

*Betty Lenth*

NO. 2013-CI-APL-003

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IN THE NOOKSACK COURT OF APPEALS  
NOOKSACK INDIAN TRIBE  
DEMING, WASHINGTON

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**MICHELLE JOAN ROBERTS, ET AL.,**

**Appellants,**

**v.**

**ROBERT KELLY, ET AL.,**

**Appellees.**

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**OPPOSITION TO MOTION FOR ORDER SHORTENING TIME  
AND SETTING HEARING**

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Appellants request that the Court maintain its previous order directing the Parties to file supplemental briefs on February 7, 2014, and that it refrain from setting this matter for oral argument. Appellants need the additional seven (7) days allowed under the Court's order of January 22, 2014, as opposed to the schedule proposed by Appellees. Oral argument is unnecessary. The facts and legal contentions are adequately presented in the materials before this Court, and argument would not aid the decisional process.

In order to grant an expedited hearing, "it must appear clearly from the pleadings not only that there is an emergency but also that it is not an emergency of the movant's own making."<sup>1</sup> *In re Villareal*, 160 B.R. 786 (W.D. Tex. 1993). "[T]he motion to expedite should address the question of prejudice to other parties." *Id.* "[M]otions to expedite should be used sparingly, rather than as a matter of course." *Id.*

Appellees argue that because the "painful and wrenching process" of disenrollment—which they have prosecuted—has lasted a year, the Court should require the parties to brief the matter seven days before the Court has currently ordered them to. It is true, these proceedings have been "painful and wrenching." This is particularly true for Appellants, who are faced with losing their "most important civil right." *Wabsis v. Little River Band of Ottawa Indians, Enrollment*

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<sup>1</sup> Fed. R. Bankr. Proc. 9006 mirrors Fed. R. Civ. Proc. 6. There is no "motion to expedite" allowed under the Federal Rules of Appellate Procedure, although Fed. R. App. Proc. 2 permits Appellate Courts to suspend the appellate rules on timing for "good cause."

*Com'n*, No. 04-185-EA, 2005 WL 6344603, at \*1 (Little River Tribal Ct. Apr. 14, 2005). But this no reason to expedite what is undoubtedly the most important decision of this Court to date.<sup>2</sup> As the Tribal Court has already warned Appellees, “the legal process takes time.” *St. Germain v. Kelly*, No. 2013-CI-CL-005, at 8 (Nooksack Tribal Ct. Dec. 18, 2013).

Appellees’ latest attempt to expedite this process is consistent with their “fast-tracking the disenrollment process at nearly every turn,” and should be rejected. *Lomeli v. Kelly*, No. 2013-CI-CL-001, at 8 (Nooksack Ct. App. Aug. 27, 2013); *see also St. Germain*, No. 2013-CI-CL-005, at 12 (noting that Appellees likely “rushed” their illegal action in order to avoid an adverse ruling by the Tribal Court). Appellees transparently seek to shorten time on the Panel’s decision-making so they can disenfranchise Appellants from voting in the Nooksack General Election on March 15, 2014, and the Primary Election on February 15, 2014. Appellees do not address the question of prejudice to Appellants because their motion was filed with *intent* to improperly prejudice Appellants. Appellees’ gamesmanship should not be indulged.

Appellees’ bare-boned assertions do not satisfy the required showing for granting their motion. Appellees have not demonstrated that reviewing this

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<sup>2</sup> Indeed, the proceedings promise to last indefinitely into the future, given Appellees’ continued violations of the Nooksack Constitution. *See* Complaint, *Adams v. Kelly*, No. 2014-CI-CL-006 (Nooksack Tribal Ct. Jan. 23, 2014) (“*Adams II*”) (challenging, *inter alia*, Defendant-Appellees’ illegal removal of Appellant-Tribal Councilpersons Michelle Roberts and Rudy St. Germain from office on Martin Luther King, Jr. Day, January, 20, 2014).

matter in the Court's normal course would be prejudicial to their interests or constitute undue delay.

Appellants respectfully request that Appellees' Motion for Order Shortening Time and Setting Hearing be denied.

DATED this 27th day of January, 2014.

Respectfully submitted,



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Attorneys for Appellants

**DECLARATION OF SERVICE**

I, Gabriel S. Galanda, say:

1. I am over eighteen years of age and am competent to testify, and have personal knowledge of the facts set forth herein. I am employed with Galanda Broadman, PLLC, counsel of record for Appellants.

2. Today, I caused the attached documents to be delivered to the following:

Grett Hurley  
Rickie Armstrong  
Tribal Attorney  
Office of Tribal Attorney  
Nooksack Indian Tribe  
5047 Mt. Baker Hwy  
P.O. Box 157  
Deming, WA 98244

A copy was emailed to:

Thomas Schlosser  
Morisset, Schlosser, Jozwiak & Somerville  
1115 Norton Building  
801 Second Avenue  
Seattle, WA 98104-1509

The foregoing statement is made under penalty of perjury under the laws of the Nooksack Tribe and the State of Washington and is true and correct.

DATED this 27th day of January, 2014.



GABRIEL S. GALANDA