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Jacquelyn McCoy
CLERK OF COURT
HOOPA VALLEY TRIBAL COURT

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IN AND FOR THE

HOOPA VALLEY TRIBAL COURT

JOE DAVIS,

Petitioner,

vs

EVERETT COLEGROVE, JR., ET AL.,

Respondents.

) Case Number: PO-24-007

DECISION OF THE COURT

INTRODUCTION

This case involves a request by Petitioner, Chairman Joe Davis of the Hoopa Valley Tribe ("Tribe"), for an injunction postponing Respondents' removal hearing scheduled for February 29, 2024, and removing Petitioner's suspension from his duties as Chairman. Petitioner filed this request against Respondents Everett Colegrove, Isaac Bussell, Daniel Jordan, Elizabeth Turner, Jordan Hailey, Jill Sherman, and Ben Branham, (collectively "Tribal Council members"), in their official capacities. At the hearing on February 28, 2024, all parties were present, and the Court ruled from the bench. This decision constitutes the Findings of Fact and Conclusions of Law.

For the reasons more fully developed below, the Court finds that Respondents acted without authority in suspending Petitioner from his position as Chairman, and Petitioner was denied his rights guaranteed by the Tribe's Constitution. However, Petitioner's resumption of his duties as Chairman during the remaining period before the removal hearing and election is not within the public interest.

1 Accordingly, the Court **GRANTS** Petitioner’s request postponing the removal
2 hearing, **DENIES** Petitioner’s request to resume his duties as Chairman, and
3 **VOIDS** Respondents’ prohibition on communications between Petitioner and Tribal
4 employees and staff.

5 **STATEMENT OF THE CASE AND FINDINGS OF FACT**

6 On February 20, 2024, Petitioner filed a Request for Civil Harassment
7 Restraining Order against Respondents (PO 24-003). The Court denied Petitioner’s
8 request and set the matter for a hearing on the merits scheduled February 28, 2024.
9 On February 23, 2024, Petitioner filed a Petition for Injunction against Respondents
10 (PO 24-007), alleging the same facts as his prior request. The Court set the Petition
11 for Injunction to be heard during the February 28, 2024, hearing. Respondents filed
12 a Memorandum of Points and Authorities in Opposition to the Petition for
13 Injunction with Exhibits on February 27, 2024. The Court reviewed both filings
14 before the hearing. The following sets forth the facts in this case.

15 On January 4, 2024, the Tribal Council sent Petitioner a letter confirming
16 and accepting Petitioner’s *voluntary leave with pay* for a few weeks until the Tribal
17 Vice-Chairman notified Petitioner he may return to work. On January 10, 2024,
18 Petitioner responded that he made a mutual agreement with Respondents to step
19 away for *two weeks* only and requested a description of the allegations against him
20 that precipitated the agreement. The following day, the Vice-Chairman responded
21 that their pending review of allegations would take more time than anticipated, and
22 thus Respondents were providing notice to Petitioner of an extended review period.
23 The letter also stated that during the review period, Petitioner was not authorized
24 to act in his capacity as Chairman.

25 Shortly thereafter, on February 6, 2024, Petitioner was sent a letter by
26 Respondents stating they had voted to formally commence the constitutional
27 process to remove Petitioner as Chairman of the Tribe. The letter also stated
28 Respondents had voted to suspend Petitioner as Chairman and put him on

1 administrative leave with pay, effective immediately, until the conclusion of the
2 removal process. Petitioner was directed to refrain from communicating with Tribal
3 employees and staff except regarding his own personal tribal benefits. The letter
4 stated Respondents would hold a Special Tribal Council Meeting (“removal
5 hearing”) on February 29, 2024, where Petitioner would have the opportunity to
6 answer any and all charges against him, and Respondents would deliberate and
7 vote on the matter. Petitioner would be provided with a written statement of the
8 charges at least five (5) days before the removal hearing according to the
9 Constitution.

10 On February 16, 2024, Petitioner appeared in his capacity as Chairman at
11 the Tribal Council meeting and chaos allegedly erupted. On February 19, 2024,
12 Respondents approved motions to restrict Petitioner’s access from all Tribal
13 property without pre-approval from the Vice-Chairman with police escort while on
14 suspension, and to prohibit *Two Rivers Tribune* from posting or printing any
15 messages from Petitioner while on suspension. Respondents sent two letters to
16 Petitioner on February 20, 2024. One letter reminded Petitioner of his suspension
17 as Chairman of the Tribe, reminded Petitioner that he is prohibited from contacting
18 Tribal employees by any means of communication, and informed Petitioner of
19 Respondents’ decision to restrict Petitioner’s access to all Tribal buildings without
20 the pre-authorization, effective immediately. The other letter stated Respondents’
21 Letter of Charges against Petitioner for the removal hearing was sent to him on
22 February 13, 2024, and inquired about Petitioner’s authorization to release the
23 letter to the tribal membership. Also on February 20th, Respondents issued a
24 memorandum to Tribal Director and Managers regarding “Communication with
25 Chairman Davis.” The memorandum disclosed the Tribal Council had commenced
26 the removal process for Petitioner as Chairman, the removal hearing date and time,
27 Petitioner’s suspension from office, and the restrictions placed on Petitioner. The
28 memorandum also directed the Tribal Director and Managers to instruct all staff to

1 refrain from speaking to Petitioner regarding the removal process or discussing the
2 removal process in general.

3 Thereafter, Petitioner filed his requests, Respondents filed their
4 memorandum in opposition, and the Court set the matters for a hearing. Petitioner,
5 Respondents, and Respondents’ attorney, Thomas Schlosser, appeared at the
6 February 28, 2024, hearing. The parties argued the issues at length. Given the
7 removal hearing before the Tribal Council was scheduled to occur in less than
8 twenty-four (24) hours from the hearing and emotions remain high throughout the
9 Tribe because of the issues in this case, the Court decided to rule from the bench.

10 **DISCUSSION AND CONCLUSION OF LAW**

11 1. **The Tribal Court Has Jurisdiction Over This Dispute.**

12 Respondents first challenge the Tribal Court’s jurisdiction over Petitioner’s
13 Request for Injunctive Relief. *Resp’t’s Mem. of P. & A. in Opp’n to Pet. For Inj.*, 3-7.
14 According to Respondents, the Tribal Council members are protected from suit by
15 sovereign immunity, and Petitioner’s attempt to halt the Tribal Council’s
16 constitutional authority is barred by Title 1 Judiciary Code. *Id.* at 4. As discussed
17 below, Respondents’ reading of the Judiciary Code misconstrues Tribal law.

18 Title 1 Judiciary Code governs the authority and establishment of the Tribal
19 Court. Title 1 §§ 1.1.01-1.1.10. According to Chapter 1 of the Code, the Tribal Court
20 has jurisdiction for granting declaratory and injunctive relief for alleged violations
21 of civil rights:

22 (d) Constitution: Civil Rights. The Court shall have exclusive
23 jurisdiction to construe and enforce provisions of the Constitution and
24 Bylaws of the Hoopa Valley Tribe, to deal with alleged violations of the
25 Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. §§ 1301-1303, *to*
26 *enforce the ICRA where tribal agencies or officers act outside the scope*
27 *of their authority, and to review actions of the Tribal Council for*
28 *compliance with the ICRA. Such jurisdiction shall be found for the*
purposes of granting declaratory and injunctive relief.

1 Title 1 § 1.1.04(d) (emphasis added). The Constitution specifically permits Court
2 jurisdiction where tribal officials act outside the scope of their authority in
3 instances where the petitioner seeks declaratory and injunctive relief. *Id.* The
4 following subsection is also consistent with the Tribal Court’s jurisdiction in
5 granting declaratory and injunctive relief by addressing the Tribe’s sovereign
6 immunity in money judgments:

7 (e) Sovereign Immunity. The Court shall have no jurisdiction over any
8 suit brought against the Hoopa Valley Tribe, its officials, entities, or
9 employees *for money judgments* without the consent of the Tribe.
10 Nothing contained within this code, or other Tribal ordinance, or other
11 [Tribal law] shall be deemed to constitute a waiver or renunciation of
12 the sovereign immunity of the Tribe to suit. Such consent or waiver must
13 be expressly made by the Tribal Council Unless specifically stated
14 in a valid waiver of sovereign immunity described under this section,
15 the Hoopa Valley Tribe *does not waive its sovereign immunity with*
16 *respect to money damages, or monetary sanctions* including any awards
17 of costs or attorney’s fees against the Tribe.

18 Title 1 § 1.1.04(e) (emphasis added). Based on these sections, the Constitution gives
19 the Court jurisdiction over suits against officials acting outside their scope of
20 authority for the purpose of granting declaratory and injunctive relief, whilst
21 limiting jurisdiction for the purpose of granting money judgments. *Id.* Thus, based
22 on the Tribe’s Judiciary Code, this Court has jurisdiction over Petitioner’s request
23 for injunctive relief against tribal officials if they acted outside the scope of their
24 authority.

25 Respondents rely on *Imperial Granite Co. v. Pala Band of Indians*, 940 F.2d
26 1269 (9th Cir. 1991), to argue the Tribal Council members are protected by the
27 Tribe’s sovereign immunity. In *Imperial Granite*, the plaintiff brought a suit against
28 Pala Band of Indians, certain tribal officials, and all tribal members for denying his
request for an easement on the reservation, claiming the denial violated his
constitutional rights. *Id.* at 1270. In discussing sovereign immunity, the Ninth
Circuit Court reasoned that although the tribe was immune from suit, tribal

1 officials are entitled to immunity when acting *within their official capacity and*
2 *within the scope of their authority. Id.* at 1271 (emphasis added). Significantly, the
3 plaintiff in *Imperial Granite* only argued that officials voted against his easement
4 request and failed to allege any individual action by the tribal officials that
5 exceeded their authority. *Id.* Thus, the Court concluded that the plaintiff failed to
6 allege a viable claim that the tribal officials acted *outside* the scope of their
7 authority granted by the tribe, thus protecting them from suit. *Id.*

8 The holding in *Imperial Granite* is consistent and supported by the United
9 States Supreme Court’s decision in *Ex Parte Young*, 209 U.S. 123 (1908). *Ex Parte*
10 *Young* held that officials can be sued in their official capacity for injunctive relief,
11 and in doing so discussed the difference between an officer merely enforcing an act
12 that is unconstitutional versus an officer acting unlawfully outside their scope of
13 authority. *Id.* at 157 (“In making an officer of the State a party defendant in a suit
14 to enjoin the enforcement of an act alleged to be unconstitutional it is plain that
15 such officer must have some connection with the enforcement of the act, or else it is
16 merely making him a party as a representative of the State, and thereby attempting
17 to make the State a party”). In sum, a tribe is not party to a suit simply because the
18 tribal officials are a party. *Id.* Instead, whether tribal officials are immune from suit
19 turns on whether they acted beyond the scope of their authority, and in instances
20 where officials simply enforce a law alleged to be unconstitutional, they do not act
21 outside the scope. *Id.*

22 Here, Petitioner is neither requesting money damages nor is he alleging the
23 Tribal Council members enforced an unconstitutional process. Petitioner does not
24 claim the removal process is unconstitutional, rather he claims the Tribal Council
25 members did not follow the constitutional removal process and disciplined him
26 beyond their authority. *See Pet. for Inj.* Simply put, Petitioner is alleging that the
27 Tribal Council members acted outside the scope of their authority when they
28 suspended him. As discussed more fully below, this Court agrees that Respondents

1 acted outside their scope of authority in suspending Petitioner from his duties as
2 Chairman and barring him from speaking to Tribal employees. And given that
3 Petitioner is requesting an injunction and not money damages, and the Judiciary
4 Code explicitly grants the Court jurisdiction over suits for injunctive relief against
5 tribal officials where they have violated a tribal member's constitutional rights,
6 the Court has jurisdiction in this matter.

7 2. Respondents Acted Outside the Scope of Their Authority.

8 Petitioner claims that Respondents unlawfully suspended him from his
9 duties as Chairman, barred him from speaking to Tribal employees, and barred him
10 from entering Tribal property without prior approval. *Pet. for Inj.*, 10-17.

11 Respondents argue they acted within the authority conferred to them by the
12 Constitution. *Resp't's Mem. of P. & A. in Opp'n to Pet. For Inj.*, 3-5. As more fully
13 developed below, the Court finds that Respondents acted outside their scope of
14 authority in suspending Petitioner from his duties and barring his communication
15 with Tribal employees, but not in restricting him from Tribal property.

16 a. Removal Process and Suspension with Pay.

17 Both Petitioner and Respondents agree that the Tribe's Constitution outlines
18 procedures for the Tribal Council's removal of any Tribal Council member, including
19 the Chairman. Under Article VII of the Constitution, the Tribal Council "may expel
20 *any member* for neglect of duty or gross misconduct." HVT Const. art. VII, § 2
21 (emphasis added). The member or official up for removal must be provided a written
22 statement of the charges against him at least five (5) days before the meeting of the
23 Tribal Council scheduled to vote on the matter, and an opportunity to answer all
24 charges at the Council meeting. *Id.* Thus, although the Constitution is clear on the
25 Council's authority to remove any member, it does not state that a member may be
26 *suspended* from their duties prior to the removal process. *Id.*

27 Petitioner argues that according to Title 18, the Tribal Council Chairman is
28 not considered an employee, and thereby is not subject to suspension prior to a

1 removal process, regardless of whether it is with or without pay. *Pet. for Inj.*, 10-17.
2 In contrast, Respondents argue that the Tribal Council has the authority to vote on
3 such matters and that Title 18's suspension with pay provision applies to all Tribal
4 Council members and has done so in the past. *Resp't's Mem. of P. & A. in Opp'n to*
5 *Pet. For Inj.*, 3 n.2.

6 Title 30 constitutes the rules and requirements regarding employment with
7 the Tribe and applies to "all employees and program managers of departments,
8 programs and specified entities of the Tribe, with all the exception of those that are
9 employed under procurement contracts." Title 30 §§ 1.1-1.3. The Tribal Council
10 serves an oversight function in application of the policies, and the "Tribal
11 Chairman, as the Senior Executive Tribal Officer" carries out the policy and has
12 supervisory authority over all personnel. *Id.* at §§ 2.1-2.2. The ordinance
13 distinguishes Tribal Council positions from other employment positions in its
14 employment categories. According to the ordinance, "political appointments are
15 those positions appointed or employed at the political discretion of the Tribal
16 Council or Chairman, and are subject to immediate appointment, removal, or
17 termination by the Tribal Council or Chairman." *Id.* at § 3.1.1. Employees are those
18 persons "employed in a full-time or part-time capacity." *Id.* at § 3.1.4. Thus, the
19 Tribal Council members and Chairman are not considered employees under Title 30
20 and the disciplinary actions under Chapter 8 Changes of Employment Resulting
21 From Disciplinary Action, such as suspension with pay, *do not* apply to the
22 Chairman. *Id.* at §§ 8.1-8.2 ("Disciplinary action may be taken against *any*
23 *employee*") (emphasis added). Section 8.2 further highlights employment
24 distinctions by stating program managers are employees of the Tribe and are
25 subject to the same requirements in this Chapter, with the Chairman holding the
26 authority to discipline or terminate managers. *Id.* at § 8.2.

27 Title 30 purposely and clearly differentiates Tribal officials from Tribal
28 employees, and it continues to highlight this distinction in applying the provisions

1 of the ordinance. Chapter 8 explicitly states it applies to employees, including
2 managers, but does not extend the requirements or penalties to Tribal Council
3 members. It is of no consequence that the Tribal Council may have applied this
4 provision to discipline Chairmen and Council members in the past because there is
5 no authority to do so. The Tribal Council's action at the very least violated Tribal
6 law, and at the most, effectively "removed" the Chairman by means of suspension
7 thereby violating the Constitution.

8 Furthermore, Petitioner's argument that Title 30's comparison to the
9 Chairman's Ordinance emphasizes special procedures exist for disciplining a
10 chairman is well founded. Title 18 Chairman's Ordinance governs the duties,
11 responsibilities, and salary of the Tribal Chairman. Title 18. According to Title 18,
12 should the Chairman "neglect or refuse to carry out the duties and responsibilities"
13 as outlined in the ordinance, "the Tribal Council, upon submission of appropriate
14 written justification, may act to decrease the annual compensation of the
15 Chairman." *Id.* at 3. The written justification must be provided to the Chairman at
16 least five (5) days before the Council meets to consider and vote on the matter and
17 must give the Chairman an opportunity to respond. *Id.* The ordinance provides no
18 avenue for the Tribal Council to suspend the Chairman from his position, and
19 instead provides a method to discipline the Chairman whilst providing him an
20 opportunity to be heard on the matter *before* decreasing compensation.

21 In short, given Petitioner is not contesting Respondents' authority to engage
22 in the removal process, which is a political act, but rather contests his suspension
23 throughout the period leading up to removal, which is more akin to an employment
24 decision, the Court authority to rule on the issue is well within the scope of its
25 judicial power. And for the foregoing reasons, the Court agrees that Respondents
26 violated Tribal law when it suspended Petitioner.

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1 b. Communication with Tribal Employees and Property Access Restrictions.

2 Petitioner also claims that Respondents violated his constitutional rights by
3 prohibiting him and all Tribal employees from communicating together on matters
4 not concerned with personal tribal benefits; restricting him from entering Tribal
5 buildings without pre-approval by the Vice-Chairman; and requiring a police escort
6 when does enter such premises. In response, Respondents argue that the
7 restrictions and limitations fall under the Tribal Council’s authority found in the
8 Constitution.

9 Under Article VIII Rights of Members, tribal members have basic
10 constitutional rights and liberties. Const. art. VIII, § 1. Among these rights include
11 the freedom of speech, freedom of the press, equal protection of the laws and due
12 process of law. *Id.* These rights cannot be violated by the Tribe or its members and
13 are not abridged by the powers and duties of the Tribal Council. *See* HVT Const.
14 art. IX, § 2. However, Article IX gives the Tribal Council the power to “safeguard
15 and promote the peace, safety, morals and general welfare of the Hoopa Valley
16 Indians by regulating . . . the use and disposition of property upon the reservation . .
17 . . .” *Id.* at § 1(l).

18 Here, in comparing the constitutional rights of tribal members with the
19 powers of the Tribal Council to impose certain restrictions on those rights, its clear
20 that Respondents exceeded their authority in prohibiting Petitioner’s
21 communication with Tribal employees. This restriction—essentially a gag order—
22 unmoored to convincing rationale, violates Petitioner’s freedom of speech. After all,
23 the suppression of free speech—a fundamental right enshrined in the United States
24 Constitution and the Indian Civil Rights Act—is the first step in the march to
25 tyranny.

26 Petitioner’s due process rights are also violated because the gag order
27 unreasonably interfered with Petitioner’s right to prepare for the removal process
28 by talking to potential witnesses, many who work for the Tribe and are effectively

1 bound by the gag order. On the other hand, Respondents were within their
2 authority to restrict building access in the interest of safety and peace within the
3 Tribe. It is apparent that the allegations leveled against Petitioner and the attempt
4 to remove him from his office is a contentious matter within the tribal community,
5 and because of this, there are valid concerns for the peaceful completion of the
6 removal investigation and hearing. And ensuring public safety is one of the duties of
7 the Tribal Council. Nevertheless, there are limits to any such restrictions, so as long
8 as Petitioner is not denied access to his personal tribal benefits, Respondents' Tribal
9 property restriction may stay in place.

10 3. Petitioner Has Stated A Claim for Injunctive Relief.

11 Lastly, the Court is tasked with determining whether Petitioner has
12 established a claim for injunctive relief. Petitioner requests the Court enjoin the
13 Tribal Council's removal hearing scheduled for February 29, 2024, and postpone the
14 hearing date so that Petitioner may retain counsel and gather witnesses. Petitioner
15 also requests the Court allow Petitioner to resume his duties as Chairman of the
16 Tribe.

17 A plaintiff or petitioner seeking preliminary injunction must show that he or
18 she is likely to succeed on the merits, likely to suffer irreparable harm in the
19 absence of preliminary relief, that the balance of equities tips in his or her favor,
20 and that an injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20
21 (2008). In the action before the Court, Petitioner has sufficiently showed that he is
22 likely to succeed on the merits of a constitutional violations claim against the Tribal
23 Council. As discussed previously, the Tribal Council violated Petitioner's freedom of
24 speech and right to due process of law, rights enumerated both in the Tribe's
25 Constitution and in the United States Constitution, and suspended Petitioner from
26 office—a de facto removal against the Tribe's constitutional procedure. Petitioner is
27 also likely to suffer irreparable harm because the removal hearing would occur one
28 day after the court hearing while the prohibitive measures are still in place. This

1 would preclude Petitioner from retaining counsel and gathering witnesses on the
2 matter.¹ Thus, Petitioner would be harmed in the absence of the removal hearing's
3 postponement.

4 Petitioner also sufficiently shows the balance of equities tip in his favor and
5 that an injunction is in the public interest of the Tribe. On the one hand, Petitioner
6 claims that proceeding with the scheduled hearing date would turn a blind eye to
7 the Tribe's Constitution and tribal members' rights and liberties therein. On the
8 other hand, Respondents claim that it is in the public interest to proceed with the
9 scheduled removal hearing because the need to follow constitutional procedure, the
10 Court's lack of authority to stop a constitutional process from occurring, and the
11 heightened tension of the Tribe while this process has unfolded. Although this
12 Court agrees it is in the public interest to not extensively delay the removal
13 hearing, the balance of equities tip in favor of Petitioner. Indeed, it is the Court's
14 duty and obligation to uphold Tribal law, and it would be egregious to force
15 Petitioner to walk into a removal hearing without upholding his constitutional
16 rights. However, it bears emphasizing that the Court is not preventing the removal
17 hearing from occurring, as it would simply be postponed if Petitioner's request is
18 granted. It is well within Respondents rights under Tribal law to seek Petitioner's
19 removal from his elected position, but in doing so, Respondents must adhere to the
20 law and due process. Whether Respondents violated the law is for this Court to
21 decide, whereas the question of whether Respondents made the politically correct
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23
24 ¹ Notwithstanding that the Tribal Council's suspension of Petitioner was
25 *ultra vires* and resulted in a de facto removal under the Constitution, this Court
26 acknowledges that the Tribal Council has given Petitioner adequate notice to retain
27 counsel prior to the removal hearing scheduled for February 29, 2024. However,
28 Petitioner could not retain counsel because the attorneys he contacted currently or
formerly represented the Tribe or have conflicts of interest with Tribal Council
members. Moreover, the prohibition on communications with Tribal employees
restricted his ability to gather witnesses.

1 decision to start the process removing Petitioner from his elected position is a
2 question appropriately left to the voters. The ballot box is often a more potent
3 instrument for change than a ruling from a court. But it is in the Tribe's public
4 interest to know that this Court will uphold the integrity of the Tribe's Constitution
5 and the basic rights of its members.

6 Petitioner also wants to resume his duties as Chairman. After weighing the
7 Tribe's interest in maintaining peace among its members against Petitioner's
8 interest in resuming his duties, the Court deems it appropriate to deny his request.
9 Petitioner would not be further harmed from an inability to return as Chairman in
10 the period leading up to the removal hearing, and balancing his interest against
11 Respondents concerns about the tensions his return would engender pending the
12 removal hearing weigh in favor of denying his request.

13 In sum, the Court finds Petitioner has established a claim for injunctive relief
14 for hearing postponement. Accordingly, with the consent of the parties established
15 on the record, the Court orders that the hearing is postponed to March 11, 2024.

16 4. Does Counsel for Respondents have a conflict of interest?

17 Petitioner objects to Mr. Schlosser's representation of Respondents, alleging
18 Mr. Schlosser has a conflict of interest because he has previously assisted Petitioner
19 with confidential matters. Mr. Schlosser claims he has no conflict because he is
20 counsel only for the Tribe, has only assisted Petitioner as Chairman of the Tribe,
21 and all prior, confidential matters are not at issue in this case.

22 Hoopa Valley Tribal law does not address ethical rules for attorneys
23 appearing before the Tribal Court. Thus, this Court turns to the American Bar
24 Association Model Rules of Professional Conduct (MRPC) for guidance. The MRPC
25 rule on confidentiality prohibits a lawyer from revealing information relating to the
26 representation of a client unless the client gives informed consent or disclosure is
27 permitted because one of seven special circumstances apply. Model Rules of Pro.
28 Conduct r. 1.6 (Am. Bar Ass'n 2024). Under the conflict-of-interest rules for current

1 clients, a lawyer shall not represent a client if the representation involves a
2 concurrent conflict of interest but may proceed with representation if the lawyer
3 believes he or she may provide competent and diligent representation,
4 representation is not prohibited by law, does not involve adverse claims, and the
5 clients give informed consent. *Id.* at r.1.7.

6 A lawyer also has a duty to former clients and cannot represent another
7 person in the same or substantially related matter where that person's interests are
8 materially adverse to the former client's interest without informed consent. *Id.* at
9 r.1.9. In instances where a lawyer is retained by an organization to represent the
10 organization, the organization is the client acting through its authorized
11 constituents. *Id.* at r.1.13. The lawyer does not have an attorney-client relationship
12 with the organization's officers, and in dealing with the officers, the lawyer must
13 explain the identity of the client when the lawyer reasonably should know "the
14 organization's interests are adverse to those of the constituents with whom the
15 lawyer is dealing." *Id.* However, a lawyer is permitted to represent an organization
16 and any of its officers subject to the rule on conflict of interest for current clients,
17 requiring informed consent. *Id.*

18 In the case at hand, Mr. Schlosser is retained by the Hoopa Valley Tribe to
19 represent the Tribe's interests. Given that a Tribe speaks through the Tribal
20 Council and its constituents and is not a separate entity that speaks for itself,
21 representation of a Tribe is most like representation of a corporation. It is clear to
22 the Tribal Council and Mr. Schlosser that his client is the Tribe, and his
23 representation of Respondents is in their capacity as the Tribal Council acting on
24 behalf of the Tribe and not in their individual, personal capacities. Although Mr.
25 Schlosser has assisted Petitioner in the past, his assistance was only providing
26 counsel to the Tribe's Chairman for his duties to the Tribe and not in his personal
27 capacity. Moreover, Mr. Schlosser affirmed that no confidential information from
28 his past communications with Petitioner would be raised or at issue in this matter.

1 Mr. Schlosser also asserted that his competence and diligence in representation
2 would not be affected by his prior dealings with Petitioner. Furthermore, if any
3 Tribal Council member sought to retain Mr. Schlosser as his or her attorney in any
4 personal capacity, Mr. Schlosser would not be barred from representing both the
5 Tribe and the Tribal Council members individually so long as he received informed
6 consent, confirmed in writing.

7 Given Mr. Schlosser's representation of Respondents is not violating any
8 ethical rules under the MRPC, and no breach of duty has been raised, this Court
9 finds Mr. Schlosser does not have a conflict of interest and may continue with his
10 representation in this case.

11 CONCLUSION

12 Exercising judicial power is a profound responsibility and courts are (or
13 should be) loath to use their power to interfere with the political process.
14 Nevertheless, courts are duty bound to use that power to correct legal errors and
15 ensure that all individuals who are subject to tribal law are afforded due process.
16 For the foregoing reasons, the Court finds that Petitioner was denied due process,
17 and he has sufficiently shown he will suffer irreparable harm if the scheduled
18 removal hearing for February 29, 2024, proceeds. Accordingly, (1) Petitioner's
19 request for postponement of the removal hearing is **GRANTED**, (2) Petitioner's
20 request to resume his duties as Chairman is **DENIED**, and (3) Respondents'
21 prohibition on communication between Petitioner and Tribal employees and staff is
22 **VOIDED**. Furthermore, **IT IS HEREBY ORDERED** that the removal hearing be
23 postponed to March 11, 2024.

24 **IT IS SO ORDERED.**

25 Date: March 8, 2024

26 Joseph J.
27 Wiseman

Digitally signed by
Joseph J. Wiseman
Date: 2024.03.08
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28 **JOSEPH J. WISEMAN**
Judge Pro Tem
Hoopa Valley Tribal Court