounds that filing such pleadings was contrary to Resolution #16-28. The Court Clerk continued to reject your pleadings even after the Nooksack Tribal Court of Appeals ordered her to accept them. The Nooksack Tribal Court of Appeals found the Court Clerk in contempt, ordered the Police Chief to arrest her, and then found the Police Chief in contempt when he refused to carry out the order.² The Nooksack Tribal Court of Appeals observed that “the rule of law on the reservation, at least within the scope of this case, has completely broken down.”³ Shortly thereafter, the Nooksack Tribal Council created a new Nooksack Tribal Supreme Court (with the Nooksack Tribal Council Chairman as Chief Justice) which promptly vacated all the orders of the Nooksack Tribal Court of Appeals on the grounds that its judges had not been reappointed by the Nooksack Tribal Council after their terms expired.⁴

In January 2017, you brought suit in the United States District Court for the Western District of Washington on behalf of six enrolled members of the Nooksack Tribe who were purportedly disenrolled by the Nooksack Tribal Council. Rabang et al. v. Kelly et al., Case No. 2:17-cv-00088-JCC. The complaint alleges, *inter alia*, that Nooksack Tribal Council members and others violated the federal Racketeer Influenced and Corrupt Organizations (RICO) Act⁵ and the False Claims Act⁶ by advancing a scheme to defraud the plaintiffs and the United States Government

¹ The resolution added the following language to Nooksack Tribal Code (NTC) § 10.02.070:

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 practice in any administrative tribunal before the Nooksack Indian Tribe or proceeding before the Nooksack Tribal Court. Council may hold such hearings as necessary to ensure that such behavior and/or practices are proven; or, as may be necessary to correct such past behavior and/or practices.

² Galanda v. Nooksack Tribal Court, 2016-CI-CL-002, Order re Plaintiffs’ Second Motion for Show Cause Order (Nooksack Tribal Ct. App., Sep. 21, 2016).

³ Id.

⁴ In re Orders Entered by Nooksack Tribal Court of Appeals, 2016-CI-SC-002, Order Vacating Tribal Court of Appeals Orders as Void (Nooksack Supreme Court, Oct. 17, 2016).

⁵ 18 U.S.C. § 1964.

⁶ 31 U.S.C. § 3729.

of money and property.⁷ Ms. Martin represents the defendants in Rabang v. Kelly. Litigation is ongoing.

In your grievance, you allege that Ms. Martin violated the RPC by advising and assisting her client, the Nooksack Tribe, with respect to the actions it took in barring you from practicing before the Nooksack Tribal Court and in refusing to accept your pleadings. More broadly, you allege that Ms. Martin “subverted justice” by assisting her client in a project that has undermined the basic fairness of the Nooksack Tribe’s judicial system.

Some commentators have opined that lawyers should be held morally responsible for the projects they voluntarily assist and for the means used to pursue them:

Lawyers have the right to decline to represent or withdraw from representing clients with whose projects they morally disagree. If they make a decision to represent a client nonetheless, why should we not hold them responsible for the project which they voluntarily assist? And why not also hold them responsible for the means used to pursue that project? . . . Lawyers also have the right (shall we say duty?) to advise their clients not only legally but also morally. If the lawyers have done so and failed to convince their clients, or have failed even to try to convince them, and still continue to represent those clients, why not hold the lawyers morally responsible?

Andrews, Aronson, Fucile & Lachman, The Law of Lawyering in Washington 4-20 (Wash. State Bar Assoc. 2012). But as a general rule, a lawyer is not legally responsible for the conduct of her client. RPC 1.2(b). One exception to the general rule is as follows:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

RPC 1.2(d).

The evidence suggests that Ms. Martin assisted her client, the Nooksack Tribe, in structuring a “justice system” that is probably not worthy of that description. Such is not a project that any lawyer should be proud of, no matter how much revenue it may generate. During oral argument in Rabang v. Kelly, Judge Richard R. Clifton of the Ninth Circuit Court of Appeals described the Tribal Council’s actions with respect to its court system as “a record a tin-pot dictator of a banana republic might be proud of.”⁸ But thus far we have not seen evidence from which it could be proven by a clear

⁷ Complaint for Damages and Injunctive Relief for Violations of the Federal Racketeer Influenced and Corrupt Organizations Act and False Claims Act, Rabang v. Kelly, No. 2:17-cv-00088-JCC (W.D. Wash. Jan. 23, 2017).

⁸ Oral Argument, Rabang v. Kelly, No. 17-35427 (9th Cir. Mar. 9, 2018), https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000013260.

preponderance of the evidence that Ms. Martin counseled or assisted the Nooksack Tribe in conduct she knew to be “criminal or fraudulent,” RPC 1.2(a), as opposed to unfair and unjust. We note that your clients have made allegations of fraudulent conduct by Nooksack Tribal Council members and others who are employees and constituents of Ms. Martin’s client.⁹ See RPC 1.13(a). If there is a judicial determination that Ms. Martin’s client or its constituents have engaged in criminal or fraudulent conduct, then we may reopen your grievance to examine whether Ms. Martin counseled or assisted her client in such conduct.

For the reasons stated above, we are dismissing this matter under ELC 5.7(a). If you do not mail or deliver a written request for review of this dismissal to us within **forty-five (45) days** of the date of this letter, the decision to dismiss your grievance will be final. Dismissal of a grievance constitutes neither approval nor disapproval of the conduct involved and should not be taken as the position of the Office of Disciplinary Counsel with respect to any other matter.

Sincerely,



Scott G. Busby
Senior Disciplinary Counsel

cc: Mark J. Fucile

⁹ Complaint for Damages and Injunctive Relief for Violations of the Federal Racketeer Influenced and Corrupt Organizations Act and False Claims Act, Rabang v. Kelly, No. 2:17-cv-00088-JCC (W.D. Wash. Jan. 23, 2017).