

DEC 12 2013

FILED BY

Betty J. Smith

IN THE NOOKSACK TRIBAL COURT
FOR THE NOOKSACK INDIAN TRIBE
DEMING, WASHINGTON

Case No.: 2013-CI-CL-005

RUDY ST. GERMAIN, *et. al.*,

vs.

ROBERT KELLY, *et. al.*
Defendant

ORDER ON MOTION FOR TEMPORARY
RESTRAINING ORDER AND
SCHEDULING

THIS COURT held a hearing on December 11, 2013 after the Plaintiffs, a group of enrolled members of the Nooksack Indian Tribe, filed a *Complaint for Prospective Equitable Relief* with the Court on December 9, 2013. Plaintiffs sue the Defendants, members of the Tribal Council and two Enrollment Officers, in their official capacities for "prospective nonmonetary relief." In addition to filing the *Complaint*, the Plaintiffs filed a *Motion for Temporary Restraining Order* and sought a hearing date for December 11, which this Court granted. Ryan Dreveskracht appeared by telephone as attorney for the Plaintiffs, with Gabriel Galanda also listening in on the hearing by telephone. Grett Hurley appeared for the Defendants in the courtroom. Plaintiff and Tribal Council Secretary Rudy St. Germain appeared in the courtroom, as well as plaintiff Francisco Rabang and his wife (who is not a Plaintiff) Wilma Rabang.

As the Court noted in the hearing, the Court set this hearing on the TRO on very shortened time in order to attempt to address the issues raised by the Plaintiffs regarding the issuance of Christmas Distribution checks. Tribal Resolution 13-171 "Polling Resolution Approving: 2013 Christmas Distribution (Option C)" was passed on December 3, 2013 approving 2013 Christmas Support in the amount of \$250.00 "to be made available to each currently enrolled Nooksack Tribal member, not subject to pending disenrollment proceedings." The resolution regarding Christmas Distribution checks does not set out a distribution date. On December 5, 2013, the Nooksack Indian Tribe Communications Page stated that "Christmas Checks will be mailed out on December 12th. Checks will not be made available for pick up for anyone and will only be mailed out."

Plaintiffs argue that they have been deprived of due process by being denied access to a public benefit (Christmas distribution checks) without notice and an opportunity to be heard. They argue further that their equal protection rights have been violated by Resolution 13-171, which denied them the Christmas distribution because they are proposed for disenrollment. Unlike the "Back-to-School" resolution issued by the Tribal Council in August 2013, this Resolution does not provide that, in the event the proposed disenrollees prove to be continued to be entitled to enrollment, the proposed disenrollees would receive the distribution. This Resolution simply states that "the Council has identified discretionary funds which it would like to make available to tribal members not subject to disenrollment proceedings for Christmas Support."

1 The Defendants argue that the Nooksack Tribal Code's Title 10 has been violated in this
2 matter. Under Title 10 (which, as the Plaintiffs note, is under appeal in another matter but which the
3 Court has applied and will continue to apply as law in this and other cases based on prior rulings),
4 "In cases involving the Nooksack Indian Tribe, or its officers . . . or employees as a named party
5 Defendant, the Plaintiff shall serve initial process by way of certified mail, return receipt requested
6 upon the Chairman and the Office of the Tribal Attorney." NTC 10.05.040(d). Attorney Galanda
7 for the Plaintiffs declares in an attachment to the Temporary Restraining Order that the attached
8 documents were "delivered" to the Office of the Tribal Attorney and emailed to Thomas Schlosser,
9 outside counsel. No reference is made to the service upon the Chairman. Title 10 further states that
10 "the first hearing on any matter shall be a preliminary hearing in which the issues are to be
11 determined and motions/trial settings made." NTC 10.05.040(e).

12 The Court understands that the Plaintiffs have brought this TRO to the Court on an
13 emergency basis because Christmas Distribution checks will be mailed on December 12, 2013. The
14 Court recognizes and understands the urgency of the matter with respect to those who have not been
15 authorized to receive Christmas Distribution checks. However, the fact that appropriate notice has
16 not been served in accordance with Title 10 prevents this Court from proceeding until such notice
17 has been provided and declarations of that notice provided to the Court. While the Court has, in
18 prior cases, used the Rules of Federal Procedure, it has done so with the agreement of the parties and
19 by order of the Court. Under Title 10, those rules cannot be applied absent agreement by all parties
20 and by order of the Court. NTC 10.05.020(d). This matter can be heard quickly, with an opportunity
21 by the Defendants to respond in writing after proper service, and, therefore, the Court will order
22 based on this hearing that the following occur:

- 23 1) A full hearing on the Plaintiffs' TRO shall be held after proper service has been
24 obtained and **the parties on all sides have complied with NTC
10.05.050(e)(1)(2)(3);** and
- 2) The Plaintiffs and the Defendants may file responsive briefing to the following
question: If the Court finds an equal protection violation of the Nooksack
Constitution by Resolution 13-171 as it applies to the proposed disenrollees, what
specific legal or equitable remedies are allowed under the legal theories advanced by
the parties? (If the parties file such briefing, they must do so by noon of the day prior
to the scheduled hearing, which the Court will endeavor to set as soon as possible.)

25 The Court notes that the Nooksack Indian Tribe and the Tribal Court will be closed
26 December 23 through December 27, 2013 and no hearings will be set during that time. The Court
27 hopes and intends to dispose of this TRO prior to that closure. Therefore, the Court orders that the
28 Plaintiffs act quickly to effect service and provide notice to this Court that such notice has occurred
29 and that the Plaintiffs and Defendants attorneys *behave with professionalism and respect towards
30 each other and this Court as they "make reasonable, good faith efforts to coordinate with the
31 opposing party or his advocate . . . prior to scheduling a hearing."* NTC 10.05.050(e)(2).


32 The Court recognizes that there are multiple views on all of these issues related to these
33 proposed disenrollments. On the one hand, the Plaintiff proposed-disenrollees argue that they are
34 still enrolled tribal members entitled to the rights and privileges of membership. On the other hand,

1 the Tribal Council believes them to be erroneously enrolled and the Defendants argue the proposed-
2 disenrollees are not, therefore, entitled to the rights and privileges concomitant with membership.
3 As the Court has written in other decisions in related cases, the Court sees no "winners" in these
4 matters. Rather, the Court views this Tribe and this community as going through a serious crisis that
5 has implications well beyond the immediate issue in front of it today. The Court sits in the position
6 of having to shepherd the legal issues through this Court deliberatively yet efficiently while
7 recognizing the very real impacts these proceedings have on the proposed disenrollees and their
8 families, as well as the community of the Tribe as a whole. It is this Court's responsibility to
9 continue to act in accordance with the law of the Nooksack Indian Tribe, with respect and
10 deliberation due to *all of the parties*. The Court will continue to do so and it expects and demands
11 that the parties, their advocates, and the community as a whole do the same.

12 The Court reserves ruling on the *Motion for Temporary Restraining Order*.

13 **SO ORDERED.**

14 **DATED** this 11 day of DEC., 2013.

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16 Raquel Montoya-Lewis
17 Chief Judge, Nooksack Tribal Court
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