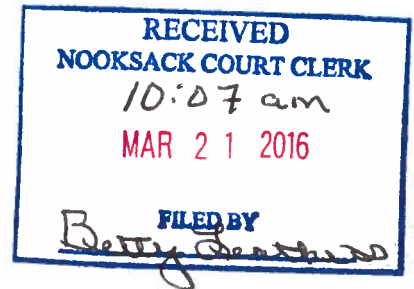


IN THE NOOKSACK TRIBAL COURT  
NOOKSACK INDIAN TRIBE  
DEMING, WASHINGTON



ELEANOR J. BELMONT, et al., )  
 )  
 ) No. 2014-CI-CL-007  
 Plaintiffs and )  
 Counterclaim Defendants, ) ORDER RE. RESOLUTION  
 ) #16-28 AND DUE PROCESS;  
 vs. ) ORDER GRANTING MOTION  
 ) FOR JUDICIAL NOTICE  
 ROBERT KELLY, Chairman of the ) FILED BY PRO SE PLAINTIFF  
 Nooksack Tribal Council, et al., ) MICHELLE JOAN ROBERTS;  
 ) ORDER RE. NOOKSACK  
 Defendants and Counterclaimants. ) BUSINESS LICENSE  
 )  
 \_\_\_\_\_ )

On February 24, 2016, the Nooksack Tribal Council enacted Resolution #16-27, amending Nooksack Tribal Code, Title 10, Section 10.02.070, Disbarment and Discipline, and adopting an Advocates Code of Conduct. Through the code amendment, the Council granted itself authority to discipline advocates representing parties in the Tribal Court.

On February 24, 2016, the Nooksack Tribal Council enacted Resolution #16-28 barring Gabriel Galanda and other attorneys in the Galanda Broadman law firm from practicing in the Nooksack Tribal Court and from engaging in business on Nooksack Tribal lands. At the time, Mr. Galanda and his law firm were representing 272 Plaintiffs in this lawsuit, all or most of whom are subject to pending disenrollment proceedings.

On March 7, 2016, Plaintiff Michelle Joan Roberts, acting pro se, filed a Motion for Judicial Notice, asking this Court generally "to take judicial notice of any Nooksack Resolutions, Tribal Code Titles or other laws that have been recently passed by Tribal Council Defendants, and to have Court staff make those laws available to Plaintiffs." Ms. Roberts noted her motion for March 15, 2016, without oral argument. On March 7, 2016, the Court entered a Case Management Order that, among other things, set deadlines for Defendants' response and Ms. Roberts' reply in accordance with NTC § 10.05.050(e)(2), (3). Defendants filed a timely response on March 11, 2016. Although papers were submitted, Ms. Roberts did not file a timely reply.<sup>1/</sup>

**Resolution #16-28 and Due Process**

Based upon Ms. Roberts' Motion for Judicial Notice and the accompanying Fourth Declaration of Michelle Roberts, with attachments, it appeared to the Court that Galanda Broadman had not received notice and an opportunity to be heard with respect to Resolution #16-28. In fact, the Court was not aware of the matters pending before Council until receipt of Resolutions #16-27 and #16-28 by email mid-afternoon on February 24, 2016. In the March 7<sup>th</sup> Case Management Order, the Court directed: "Along with their response to the Motion for Judicial Notice, Defendants shall submit an affidavit describing the due process afforded Mr. Galanda and other attorneys in the Galanda Broadman law firm in connection with enactment by the Tribal Council of Resolution #16-28." Case Management Order (3/7/16) at 5.

Other than a declaration of service, Defendants submitted four declarations along with their response to Ms. Roberts' Motion for Judicial Notice: Third Declaration of Raymond Dodge (co-counsel of record for Defendants), Declaration of Thomas P. Schlosser (co-counsel of record for Defendants), Third Declaration of Charity Bernard (Chief of Staff for the Nooksack General Manager), and Declaration of Sue Gearhart (legal assistant for the Nooksack Office of Tribal Attorney). Not one of the declarations addresses the question of what due process was afforded Galanda Broadman in connection with enactment of Resolution #16-28.

Apparently in lieu of the required affidavit, Defendants have submitted some 300 pages of documents – copies of motions papers, emails, trial court orders, appellate opinions, etc. – filed in or somehow related to proceedings arising out of the disenrollment dispute. The only reference to the documents in Defendants' response states that they have a "bearing on the issue." Response to Motion for Judicial Notice at 4. The documents are attached to Ms. Gearhart's declaration, in which she states repeatedly that the documents "relat[e] to ethical concerns of [sic] Galanda . . . ." She provides a brief description of each document and what it allegedly demonstrates – Galanda Broadman's violation of laws, regulations, rules, or orders; unauthorized practice of law; lack of diligence or competence; disruptive or contemptuous conduct; exaggerations or misrepresentations; ex parte contacts; and so forth.

After directing submission of an affidavit in the March 7<sup>th</sup> Case Management Order, the Court expressly stated:

At this time, the Court is not interested in argument on precisely what process is due or on the accuracy or adequacy of allegations in Resolution #16-28. At this time, the Court simply wishes to know, factually, what notice and opportunity to be heard were afforded Mr. Galanda and other attorneys in the Galanda Broadman law firm in connection with enactment by the Tribal Council of Resolution #16-28.

Case Management Order (3/7/16) at 5. Thus, Defendants have done exactly the opposite of what the Court ordered: They have not submitted an affidavit setting forth the due process afforded Galanda Broadman. Instead, they have submitted evidence purporting to support the accuracy and adequacy of allegations in Resolution #16-28.<sup>2/</sup>

As stated in the March 7<sup>th</sup> Case Management Order, the Court's affidavit requirement was based in part upon due process guarantees under the Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. § 1301 et seq. Defendants include a few puzzling sentences on ICRA in their response. They observe that "ICRA, as it applies to this matter, does not provide an independent cause of action in tribal or federal court." Response to Motion for Judicial Notice at 4. It is not clear what "this matter" refers to – the disbarment of Galanda Broadman or something else. Likewise, it is not clear what is meant by "an independent cause of action" under the circumstances.

Certainly, in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), the Supreme Court held that ICRA did not abrogate Tribal sovereign immunity and that the only federal remedy under ICRA is through habeas corpus proceedings. But the Court also observed that

Tribal forums are available to vindicate rights created by the ICRA, and § 1302 [including the right to due process] has the substantial and intended effect of changing the law which these forums are obliged to apply. Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.

*Id.* at 65 (citations and footnotes omitted). Even in a tribal forum, sovereign immunity may bar a suit against an Indian tribe, absent express waiver by the tribe or congressional abrogation. See *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). But it is not clear to the Court exactly what point Defendants are making in the context of Ms. Roberts' Motion for Judicial Notice or the Court's requirement of an affidavit concerning proceedings initiated by the Tribal Council against Galanda Broadman.

Defendants go on to quote the Nooksack Constitution, Article IX – Bill of Rights: "All members of the Nooksack Indian Tribe shall be accorded equal rights pursuant to tribal law. The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77) against actions of the Nooksack Indian Tribe in the exercise of its powers of self-government shall apply to the members of the Nooksack Indian Tribe." Defendants conclude: "From its very wording, the constitution places a limitation on the availability of civil rights to only members of the Nooksack Indian Tribe." Response to Motion for Judicial Notice at 4. Apparently Defendants believe Mr. Galanda and other Galanda Broadman attorneys are not entitled to due process before the Tribal Council because they are not enrolled members of the Nooksack Tribe.

The Court leaves for another day Defendants' apparent position that a tribal constitution may override the ICRA mandate that "[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law . . . ." 25 U.S.C. § 1302(a)(8) (emphasis added). Likewise, the Court need not decipher "this matter" or "an independent cause of action."

The Court's purpose in ordering an affidavit was simply to determine, based on more than circumstantial evidence and inference available to the Court at the time, whether the Galanda Broadman attorneys were afforded notice and an opportunity to be heard with respect to Resolution #16-28. Defendants' failure to submit an affidavit can lead to only one conclusion: Galanda Broadman was not afforded due process of any kind in connection with enactment of Resolution #16-28. As a result, until further order, the Court will continue to accept filings from Plaintiffs acting pro se or from a non-attorney

advocate representing Plaintiffs, where assistance has been provided by Galanda Broadman in the background.

Quite obviously, the documents attached to Ms. Gearhart's declaration have no "bearing" whatsoever upon the due process question. Rather, the Court must view Defendants' unsolicited submission of the documents as an invitation to the Court to review Resolution #16-28. The Court declines to do so at this juncture for several reasons.

First, the only matter properly before the Court right now is Ms. Roberts' Motion for Judicial Notice, in which she simply seeks judicial notice and copies of documents. There has been an effort, through her reply, to argue Ms. Roberts' "right to be represented by an advocate of [her] own choice" under NTC § 10.02.010. But she does not have the right to be represented by an advocate not currently admitted to the bar of the Nooksack Tribal Court. And that is the current status of Mr. Galanda and the other Galanda Broadman attorneys as a result of Resolution #16-28. The Council's action has effectively turned this case upside down. Where Galanda Broadman was representing Ms. Roberts previously, it is now Ms. Roberts who seeks to act for Galanda Broadman. It is their battle to wage, however, and not hers.

Second, it is up to Mr. Galanda and the other Galanda Broadman attorneys, who may face significant jeopardy in their legal practice and careers as a result of Resolution #16-28, to decide whether to seek redress and, if so, how — through the Tribal Council, the Tribal Court, or otherwise.<sup>3/</sup>

Third, this Court is unwilling to review Resolution #16-28 without affording Galanda Broadman due process, which means notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Meaningful notice and opportunity to be heard in this instance require access to Resolution #16-28. Galanda Broadman likely has access to the 300 pages of documents allegedly supporting Resolution #16-28, which were attached to Ms. Gearhart's declaration served upon Ms. Roberts. But it appears that Galanda Broadman has not yet seen Resolution #16-28. Until they actually see the resolution, they are not in a position to decide whether and how best to proceed.

Fourth, the Court notes that, on March 14, 2016, Defendants filed a petition seeking permission from the appellate court to file an interlocutory appeal from this Court's earlier denial of their motion for preliminary injunction. On March 16, 2016, Ms. Roberts moved to stay proceedings in the appellate court "pending the Tribal Court's decision on disbarment of Plaintiffs' chosen counsel of record . . . ." The Court is in no position to make that decision yet. Whether the Galanda Broadman attorneys had a right to due process and were denied due process is not the end of the inquiry. The Tribal Council's enactment of Resolution #16-28, and any subsequent judicial review of Council's actions, raises complex and delicate issues that are not adequately addressed in the context of Ms. Roberts' Motion for Judicial Notice. They can be addressed only after full briefing and oral argument.

#### Judicial Notice

Specifically, Ms. Roberts' seeks judicial notice and copies of:

(1) "Any Resolutions or other laws passed on February 23, 24, or March 2, 2016, to ban, exclude, or expel Plaintiffs' counsel of record, Galanda Broadman, PLLC. There are believed to be at least two Resolutions." Motion for Judicial Notice at 1.

(2) Any resolution amending NTC Title 10, Tribal Court System and Court Rules, since December 19, 2015, and the amended Title 10.

(3) Any resolution amending NTC Title 60, Constitutional Petition Ordinance, and the amended Title 60.

(4) "Any such other Resolutions or amended Titles that impact Plaintiffs' due process rights at bar," such as Title 80, Appellate Code. Motion for Judicial Notice at 2.

In their Response to Motion for Judicial Notice, Defendants contend judicial notice is not the proper vehicle for obtaining the documents. They believe "Ms. Roberts' claim is more akin to a tribal records request or a discovery request. She is seeking to obtain certain documents that she has not made a proper request for in accordance with tribal law. Because Ms. Roberts

has not made such a request, this claim is not yet ripe for the Court's consideration." Response to Motion for Judicial Notice at 2-3.

In effect, Defendants contend Ms. Roberts has not exhausted administrative remedies. They rely upon the Tribal Records Policy, adopted by the Tribal Council through Resolution #03-29 on March 4, 2003. The resolution and policy are attached to Ms. Bernard's declaration.

The Tribal Records Policy affords Nooksack tribal members "access to the following tribal records: resolutions and ordinances, tribal minutes, descriptions of tribal lands, the leasing and exchanges of Tribal lands, and grants awarded to the Nooksack Indian Tribe." The stated basis for the "policy is that all tribal members have property interests in the tribe and as owners of these interest [sic] have a right to review these records." Requests for "access" must be in writing. "'Access' shall mean by inspection only, unless approved for copying by the Nooksack Tribal Council. Non-Indians and non-member Indians shall not have a right to any item included above, except upon the written permission of the Nooksack Tribal Council."

The United States Supreme Court's "precedents have recognized at least three broad sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion." *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992). Exhaustion is not required when (1) requiring resort to an administrative remedy may cause undue prejudice to a later court action, e.g., as a result of administrative delay; (2) an administrative remedy would be inadequate or futile, e.g., when the administrative body lacks power to grant the remedy; or (3) the administrative body is biased or has predetermined the issue. *Id.* at 146-149.

This case may come within all three exceptions, but the Court need find only one. This case presents a prime example of the third exception: the administrative body is biased or has predetermined the issue. The Tribal Records Policy does not indicate who in Tribal administration is tasked with fulfilling a written request by Ms. Roberts for access to the documents she seeks in her Motion for Judicial Notice. That person is undoubtedly under the supervision of the Nooksack General Manager, who is a member of Tribal Council and a Defendant in

this lawsuit. Moreover, in order to obtain copies of the documents, Ms. Roberts would have to seek permission from the Tribal Council, a majority of whom are Defendants in this lawsuit. Given the history of these disenrollment proceedings, including the recent summary disbarment of Plaintiffs' counsel, the administrative body is plainly biased. As a result, Ms. Roberts need not exhaust administrative remedies under the Tribal Records Policy as a precursor to seeking relief from this Court.

Defendants also make a brief sovereign immunity argument, contending "Ms. Roberts is seeking documents that belong to a sovereign that has not consented to suit." Response to Motion for Judicial Notice at 4. But the Tribal Records Policy expressly states: "The basis for this policy is that all tribal members have property interests in the tribe and as owners of these interest [sic] have a right to review these records." Ms. Roberts is a Tribal member. She has a property interest. Under the circumstances, however, the procedures under the Tribal Records Policy do not protect her interests.

Alternative to their theory that Ms. Roberts' "claim is more akin to a tribal records request," Defendants suggest she should have made a discovery request, although they do not expand on that suggestion. Like Defendants, the Court has pondered whether judicial notice is the appropriate vehicle for achieving Ms. Roberts' goal of obtaining copies of the documents. Her choice of the judicial notice vehicle has afforded Defendants the opportunity to contend she is not entitled to judicial notice because she has not provided copies of the documents she wants noticed. Suffice to say that Defendants and the Court already have copies. Defendants also argue the distinction between adjudicative facts, which are the proper subject of judicial notice, and legislative facts, which are not. The Court researched the matter and wandered into the adjudicative/legislative thicket even before Defendants filed their Response to Motion for Judicial Notice.

The Court could certainly construe Ms. Roberts' motion as a motion to compel discovery, but the Court does not see the need. The Court does not ascribe to Defendants' view that the documents constitute legislative facts and, therefore, are not the proper subject of judicial notice. Simply because documents were generated by a legislative body does not render them



legislative facts. In enacting Resolution #16-28 and disbaring the Galanda Broadman attorneys, apparently relying on the 300 pages of documents attached to Ms. Gearhart's declaration, the Tribal Council engaged in some sort of fact-finding more in the nature of judicial proceedings than legislative. Courts may take judicial notice of the acts and records of other adjudicatory bodies, although not of the truth of the facts and allegations contained therein. *See, e.g., Taylor v. Charter Medical Corp.*, 162 F.3d 827, 830 (5<sup>th</sup> Cir. 1998).

NTC § 10.06.020(e) provides that "[t]he judge may take notice of facts, which are a matter of official public record, even if no party introduces them as evidence," without reference to the niceties of adjudicative versus legislative facts. Tribal Council resolutions and ordinances are a matter of official public record for the Nooksack Indian Tribe. Because Galanda Broadman has been counsel of record for Plaintiffs in this case, the Court believes it particularly appropriate to take judicial notice of the existence of Tribal Council Resolution #16-28 barring the firm from practice in the Nooksack legal system, albeit without affording judicial notice to the facts and allegations contained therein.

Moreover, it appears that some of the documents have already been provided, if not directly to Ms. Roberts, at least to Galanda Broadman as Plaintiffs' counsel. In his declaration, Mr. Dodge reports he sought permission from Tribal Council on March 2, 2016, to provide current copies of Nooksack Tribal Code Titles 10 and 60 to Defendants, but the Council denied his request. Yet Mr. Schlosser states in his declaration that on March 4, 2016, he emailed Mr. Galanda copies of amended Titles 10 and 60, as well as Resolution #16-27 enacting Title 10.

For many years, going back well before this judge's arrival at Nooksack, the Court Clerks have routinely fulfilled requests for copies of Tribal ordinances codified in the Nooksack Tribal Code, along with pertinent resolutions, at a per-page charge for copying. It is difficult to imagine otherwise. Surely Tribal Council is not prepared to review requests for copies of ordinances from criminal defendants, while the speedy trial clock ticks, or from myriad other parties involved in proceedings in the Tribal Court. When it comes to codified ordinances or amendments, and resolutions enacting them, the Tribal Records Policy is cumbersome and unworkable.

**Nooksack Business License**

Resolution #16-28, barring the Galanda Broadman attorneys from practicing in the Nooksack Tribal Court and from engaging in business on Nooksack Tribal lands, is based in part upon their failure to obtain a Nooksack business license (\$100.00 per annum) in violation of NTC Title 54, Business License Ordinance.

On February 25, 2016, the day after enactment of Resolution #16-28, Ms. Bernard emailed a memorandum from the Nooksack General Manager to "Chief Judge Alexander and the Nooksack Tribal Court Administration." The memo stated in part: "The intent of this memorandum is to let you and the Court Clerk's [sic] know and be aware that no person is to be admitted to the Tribal Bar as an Advocate without a Nooksack Indian Tribe Business License unless they are an employee of the Tribal government or if this person is contracted with the Tribal government." The memo then directed the Court, before granting admission to the Tribal Bar, to obtain written confirmation of either an exemption to the license requirement or the possession of a license. Confirmation of a "valid business license" could be obtained "through the Chief of Staff," Ms. Bernard.

The requirement came as a surprise to the Court. NTC Chapter 10.02, Rules Governing Advocates, does not include the requirement of a business license and, historically, NTC Title 54 has not been enforced against advocates. Nor does the new Advocates Code of Conduct, adopted by the Tribal Council through Resolution #16-27 on February 24, 2016, mention a license requirement.<sup>4/</sup>

NTC § 10.02.010 states that "any such advocate appearing before the Courts of the Nooksack Indian Tribe shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein." NTC § 10.02.030 provides that any person, at least 18 years of age and of "good moral character," may serve as an advocate "as long as he or she has applied in writing for permission, has paid the admission fee, has read the Constitution and the ordinances of the Nooksack Tribe, and the Rules of the Nooksack Tribal Court; and has been certified by the court as qualified to appear and has taken an oath to uphold the tribal constitution."

For many years, the Court has maintained a list of advocates admitted to practice in the Tribal Court, displayed

the list publicly, and provided a copy to parties seeking representation. In late February 2016, the list numbered nearly forty advocates. Following the February 25<sup>th</sup> memorandum, Ms. Bernard assisted a Court Clerk in winnowing the list down to a handful of advocates.

Along with her Motion for Judicial Notice, Ms. Roberts filed the Fourth Declaration of Michelle Roberts, with attachments. Included among the attachments are emails in which Galanda Broadman, having heard about the license requirement, attempted to obtain official information from various Nooksack sources, without success. On February 26, 2016, Mr. Galanda sent a certified letter and check to Nooksack Chief Financial Officer Joe Mace in payment of the business license fee and requested notice of "any other action we must take to remain in good standing at Nooksack as we have been since March 2013." Mr. Mace responded with a curt letter on February 29, 2016: "We have enclosed your check # . . . , in the amount of \$100.00, and are not able to issue the requested license."

Among the items emailed by Ms. Roberts to Defendants' counsel and the Court on March 11, 2016, is a declaration by Ms. Roberts in which she details her own efforts to obtain a Nooksack business license. Ms. Roberts wished to apply for admission as an advocate in the Tribal Court in order to represent Plaintiffs after Galanda Broadman's disbarment. When she inquired at the courthouse on March 7, 2016, she was told she needed to speak with Ms. Bernard first about a business license. She then proceeded to Ms. Bernard's office down the road at the administration building. According to Ms. Roberts, Ms. Bernard "informed me that I needed to complete the Business form but that it is still in draft form in the Nooksack legal department and has been for the last 4 months." Declaration of Michelle Roberts (3/10/16) at 2.

In a Declaration of Judith A. Endejan of the Garvey Schubert Barer law firm, served upon Defendants' counsel and received by the Court on March 14, 2016, she describes her efforts to obtain information about the business license requirement, including an application form. She received no response.

Quite obviously, the Nooksack Tribe cannot impose requirements on parties without establishing clear-cut procedures and affording parties a genuine opportunity to

meet the requirements. NTC § 10.02.010 provides that "[a]ny person appearing as a party in any civil or criminal action shall have the right to be represented by an advocate of his/her own choice . . . ." While the Tribe may establish reasonable standards and procedures for attaining advocate status, the Tribe cannot send aspiring advocates on a wild goose chase. The business license requirement affects all non-exempted advocates appearing in the Tribal Court, and not just counsel for Plaintiffs in this lawsuit.

Repeatedly, the Court has observed such tactics by Defendants: They rely upon case law where Defendants and their counsel have access to the full record of the case, while refusing such access to Plaintiffs without approval by Tribal Council, a majority of whom are Defendants in this lawsuit. *E.g., Campion v. Swanaset*, No. NOO-C-496-004 (Nooksack Ct. App. 11/12/96). They rely upon statutes where Defendants and their counsel have full access to the statutes, while refusing such access to Plaintiffs without Tribal Council approval. *E.g.*, after Defendants claimed that the recall option is open to Plaintiffs, the Council declined to provide Plaintiffs with a copy of amended Title 60, setting forth recall procedures. And most recently, Defendants delegated to themselves authority for disciplining advocates in the Tribal Court and then, without providing notice and opportunity to be heard, they disbarred attorneys representing their adversaries in litigation.

Throughout the disenrollment litigation, Defendants have repeatedly insisted Plaintiffs need only come forward with evidence demonstrating they are eligible for enrollment in order to bring this disenrollment episode to an end. Understandably, Plaintiffs do not wish to do so until resolution of issues regarding their due process rights in disenrollment proceedings, a matter currently pending before the Interior Board of Indian Appeals. Still, Defendants contend Plaintiffs' failure to come forward to date suggests their case is weak.

By the same token, in view of the extreme tactics employed by Defendants, the Court must wonder at the strength of Defendants' position. As emphasized on previous occasions, at hearings and in orders, the Court does not know or judge whether Plaintiffs are eligible for enrollment and has no jurisdiction to do so pursuant to NTC § 63.00.003. The Court is on neither "side" here. But the tactics being employed by Defendants are surely confounding. The documents submitted by Defendants in

support of Resolution #16-28, attached to Ms. Gearhart's declaration, go back several years. Once again, as with Defendants' efforts to disenfranchise Plaintiffs with respect to the 2016 elections after Plaintiffs voted without issue in the 2014 elections, the Court is skeptical regarding the timing of Resolution #16-28.

#### CONCLUSION

Ms. Roberts' Motion for Judicial Notice is granted. Along with this order, the Court Clerk shall serve Ms. Roberts with copies of the following:

(1) Nooksack Tribal Council Resolution #16-26, "AMENDMENT OF TITLE 60 – CONSTITUTIONAL PETITION ORDINANCE" (2/17/16), including any and all attachments;

(2) Nooksack Tribal Council Resolution #16-27, "AMENDMENT TO TITLE 10 AND ADOPTION OF ADVOCATE'S CODE OF CONDUCT" (2/24/16), including any and all attachments; and

(3) Nooksack Tribal Council Resolution #16-28, "BARRING GABRIEL GALANDA and ANY OTHER ATTORNEYS WORKING AT THE FIRM OF GALANDA BROADMAN, WHO ADMITTED [sic] AND PRACTICE IN THE NOOKSACK TRIBAL COURT FROM (1) ENGAGING IN BUSINESS ACTIVITIES WITHIN THE NOOKSACK TRIBAL LAND and (2) PRACTICING IN THE TRIBAL COURT" (2/24/16), including any and all attachments.

The Court is unaware of any other resolutions, ordinances, or amended ordinances that come within Ms. Roberts' Motion for Judicial Notice.

On or before April 1, 2016, the Office of Tribal Attorney shall submit to the Court a plain-English description of the procedures to be followed and a copy of the application form to be used to obtain a Nooksack business license, in compliance with NTC Title 54. The documents shall be appropriate for distribution to persons seeking a business license, including those seeking admission as an advocate in the Tribal Court. At the same time, the Office of Tribal Attorney shall assure that all Tribal offices involved in the process are fully informed and prepared to facilitate the process. If no satisfactory description and form are submitted by April 1, 2016, the Court will waive the business license requirement for all advocates until submission of satisfactory procedures and form.

SO ORDERED this 21<sup>st</sup> day of March, 2016.

  
Susan M. Alexander  
Chief Judge

**FOOTNOTES**

1/ Pursuant to NTC § 10.05.050(e)(3) and the March 7<sup>th</sup> Case Management Order, Ms. Roberts' reply was due by noon on March 14, 2016. Ms. Roberts emailed assorted documents to the Court on March 11, 2016, perhaps by way of reply. The Court does not recognize electronic filing, however, and the documents were not hand-delivered to the Court for filing prior to the deadline. After the deadline, a number of documents, prepared by the law firm of Garvey Schubert Barer on Ms. Roberts' behalf, were hand-delivered to the Court. Because the documents came in after the deadline and were not accompanied by a motion for extension of time, they were "received" and not "filed." This judge reviewed the documents as they relate to the Nooksack business license requirement and to give the Court Clerk direction. The Court has not considered the documents in ruling upon Ms. Roberts' Motion for Judicial Notice. A reply is usually optional anyway. In the March 7<sup>th</sup> Case Management Order, the Court referred to ". . . Plaintiff Roberts' reply, if any . . . ." Case Management Order (3/7/16) at 3.

2/ In their response to Ms. Roberts' motion, Defendants state that the Court "requested" an affidavit, despite the Court's use of the word "shall." Response to Motion for Judicial Notice at 4. In fact, Defendants even quote from the text of the March 7<sup>th</sup> Case Management Order, beginning with the text immediately after the word "shall." Then, having turned the Court's directive into a "request," Defendants chose to ignore the "request." Defendants' counsel are warned that such maneuvers in the future may lead to contempt proceedings.

3/ Putting aside the familiar admonition that does not bear repeating here, the Galanda Broadman attorneys have not lost their right to self-representation in the matter. However, due to application of Resolution #16-28 currently in this jurisdiction, none of the Galanda Broadman attorneys may represent the firm or one another. See *Dutch Village Mall v. Pelletti*, 162 Wn. App. 531 (2011).

4/ The newly-minted Nooksack Advocates Code of Conduct, suddenly adopted by the Tribal Council without notice to or opportunity for input by the Tribal Court, was borrowed nearly whole from the Tohono O'odham Rules of Court, Section 14, Code of Ethics for Attorneys and Advocates Practicing In the Courts of the Tohono O'odham Nation. Interestingly, the only rule entirely eliminated from the Nooksack version is Rule 18 of the Tohono O'odham Code of Ethics, setting forth "Special Responsibilities of a Prosecutor" such as the "duty to ensure that a defendant in a criminal case is accorded justice . . . ." The major addition to the Tohono O'odham Code of Ethics is Rule 22 of the Nooksack Advocates Code of Conduct, containing the same language added to NTC § 10.02.070 by Resolution #16-27. (The Nooksack Advocates Code of Conduct contains no Rule 19 at all.)