

6 IN THE TRIBAL COURT OF THE NOOKSACK TRIBE OF INDIANS FOR THE
7 NOOKSACK INDIAN TRIBE

8 BELMONT, *et al.*,

No. 2014-CI-CL-007

9 Plaintiffs,

DECLARATION OF SUE
GEARHART

10 v.

11 KELLY, *et al.*,

COPY

12 Defendants.
13
14

15 I, SUE GEARHART, declare under penalty of perjury under the laws of the Nooksack
16 Indian Tribe and the State of Washington that the following is true and correct to the best
17 of my knowledge:

- 18
- 19 1. I am over the age of eighteen (18), competent to testify about the matters stated
20 herein, and make this declaration of my personal knowledge.
 - 21 2. I am not a member of the Nooksack Indian Tribe, and I am currently employed as
22 a legal assistant for the Nooksack Indian Tribe Office of Tribal Attorney. I have
23 been in this position for two and a half (2 ½) years.
 - 24 3. As the Office of Tribal Attorney ("OTA") legal assistant, I am responsible for the
25 maintenance and upkeep of the OTA's records.
 4. Attached hereto are the following OTA records relating to ethical concerns of
Galanda Broadman ("Galanda"), specifically concerning an IBIA proceeding and

Galanda's: (1) misrepresentation(s) to the IBIA; (2) failure/refusal to comply with federal regulations; and (3) ex parte contact with the IBIA:

- a. Attached hereto as **Exhibit A** is a true and correct copy of "Unopposed Continuance Request" filed by Galanda Broadman on February 19, 2016 to the Interior Board of Indian Appeals ("IBIA") in Docket No. IBIA 16-022;
 - b. Attached hereto as **Exhibit B** is a true and correct copy of the Nooksack Indian Tribe's Response in Opposition filed on February 25, 2016 to the IBIA in Docket No. IBIA 16-022;
5. Attached hereto are the following OTA records relating to ethical concerns of Galanda, specifically its knowledge of business licensing requirements are dependent upon individual jurisdictions and its refusal to comply with Tribal business licensing laws:
- a. Attached hereto as **Exhibit C** is a true and correct copy of proof of a Business license of Galanda for the state of Washington;
 - b. Attached hereto as **Exhibit D** is a true and correct copy of proof of a Business license of Galanda for the city of Seattle;
 - c. Attached hereto as **Exhibit E** is a true and correct copy of an Opinion from the Quinault Indian Nation Court of Appeals in *Pura v. Quinault Housing Authority*, CV-12-002, wherein Galanda, sitting as appellate judge, co-authored an opinion concerning, in part, tribal business license requirements;
 - d. Attached hereto as **Exhibit F** is a true and correct copy of an email from the Tribe's Accounting Department indicating the Galanda had not inquired about, applied for, paid for, or received a business license, up to and including, February 24, 2016;
6. Attached hereto are the following OTA records relating to ethical concerns of Galanda, specifically the unauthorized practice of law by Mr. Broadman in the Nooksack Tribal Court:
- a. Attached hereto as **Exhibit G** is a true and correct copy of the list of Attorneys, Advocates/Spokesperson's that are admitted to the Nooksack

1 Tribal Bar, as of November 18, 2015 (sic) evidencing that Mr. Anthony
2 Broadman of Galanda Broadman was "pending" as opposed to
3 "admitted";

- 4 b. Attached hereto as **Exhibit H** is a true and correct copy of the Declaration
5 of Anthony Broadman filed on November 4, 2013 in *Lomeli v. Kelly*,
6 Nooksack Tribal Court, 2013-CI-CL-001, wherein Mr. Broadman
7 indicated he is co-counsel of record;

- 8 7. Attached hereto are the following OTA records relating to ethical concerns of
9 Galanda, specifically material misstatements of fact to the Pro Tem judge of the
10 Nooksack Tribal Court:

- 11 a. Attached hereto as **Exhibit I** is a true and correct copy of Galanda's email,
12 dated March 15, 2013 at 6:19 PM, to pro tem Judge Doucet, wherein
13 Galanda attempts to "e-file", "at the Nooksack Tribal Court Clerk's
14 instruction";
15 b. Attached hereto as **Exhibit J** is a true and correct copy of an email from
16 then Chief Judge Montoya Lewis, dated March 18, 2013 at 9:58 AM, to
17 counsel for the parties and Pro Tem Judge Doucet, wherein Chief Judge
18 Montoya Lewis indicates that no such "e-file" instruction was ever given,
19 nor does such a procedure exist, and "direct contact with a judge is
20 inappropriate;"

- 21 8. Attached hereto are the following OTA records relating to ethical concerns of
22 Galanda, specifically filing false evidence:

- 23 a. Attached hereto as **Exhibit K** is a true and correct copy of the Declaration
24 of Gabriel S. Galanda (including Exhibit 4 which purports to be an official
25 tribal record of Tribal Council minutes) filed on March 15, 2013 in *Lomeli*
v. Kelly, Nooksack Tribal Court, 2013-CI-CL-001;
b. Attached hereto as **Exhibit L** is a true and correct copy of the Declaration
of Amiliana Johnny, Assistant to the Nooksack Tribal Chairman, filed on
April 11, 2013 in *Lomeli v. Kelly*, Nooksack Tribal Court, 2013-CI-CL-
001 concerning the non-existence of Exhibit 4 to Declaration of Gabriel S.
Galanda;

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9. Attached hereto are the following OTA records relating to ethical concerns of Galanda, specifically regarding conduct intended to disrupt court proceedings and/or contemptuous behavior toward the Tribal Court:

- a. Attached hereto as **Exhibit M** is a true and correct copy of the Order on Security for Hearings, dated June 7, 2013 in *Lomeli v. Kelly*, Nooksack Tribal Court, 2013-CI-CL-001 which establishes minimal, but necessary security procedures to ensure the security of the courtroom including a process to resolve disputes regarding said procedures;
- b. Attached hereto as **Exhibit N** is a true and correct copy of the Order Modifying Order on Security, dated June 17, 2013 in *Lomeli v. Kelly*, Nooksack Tribal Court, 2013-CI-CL-001 reiterating the requirements of the earlier security order and the Court's expectation that Galanda abide the earlier court order;
- c. Attached hereto as **Exhibit O** is a true and correct copy of the Order on Hearing Attendees for June 25, 2013, dated June 24, 2013 in *Lomeli v. Kelly*, Nooksack Tribal Court, 2013-CI-CL-001 extending the previous security orders as a result of Galanda's failure/refusal to comply with the Court's previous orders, and reserving a determination concerning Galanda's contemptuous behavior for another day;

10. Attached hereto are the following OTA records relating to ethical concerns of Galanda, specifically regarding making false statements of law to the Tribal Court and failing to disclose (or correct) the same:

- a. Attached hereto as **Exhibit P** is a true and correct copy of the Order Denying Motion to Disqualify Chief Judge Eric Nielsen, dated August 14, 2013 in *Lomeli v. Kelly*, Nooksack Tribal Court of Appeals, 2013-CI-CL-001;

11. Attached hereto are the following OTA records relating to ethical concerns of Galanda, specifically repeated efforts to influence the Court (and others) with the use of unnecessary exaggeration as opposed to relevant law and facts:

- a. Attached hereto as **Exhibit Q** is a true and correct copy of an Order Denying Motion for Preliminary Injunction, dated May 20, 2013 in *Lomeli*

1 v. *Kelly*, 2013-CI-CL-001, which characterizes Galanda's arguments as
2 "hyperbole";

3 b. Attached hereto as **Exhibit R** is an email from Galanda to Grett Hurley,
4 dated December 30, 2013 at 8:05 PM;

5 c. Attached hereto as **Exhibit S** is an email from Galanda to Sue Steadle,
6 dated December 9, 2013 at 2:21 PM;

7 12. Attached hereto are the following OTA records relating to ethical concerns of
8 Galanda, specifically Galanda's refusal to comply with known tribal law
9 governing civil procedure:

10 a. Attached hereto as **Exhibit T** is the Decision and Order Denying
11 Defendant's Motion to Strike in Part and Granting in Part, dated April 23,
12 2013, in *Lomeli v. Kelly*, 2013-CI-CL-001, directing the parties to comply
13 with Title 10;

14 b. Attached hereto as **Exhibit U** is an email from Galanda to Grett Hurley,
15 dated December 11, 2013 at 2:18 PM characterizing procedures within
16 Title 10 as a "sham";

17 c. Attached hereto as **Exhibit V** is a letter addressed to the Court from
18 Galanda, dated December 13, 2015, confirming Galanda's knowledge on
19 the recent Title 10 amendments to the Court;

20 d. Attached hereto as **Exhibit W** is an email from Galanda to Grett Hurley,
21 dated December 17, 2013 at 12:46 PM, evidencing Galanda's repeated
22 refusal to comply with Title 10;

23 13. Attached hereto are the following OTA records relating to ethical concerns of
24 Galanda, specifically Galanda's lack of diligence and/or competence resulting in
25 loss of client rights who appear before the tribal court and other forums:

 a. Attached hereto as **Exhibit Y** is an email from Chief Judge Montoya
 Lewis to Galanda regarding a failure to pay the filing fee and file a notice
 of appeal, dated August 12, 2014 at 4:01 PM, prior to the expiration of the
 requisite time;

 b. Attached hereto as **Exhibit Z** is the Opinion, dated November 12, 2014, in
 Adams v. Kelly, 2014-CI-CL-007, Nooksack Tribal Court of Appeals,

affirming the trial court's denial to file an untimely brief for failure to file and provide the requisite fee;

c. Attached hereto as **Exhibit AA** is the Pre-Docketing Notice and Order for Appellants to Show Cause, dated September 30, 2013, Docket No: IBIA 14-011, ordering Galanda to show cause why dismissal was not warranted when Galanda failed to serve necessary parties;

d. Attached hereto as **Exhibit BB** is the Order Docketing and Dismissing Appeal, dated November 15, 2013, Docket No. IBIA 14-011, at the request of Galanda;

14. Attached hereto are the following OTA records relating to ethical concerns of Galanda, specifically concerns regarding Galanda's: (1) fairness to opposing counsel; (2) candor toward the tribal court; (3) failure to abide by court orders; (4) conduct prejudicial to administration of justice; and (5) conduct involving dishonesty, fraud, deceit, or misrepresentation:

a. Attached hereto as **Exhibit CC** is the Complaint for Prospective Equitable Relief, filed on December 9, 2013, in *St. Germain v. Kelly*, 2013-CI-CV-005, Nooksack Tribal Court, which cites *Schlender v. Quinault Indian Nation* as authority for allowing lawsuits to continue against a Defendant that retains sovereign immunity;

b. Attached hereto as **Exhibit DD** is the Motion for Temporary Restraining Order, filed on December 9, 2013, in *St. Germain v. Kelly*, 2013-CI-CV-005, Nooksack Tribal Court, which cites *Schlender v. Quinault Indian Nation* as authority for allowing lawsuits to continue against a Defendant that retains sovereign immunity;

c. Attached hereto as **Exhibit EE** is the Plaintiffs' Brief in Support of Temporary Restraining Order Relief, dated on December 17, 2013, in *St. Germain v. Kelly*, 2013-CI-CV-005, Nooksack Tribal Court, which cites *Schlender v. Quinault Indian Nation* as authority for allowing lawsuits to continue against a Defendant that retains sovereign immunity;

d. Attached hereto as **Exhibit FF** is the Opinion, filed on September 10 2013, in *Schlender v. Quinault Indian Nation*, CV-12-078, Quinault Court

of Appeals directing the trial court judge, Gabriel Galanda, to hold
hearings consisting with its remand;

- e. Attached hereto as **Exhibit GG** is the Order of Dismissal authored by
Gabriel Galanda, entered December 6, 2013 (immediately before the
Nooksack court filings), in *Schlender v. Quinault Indian Nation*, CV-12-
078, Quinault Tribal Court, dismissing a case, but permitting the Plaintiff
to amend his complaint in a manner that would allow the Plaintiff to
pierce the other party's sovereign immunity;

Signed this 11th day of March, 2016 at Deming, WA 98244.


Sue Gearhart, Legal Assistant
Office of Tribal Attorney
Nooksack Indian Tribe

EXHIBIT A

UNITED STATES DEPARTMENT OF INTERIOR
INTERIOR BOARD OF INDIAN APPEALS

RUDY ST. GERMAIN, MICHELLE
ROBERTS, et al.,

Appellants,

v.

ACTING NORTHWEST REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,

Appellee.

NO. IBIA 16-022

UNOPPOSED CONTINUANCE
REQUEST

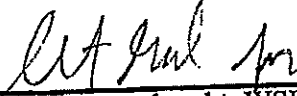
Appellants respectfully request that the Board of Indian Appeals ("Board") extend briefing deadlines. The Acting Northwest Regional Director of the Bureau of Indian Affairs ("Appellee") does not oppose this motion. See Appendix A.

On January 27, 2016, the Board issued an Order Setting Briefing Schedule and Order for Briefing on Jurisdiction that set the deadline for Appellants' opening brief as March 4, 2016. The administrative record in this matter is voluminous, and Appellants require an additional two weeks to sufficiently review and analyze the matters now before the Board. The Board may extend the time for filing any document as long as the request is filed within the time originally allowed for filing. 43 C.F.R. §§ 4.310(d)(1)-(2).

1 Appellants' request is timely, and unopposed. Appellants' respectfully request that the
2 Board extend the deadline for their opening brief by two weeks, to March 18, 2016.

3 DATED this 18th day of February, 2016.

4 GALANDA BROADMAN PLLC

5 
6 _____
7 Ryan D. Dreveskracht, WSBA #42593
8 8606 35th Ave NE, Ste. L1
9 P.O. Box 15146
10 Seattle, WA 98115
11 Phone: 206-557-7509
12 ryan@galandabroadman.com
13 Attorney for Appellants
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2/18/2016

Galanda Broadman Mail - St. Germain v. Acting NW Regional Director, IBIA No. 16-022



Ryan Dreveskracht <ryan@galandabroadman.com>

St. Germain v. Acting NW Regional Director, IBIA No. 16-022

Wed, Feb 17, 2016 at 8:05 PM

Kenworthy, Mary <maryanne.kenworthy@sol.doi.gov>
To: Ryan Dreveskracht <ryan@galandabroadman.com>
Cc: Gabe Galanda <gabe@galandabroadman.com>, Anthony Broadman <anthony@galandabroadman.com>

Ryan:

You can tell the Board that the Regional Director does not object to your request for additional time. /mak

Mary Anne Keniworthy
Attorney
U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 600
Portland, OR 97205

tel. (503) 231-2121

On Wed, Feb 17, 2016 at 2:40 PM, Ryan Dreveskracht <ryan@galandabroadman.com> wrote:
Mary Anne,

: Would you be amenable to returning the favor and allowing us an additional two weeks to get our opening brief
: in? Given the voluminous record, and our workload in the next two weeks, it would be greatly appreciated.

: Thank you,

: On Wed, Feb 3, 2016 at 4:48 PM, Gabe Galanda <gabe@galandabroadman.com> wrote:
: Thanks, Stephanie.

: I thought that might be the case but started with you as you were listed in the Order's distribution list. We
: look forward to hearing from Mary Anne or Mr. Norton. Given the magnitude of the brief and some other
: things we have cooking in the next two weeks, if we can't get the record in relatively short order, we may
: need to ask for a short extension of time for our opening brief--and to that end, may need to ask for a return
: favor. But for now, we'll just wait to hear back from them. Have a good night.

: **Gabriel S. Galanda**
: Attorney at Law
: Galanda Broadman, PLLC
: m: 206.300.7801
: gabe@galandabroadman.com

: **CONFIDENTIAL ATTORNEY WORK PRODUCT/ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

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: not create an attorney-client relationship.

2/18/2016

Galanda Broadman Mail - St. Germain v. Acting NW Regional Director, IBIA No. 16-022

On Wed, Feb 3, 2016 at 7:41 PM, Lynch, Stephanie <stephanie.lynych@sol.doi.gov> wrote:

Hi Gabe,

This is actually not my case but Mary Anne Kenworthy's (copied). I will also forward your email to Greg Norton who I believe is the BIA staff member who compiled the administrative record in case he can advise you. Mary Anne is on travel this week but I believe she may be checking email so it shouldn't take too long for someone to get back to you. Thanks!

Stephanie Lynch
Attorney-Advisor
Office of the Regional Solicitor
Pacific Northwest Region
US Dept of the Interior
(503) 231-2144(phone)
(503) 231-2166 (fax)
Stephanie.Lynch@sol.doi.gov

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On Wed, Feb 3, 2016 at 4:23 PM, Gabe Galanda <gabe@galandabroadman.com> wrote:

Hi, Stephanie.

Per the attached docketing order, we would like to obtain the administrative record from the Regional Director. We presume the record exceeds 100 pages. With our Opening Brief due in about a month, we'd like to obtain it as quickly as possible. Please let us know how we can do that most efficiently.

Thank you.

Gabriel S. Galanda
Attorney at Law
Galanda Broadman, PLLC
m: 206.300.7801
gabe@galandabroadman.com

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Ryan D. Dreveskracht
Attorney at Law
Galanda Broadman, PLLC
8606 35th Avenue NE, Ste. L1

2/18/2016

Galanda Broadman Mail - St. Germain v. Acting NW Regional Director, IBIA No. 16-022

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Seattle, WA 98115
m: 206.909.3842
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GALANDA BROADMAN
An Indian Country Law Firm

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CERTIFICATE OF SERVICE

I, Molly Jones, 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 foregoing document and its Appendix A to be filed on the following via overnight U.S. Mail:

Board of Indian Appeals
Office of Hearings and Appeals
US Department of the Interior
801 N. Quincy Street, Suite 300
Arlington, VA 22203

and served via U.S. Mail on the following:

Mary Anne Kenworthy
Attorney
U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 600
Portland, OR 97205

Chairman Bob Kelly
Nooksack Indian Tribe
PO Box 157
Deming WA 98244

Thomas Schlosser
Morrisset, Schlosser, Jozwiak, & Somerville
1115 Norton Building
801 Second Avenue
Seattle, WA 98104

Stanley Speaks
Northwest Regional Director
US Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Ave
Portland OR 97232

1 Superintendent
2 BIA, Puget Sound Agency
3 2707 Colby Avenue, Suite 1101
4 Everett, WA 98201

5 The foregoing statement is made under penalty of perjury under the laws of the United
6 States and the State of Washington and is true and correct.

7 DATED this 18th day of February, 2016.

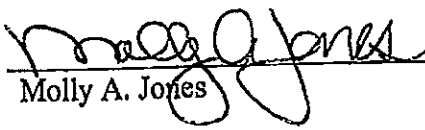
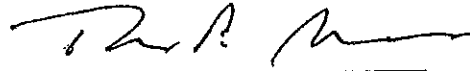
8 
9 Molly A. Jones

EXHIBIT B

Continuance Request. The Tribe requests that this Board deny Appellants' Continuance Request.

Dated this 23rd day of February, 2016.

Respectfully submitted,



Thomas P. Schlosser
Rebecca JCH Jackson
Morisset, Schlosser, Jozwiak & Somerville
801 2nd Ave., Ste. 1115
Seattle, WA 98104
Phone: 206-386-5200
t.schlosser@msaj.com
r.jackson@msaj.com
Attorneys for the
Nooksack Indian Tribe

T:\WPDOCS\0232\09738\UBIA Opp to Continuance Mot 022316.docx
rsj:2/23/16

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response in Opposition to Appellants' Continuance Request was sent on February 23, 2016 via Federal Express overnight mail with postage prepaid to the following:

Office of Hearings and Appeals
Interior Board of Indian Appeals
801 North Quincy Street, Suite 300
Arlington, VA 22203-1710

Copies were provided via United States mail to:

Mary Anne Kenworthy
Attorney for Appellees
U.S. Department of the Interior
Office of the Regional Solicitor
805 SW Broadway, Suite 600
Portland, OR 97205-3346

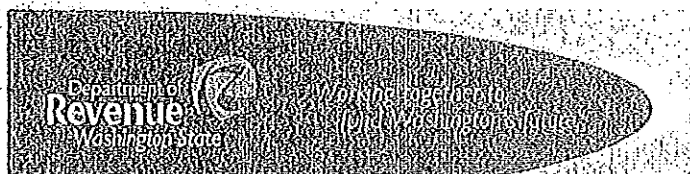
Ryan D. Dreveskracht
Attorney for Appellants
Galanda Broadman
P.O. Box 15146
Seattle, WA 98115

Dated this 23rd day of February, 2016



Rebecca Jackson

EXHIBIT C



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Doing business

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Get a form or publication

Find a law or rule

If "Non-revenue" appears after Tax Registration Number, the account is not registered with the Department of Revenue. However, it may be registered with other agencies in the state.

Washington State Department of Revenue State Business Records Database Detail

TAX REGISTRATION NO: 603605834	ACCOUNT OPENED: 4/1/2010 12:00:00 AM
UBI: 603605834	ACCOUNT CLOSED: OPEN
ENTITY NAME: GALANOA BROADMAN PLLC	
BUSINESS NAME:	
MAILING ADDRESS:	BUSINESS LOCATION:
PO BOX 15146	4024B NE 95TH ST
SEATTLE, WA 98115-0146	SEATTLE, WA 98115-2549
ENTITY TYPE: LIMITED LIABILITY	RESELLER PERMIT NO: N/A
	PERMIT EFFECTIVE: N/A
	PERMIT EXPIRES: N/A
NAICS CODE: 541110	
NAICS DEFINITION: OFFICES OF LAWYERS	

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3/7/2016 6:13 PM

If you are unable to find the reseller permit you are looking for, try searching by tax registration/UBI number.

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Access Washington

Voter registration assistance (SECRETARY OF STATE)

EXHIBIT D

Licenses (licenses)

Finance & Administrative Services Department - Fred Podesta, Director

[Home \(licenses\)](#) / Find a business

[Get a business license
\(licenses/get-a-business-
license\)](#)

[Renew a business license
\(licenses/renew-
a-business-license\)](#)

[Cancel a business license
\(licenses/cancel-
a-business-license\)](#)

[Find a business
\(licenses/find-a-business\)](#)

FIND A BUSINESS

Need to look up a business? Search the database for licensed Seattle businesses. You can search by business name, industry type or zip code.

The Seattle business license tax certificate database shows you the following information about a business:

- legal name
- trade name ("doing business as")
- main location address
- phone number
- license tax certificate expiration date
- industry type and Standard Industrial Code (SIC)

Related Sites

[Business License Tax
\(/business-license-tax\)](#)

[Business Regulations
\(/business-regulations\)](#)

[Seattle.gov Services &
Info: Business &
Economic
Development
\(/services-
and-information
/business-
and-economic-
development\)](#)

[Seattle Labor
Standards
\(/laborstandards\)](#)

City of Seattle Business License Database

Your search found 1 Businesses named **galanda**.

Follow the links below to view a list of companies with the same NAICS code.

[Back to Search](#)

Customer # (Business license #): **726658**

Legal Name: **GALANDA BROADMAN PLLC** Trade Name: **GALANDA BROADMAN**

8606 35TH AVE NE # STE L1 SEATTLE, WA 98115-3608

NAICS: 541110, Offices of Lawyers

License types:

BUSINESS LICENSE Renewal Date: 12/31/2016 Phone: (206) 557-7509



(<http://www.seattle.gov/fas/>)

Finance and Administrative Services

(<http://www.seattle.gov/fas/>)

Street Address

Seattle Municipal Tower

700 5th Ave

Suite 5200

Seattle, WA 98104

Phone: 206-684-2489

Notice of Nondiscrimination ([civilrights/title-vi-notice-of-nondiscrimination](http://www.seattle.gov/civilrights/title-vi-notice-of-nondiscrimination))

Privacy (<http://www.seattle.gov/information-technology/privacy-program>)

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EXHIBIT E

OF THE

OPINION

-1-

brought an action in Tribal Court alleging, among other things, that QHA breached a written Employment Agreement by failing to pay her an amount allegedly owed under the contract. Dkt. 2. The Employment Agreement included a limited waiver of sovereign immunity which read as follows:

Nothing in this Agreement shall be construed to be a complete waiver of the Quinault Indian Nation's Sovereign Immunity. The Tribe does consent to a very limited and specific waiver of immunity only to the extent of the value of this Agreement or to enforce the provisions of this Agreement.

Dkt. 2, Exh. A. The Employment Agreement was signed by the Appellant, QHA, and a representative of the Quinault Indian Nation ("Nation" or "Tribe").

According to Appellant, she was hired by QHA to serve as Executive Director for a term of five years. Dkt. 2, at 2. One of Pura's early initiatives as Executive Director was to terminate an employee of QHA who had allegedly been mismanaging HUD contracts and funds. *Id.* at 3. Upon termination, the employee reportedly began harassing and intimidating Pura. *Id.* On September 1, 2011, Pura attended a meeting held by some of QHA's Board of Commissioners ("BOC") where, upon finding that "Pura's physical safety ha[d] been threatened on numerous occasions by a former QHA employee, which has now increased to the level of threats of hate crime," the BOC passed a Resolution "terminat[ing] and buy[ing] out Sebnem Pura from her employment contract and pay[ing] her in full, for the entirety of her employment contract for five years." *Id.*, Ex. 2¹. A check in the amount of \$640,000.00 was issued to Pura the following day. *Id.* at Ex. 3. Later that day, however, a BOC member notified Pura that a "stop" had been placed on the check, "stated that [QHA's] decision to stop payment was the wrong way to treat [her], and encouraged Ms. Pura to take legal action." *Id.* at 5.

QHA disputes the Appellant's version of events. QHA contends that Pura simply stopped coming to work and forced an informal settlement agreement from the BOC on September 1, 2011, that was never ratified or formalized. Respondent's Br., at 4-5.

¹ The Resolution does not appear to be signed or numbered, although it does indicate that three BOC members voted in favor of the Resolution, zero opposed it, one abstained, and the remaining four BOC members were absent.

A. Motion to Dismiss

After filing of the Complaint, QHA moved to defend against the claim. On March 29, 2012, QHA filed a Motion to Dismiss the action before the Tribal Court, principally arguing that the express waiver of sovereign immunity contained in the contract did not apply to the claims brought by Pura. Dkt. 9. On April 9, 2012, QHA withdrew the Motion to Dismiss, without explanation. Dkt. 13. The same day, QHA filed an Amended Motion to Dismiss, arguing:

Article V, Section 3(d) of the Quinault Indian Nation Constitution...preserve[s] sovereign immunity except in such rare and unique instances where specifically identified physical assets of value equal to the waiver are pledged as security for the waiver.

Dkt. 14, at 4. The Tribal Court heard QHA's Motion to Dismiss on June 26, 2012. On July 16, 2012, Judge Pro Tem Anita A. Neal issued an Order denying the Motion to Dismiss. Dkt. 37. The Tribal Court found that the Chair of the BOC, acting on behalf of the Quinault Nation, validly entered the Employment Agreement which contained a clause purporting to waive the Nation's sovereign immunity. *Id.* at 1.

B. First Appeal

In response to this ruling, QHA filed the first appeal to this Court of Appeals alleging that the denial of the Authority's Motion to Dismiss based on sovereign immunity was an appealable final order.

The Court of Appeals denied the Authority's appeal. On October 26, 2012, this Court issued an Opinion ruling that the denial of the QHA's sovereign immunity argument was not appealable as an interlocutory order under QTC §31.02.010(b). *Pura v. Quinault Housing Authority*, No. 12-002 (Quinault Ct. App. Oct. 27 2012).

C. Discovery Disputes and Sanctions

After denial of QHA's appeal, the case continued in the Tribal Court. The Tribal Court proceedings appear to have been marked by ongoing and acrimonious discovery disputes. This included a Motion to Compel discovery filed by Pura against QHA on September 5 and 6, 2012. Dkt., 54, 58. On October 1, 2012,

Judge Neal ruled in favor of Pura and ruled that QHA must pay Pura's attorneys fees and costs in bringing the discovery motions and oral argument. Dkt, 81 at 8.

Despite Judge Neal's order granting Pura's Motion to Compel, discovery disputes apparently continued, culminating in an October 11, 2012 Motion for Order of Contempt and Sanctions by Pura. Dkt. 93. On October 23, 2012, the Tribal Court granted Pura significant relief sought in the Motion for Order of Contempt and Sanctions, and scheduled a hearing on the issue of sanctions for November 12, 2012. Dkt., at 119.

D. *Quinault Indian Nation v. Wing*, No. 12-111 (Quinault Tribal Ct.)

During the October 23, 2012, hearing on Pura's motions to compel documents and witnesses, counsel for the Nation informed the Court that (1) Pura's attorneys did not have a Quinault business license; (2) the Nation had filed a separate action against those attorneys, personally; and (3) QHA counsel had filed an ex parte Motion for Temporary Restraining Order ("TRO") requesting that Pura's attorneys be enjoined from practicing in the Quinault Tribal Court. In response, Judge Neal continued the hearing on Pura's discovery motions until the business license matter was resolved.

On November 27, 2012, the Tribal Court granted QHA's motion and prohibited Pura's counsel from providing legal representation until such time as they secured a Business License from the Nation. Dkt. 138. Prior to this ruling, it appears that Pura's attorneys had already applied for a business license from the Nation's Department of Revenue ("DOR"). The record indicates, however, that the DOR refused to issue the business license and Pura's attorneys sought a Motion to Compel a Business License in the parallel civil proceeding launched against them (*QIN v. Wing*, No. 12-111) on December 12, 2012. On December 21, 2012, a hearing was set on that motion, to be held January 10, 2013. Dkt. 141.

E. Removal and Appointment of Tribal Court Judges

During this contentious stage of dueling litigation, it appears that the lower Tribal Court bench went through significant transition. Sometime prior to November 30, 2012, Judge Neal was reportedly removed from the bench by the Nation's Business Committee. Appellant's Br., at 17. Appellant sees a sinister motive behind the removal, whereas Respondent argues

that Judge Neal's pro tem appointment had merely expired on May 31, 2012. *Id.* at 39-40; Respondent's Br., at 8-9. After Judge Neal's removal, Judge Leona Colegrove apparently presided over the present case, until she too was reportedly removed at some point between January 16, 2013, and January 30, 2013. Following Judge Neal's removal, the Business Committee appointed Judge Joel Penoyar to this case.

F. QHA's Motion for Summary Judgment and Second Appeal

After the November 27, 2012, ruling, Pura proceeded *pro se* as the parallel civil proceeding against her counsel in *QIN v. Wing* unfolded. During that time, QHA filed a Motion for Summary Judgment on November 13, 2012. On January 11, 2013, as outlined in a Memorandum on Summary Judgment and Memorandum on Sovereign Immunity, the newly-appointed Judge Penoyar granted QHA's Motion for Summary Judgment. The Tribal Court based the decision on an analysis of Article V, Section 3(d) of the Quinault Tribal Constitution addressing situations when the Business Committee may waive sovereign immunity. The Appellant, still acting *pro se* at the time, filed her Notice of Appeal to this Court of Appeals on January 16, 2013.

II. DISCUSSION

The Appellant claims four allegations of error: 1) the award of summary judgment in favor of the Respondent; 2) the Tribal Court's Memorandum on Summary Judgment; 3) the Tribal Court's Memorandum on Sovereign Immunity; and 4) the removal of Judge Neal from the Appellant's case. Because the first, second, and third allegations of error all pertain to the awarding of summary judgment and the Tribal Court's reasoning for granting thereof, they are treated as a single allegation of error for purposes of this appeal.

A. Standard of Review

Summary judgment proceedings are specifically authorized under the Quinault Tribal Code at Q.T.C. §30B.16.020. A trial court's granting of summary judgment is almost universally reviewed by the appellate court *de novo*. See e.g. *Boyd v. Colville Tribal Credit*, 4 CTCR 09, 7 CCAR 27 (Colville Tribal Ct., May 19, 2003); *Lahey v. Puget Sound Energy, Inc.* 176 Wn.2d 909, 922 (Wash. 2013); *Columbia Pictures Indust. v. Fung*, 710 F.3d 1020 (9th Cir. 2013).

Despite this seeming universality, analysis of the Quinault Tribal Code indicates that such review may not be permitted in Quinault Tribal Courts, as there are two seemingly inconsistent provisions. Although Q.T.C. §31.03.010 states "[u]nder no circumstances shall the Court of Appeals conduct de novo reviews," Q.T.C §31.04.010 states "[t]he Court of Appeals shall limit its consideration, so far as the interests of justice permit, to matters of law and interpretation."

These seemingly inconsistent provisions may be resolved, however, by review of their location in the Code. The prohibition on de novo reviews is located in the section of the Code pertaining to remanding a case for new trial and appears to relate to development of a factual record. This is supported by the language of Q.T.C. §5.02.020 which states "[t]he parties shall not be entitled to a trial de novo in the Court of Appeals" (emphasis original). A de novo review of issues of law is not a trial de novo. At oral arguments, both parties agreed that de novo review of issues of law was appropriate in this case. We are satisfied that such review of matters of law is permissible under the Quinault Tribal Code and apply it in this review of the granting of summary judgment.

B. Service on the Nation

As an initial matter, QHA argues that this Court must dismiss this appeal without reaching the merits because the Appellant failed to serve her notice of appeal or appellate brief on the Nation. Respondent's Br., at 12-16. QHA argues that service was required by Q.T.C. §31.09.010, which requires service of a notice of appeal on "all parties."

As QHA's argument was raised in a response brief, the Appellant has not provided counter-argument. Nevertheless, we decline to adopt the Respondent's position. As examined more fully below, it is clear that both the Nation and QHA possess sovereign immunity under Q.T.C. §99.02.010(a) and Q.T.C. §80.05.020, respectively. As this appeal turns on the issue of sovereign immunity, and the protection is common to both potential defendants, it is unnecessary for this Court to ascertain if "all parties" under Q.T.C. §31.09.010 were properly joined. Moreover, the Court notes that the Nation was served by the Appellant's initial Complaint and on March 27, 2012, shortly after service, the Nation's Attorney General informed the Court by letter that it would not participate in the judicial proceedings as the Nation was not named a named defendant to the lawsuit. Dkt. 7. Consequently, the Nation has been aware of

the lawsuit from its inception, and either the Nation or QHA could have taken advantage of the joinder provisions of the Quinault Tribal Code at Q.T.C. §30B.08.010 and §30B.09.010. Finally, the Court notes that QHA has claimed no prejudice by the alleged failure to serve the Nation. In the absence of such an allegation, and in light of the common dispositive issue in this case, we decline the Respondent's request to dismiss the appeal for failure to properly serve. See *English v. Cowell*, 969 F.2d 465, 468 n.6 (7th Cir. 1992) (declining to dismiss case when there was no explanation of why failure to serve, within the facts of the case, required dismissal).

C. Law of the Case Doctrine

The Appellant's first argument is that a previous ruling by the Quinault Tribal Court that sovereign immunity was waived acts as a barrier to a subsequent motion for summary judgment on the same issue under the law of the case doctrine. Appellant's Br., at 17-18. The Appellant contends that Judge Neal's initial ruling on July 16, 2012, that the Nation had waived sovereign immunity is binding throughout the case and should not be overturned on summary judgment. Respondent contends that Judge Neal ruled on a preliminary motion to dismiss, whereas the later-appointed Judge Penoyar ruled on a motion for summary judgment, that they are two different standards, and occur at different points in the litigation. Respondent's Br., at 16-17.

We are persuaded that the Respondent is correct. The law of the case doctrine is a judicial invention to aid in effective case management. *Lockert v. U.S. Dept. of Labor*, 867 F.2d 513, 518 (9th Cir. 1989). "Under the doctrine, a court is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the identical case." *Milgard Tempering, Inc. v. Selas Corp. of America*, 902 F.2d 703, 715 (9th Cir. 1990). For the doctrine to apply, the issue in question must have been "decided explicitly or by necessary implication in the previous disposition." *Id.* (citing *Liberty Mutual Ins. Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982)). Moreover, the law of the case doctrine is discretionary. *Id.* As application of the doctrine is discretionary, a trial judge's decision to depart from it is reviewed for abuse of discretion. *Pyramid Lake Tribe v. Hodel*, 882 F.2d 364, 369 n.5 (9th Cir. 1989); See also *Lower Elwha Band of S'Klallams v. Lummi Indian Tribe*, 325 F.3d 443, 452-53 (9th Cir. 2000).

The Quinault Tribal Code permits both a motion to dismiss and a summary judgment motion. A motion to dismiss is permitted

under Q.T.C. §30B.16.010. This provision makes clear that it may be filed at any time after the complaint is filed. A summary judgment motion is similarly provided for under Q.T.C. §30B.16.020. Unlike a motion to dismiss, however, a summary judgment motion is permitted after the expiration of the period in which the Defendant is to appear, or after service of a motion for summary judgment.

In courts of persuasive jurisdictions, a motion to dismiss under CR 12(b)(6) is typically granted when there is an insuperable bar to the claim. See e.g. *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 330 (1998). In contrast, a motion for summary judgment under CR 56 is only granted when there is no genuine issue of material fact and judgment may be entered as a matter of law. The Quinault Tribal Code adopts this standard explicitly in Q.T.C. §30B.16.020(c): "The judgment sought shall be granted if the Court finds there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Consequently, not only is the timing different, but the standards are also different and the denial of a motion to dismiss does not necessarily preclude bringing a later motion for summary judgment.

Due to these differences, we are satisfied that the Tribal Court's denial of the motion to dismiss under Q.T.C. §30B.16.010 does not preclude a later granting of summary judgment under Q.T.C. §30B.16.020. Persuasive authority is in accordance. See *McKenzie v. BellSouth Telecomms. Inc.*, 219 F.3d 508, 513 (6th Cir. 2000) ("[O]ur holding on a motion to dismiss does not establish the law of the case for purposes of summary judgment."); 191 *Chrystie LLC v. Ledoux*, 82 A.D.3d 681, 682 (N.Y.A.D. 2011) ("The law of the case doctrine is inapplicable where, as here, a summary judgment motion follows a motion to dismiss.") (quotation omitted); *Cipolla v. Rhode Island College, Bd. of Governors for Higher Educ.*, 742 A.2d 277, 280 (R.I. 1999) (same). Consequently, we are satisfied that the Tribal Court's actions under these circumstances do not constitute an abuse of discretion.²

² We do, however, find the Tribal Court's various final orders to be generally lacking. The law of the case doctrine was a potentially dispositive issue that was briefed extensively by the parties. It deserved analysis. Instead, we were left with nothing to review. See *Frank v. Illinois Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983) (where district court fails to address issue there is nothing for the appellate court to review). We also note that during the scheduling hearing on the Motion for Summary Judgment, Judge Penoyar stated that he "ha[d] no interest in and d[id] not intend to review the record."

D. Express Waiver of Sovereign Immunity

Appellant's next argument is that she secured an express waiver of sovereign immunity through the Employment Agreement. Appellant's Br., at 18-19. The Appellant argues that the Employment Agreement includes the "very limited and specific waiver of immunity." *Id.*

The Respondent disagrees. The Respondent contends that the Employment Agreement waives the sovereign immunity of "the Tribe" as opposed to QHA. Respondent's Br., at 21. Additionally, QHA argues that sovereign immunity is strictly construed and, as such, the alleged waiver was insufficient to constitute a waiver. *Id.* The Tribal Court agreed with the Respondent and based its decision, at least in part, on this reasoning.

We agree with the Appellant. Here, QHA is a "delegate agency" of the Tribe according to Q.T.C. §80.05.020. Moreover, Q.T.C. §80.03.070 defines the "Nation" as the "Quinault Indian Nation and any or all of its departments or agencies." (emphasis added). As Title 80, which specifically pertains to the QHA, defines the "Nation" as including its "departments or agencies," we find that the use of the phrase "the Tribe," in the context of the Employment Agreement, expressly waives the sovereign immunity extending to the QHA. Moreover, the language of the waiver is clear and unequivocal. Consequently, we agree with the Appellant that the Employment Agreement constitutes an express waiver of the QHA's sovereign immunity. To the extent that the Tribal Court found otherwise, it is hereby reversed.

The record at that point spanned over 140 docket entries and consisted of thousands of pages. While we do not expect a Tribal Court to become familiar with every piece of evidence in the record, we do expect that the Tribal Court be "more familiar with the record in this case than we are." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 915 (6th Cir. 2004). It is the Tribal Court's familiarity with the record that puts it "in a much better position to determine whether . . . summary judgment in [QHA]'s favor would be appropriate." *Id.* We have herein summarized the record, but expect that, on remand, the Tribal Court will conduct a more searching review of its own record.

E. Constitutionality of Express Waiver

If there was an express waiver of sovereign immunity by the QHA, the next issue is whether such waiver was permissible under Quinault law. Indeed, this is another ground ruled on by the Tribal Court, and is arguably the heart of this case.

Tribal governments enjoy sovereign immunity from suit similar that enjoyed by the United States. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Only Congress or the Tribe itself may waive the Tribe's immunity through suit. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754 (1998). A tribe may waive its own sovereign immunity so long as it is "clearly" done. See *Oklahoma Tax Comm'n. v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 506, 509-10 (1991).

Appellant argues that the express waiver was in accordance with constitutional and statutory requirements. Specifically, the Appellant argues that Q.T.C. §80.05.020 authorizes QHA to waive sovereign immunity by "express written contract." Appellant's br., at 18. The Respondent counters that Article V, Section 3(d) of the Quinault Constitution limits waivers of sovereign immunity to situations where unencumbered Tribal assets are specifically pledged as collateral for the waiver. Respondent's Br., at 23. The Respondent contends, as the Tribal Court found below, that no such pledge accompanied the Employment Agreement and, as a consequence, the alleged waiver of sovereign immunity is unenforceable.

In response, the Appellant counters that the provision of Article V, Section 3(d) is not the exclusive manner that the Tribe may waive its sovereign immunity. Further, Appellant argues that, if the Respondent's constitutional argument is accepted, it would have absurd results, invalidate many tribal contracts, and render other Tribal Code provisions unconstitutional. Appellant's br., at 21-25.

Here, there are both constitutional and statutory provisions at issue. Article V, Section 3(d) of the Quinault Constitution limits waivers of sovereign immunity to situations where unencumbered tribal assets are specifically pledged as collateral. This provision states as follows:

The Business Committee shall have the power...to assert the defense of sovereign immunity in suits brought against the Nation and to waive the said defense by agreement where National realty or personality³ not held in trust by the United States is pledged or when property held in trust is pledged with the consent of the United States.

This Constitutional provision is not alone. As noted previously, Q.T.C. §80.05.020 states as follows:

The Business Committee hereby gives its consent...allowing the Authority...to waive the immunity from suit it possesses as a delegate agency of the Quinault Indian Nation; provided that the QIN...shall not be liable for the contracted debts or obligations of the Authority...Provided further, that any waiver by the Authority of the sovereign immunity which the Authority possesses as a delegate agency of the Nation must be explicit and set forth in a written contract to which the Authority is a party and must comply with all federal and tribal requirements for the waiver of sovereign immunity.

This broad grant of permission to the QHA to waive immunity is partnered with a general waiver permitting the Nation to be sued "with respect for any claim for which the Quinault Indian Nation is insured." Q.T.C. §99.02.020(c).

The parties sharply disagree regarding the meaning of these constitutional and statutory provisions, particularly regarding the meaning of the words "personalty" and "pledge" in Article V of the Constitution. The Appellant contends that "personalty" may include sums of money and that "pledge" may mean a promise to pay. In response, the Respondent argues that the term "pledge" involves the actual transfer of property pledged as security for a debt or other obligation. Respondent's Br., at 23-26. Additionally, Respondent contends that the provisions of Article V are a condition precedent on the waiver of sovereign immunity. *Id.*

Neither party has provided analysis of the history or purpose underlying Article V, Section 3(d). This provision appears to be unique among Tribal constitutions. Our review of all Federally-recognized Indian Tribes in the State of Washington does not reveal any other Tribe with a similar

³ The parties have stipulated that the word "personality" is, in fact, intended to be "personalty."

provision.⁴ Review of early government documents from the Nation does not shed any additional light on the matter. The first governing documents for the Nation, following the Quinault River Treaty of 1856 establishing the Reservation, were the Tribal Council Bylaws of August 24, 1922. Veronica E. Velarde Tiller, Tiller's Guide to Indian Country 997 (2005). These Bylaws, however, do not have a similar provision regarding under what circumstances the Tribal Council may waive the Tribe's sovereign immunity. See BYLAWS OF THE TRIBAL COUNCIL OF THE INDIANS OF THE QUINAULT INDIAN RESERVATION, available at <http://www.quinaultindiannation.com/BYLAWS.htm>. On March 22, 1975, the present Constitution was adopted. Tiller, *supra*, at 997. The text of the present Constitution provides no additional insight into the meaning of Article V, Section 3(d).

Although Article V, Section 3(d) appears unique amongst governing documents, the provision is notably similar to provisions in corporate charters issued under the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §461, *et seq.* Section 17 of the IRA permits a Tribe to establish corporations that are wholly-owned by the Tribe. 25 U.S.C. §477. Among the powers possessed by Section 17 corporations is the power to "sue or be sued" with judgments being limited to "assets specifically pledged or assigned." See Cohen's Handbook of Federal Indian Law, §4.04[3][a], (Nell Jessup Newton ed., 2005) [hereinafter COHEN'S HANDBOOK] (citing e.g., Corporate Charter and By-Laws of the Omaha Tribe of Nebraska, §5(i)). Courts have sustained this limitation. See e.g. *Maryland Cas. Co. v. Citizens Natl. Bank*,

⁴ Of the 29 Federally-recognized Tribes in the State of Washington, we find only three Tribes, other than the Quinault Nation, that specifically address waiver of sovereign immunity in their Constitutions. See SKOKOMISH TRIBAL CONSTITUTION, Art. V, §1(o), available at <http://www.skokomish.org/SkokConstitution&Codes/Constitution/SkokConst.htm> ("The Tribal Council shall have the following powers...to assert as a defense to lawsuits against the tribe and to waive as permitted by Federal Law the sovereign immunity of the Skokomish Tribe."); SNOQUALMIE TRIBAL CONSTITUTION: Art. I, §3, available at <http://www.snoqualmiation.com/content/tribal-court> ("The Snoqualmie Indian Tribe is immune from suit except to the extent that the Tribal Council expressly and unambiguously waives its sovereign immunity."); JAMESTOWN S'KLALLAM TRIBAL CONSTITUTION: Art. VII, §1(r), available at http://www.jamestowntribe.org/govdocs/gov_const.htm ("The Tribal Council of the Tribe shall be authorized to...assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe, including limited waivers of sovereign immunity.").

361 F.2d 517 (5th Cir. 1966). This limitation allows a tribal corporation to enter business transactions, but requires that the party contracting with the corporation seek a pledge in advance of whatever security it may require since general assets of the corporation cannot be reached. Cohen's Handbook, §4.04[3][a]; *Namekagon Dev. Co. v. Bois Forte Reservation Hous. Auth.*, 517 F.2d 508 (8th Cir. 1975). The purpose of this provision is to protect the tribe involved. As noted by an Alaska Supreme Court decision examining Section 17, "[s]ome of the tribal property could be kept in reserve, safe from a judgment execution which could destroy the tribe's livelihood, in recognition of the special status of the Indian Tribe." *Atkinson v. Haldane*, 569 P.2d 151, 175 (Alaska 1977) (emphasis added).

The Quinault Nation voted to accept the IRA, but did not reorganize under it. As a consequence, it kept the Bylaws of 1922 until the adoption of the present Constitution. As a result, it is unclear to what extent, if any, Section 17 of the IRA may have influenced the drafters of the current Constitution. It provides important contemporaneous evidence, however, of interpretation of a similar provision widely used in Indian Country during the time of the Constitution's drafting. As such, this provision appears specifically intended to protect the Tribe. Under a plain reading of Article V, Section 3(d), and combined with the intent and policy considerations outlined above, we find that the Quinault Constitution requires a pledge of National realty or personalty before a waiver of sovereign immunity is valid, and that such a pledge requirement is designed for the Nation's protection and benefit.⁵

⁵ In *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian Community*, 674 P.2d 1376 (Ariz. Ct. App. 1983), a tribal corporation argued that there was no waiver of immunity because "the waiver of sovereign immunity [in the Tribe's Constitution] is limited to only those situations where specific income or chattel are pledged or assigned" and the complaint did not "indicate any . . . income or chattel [that] has been specially pledged or assigned." *Id.* at 1383 (quotation omitted). The clause of that constitution stated that "the grant or exercise of such power to sue and be sued shall not be deemed a consent . . . to the levy of any judgment, lien or attachments upon the property of the [Tribe] other than income or chattels especially pledged or assigned." *Id.* at 1380 (quotation omitted). The court held that this clause did "not affect [the court's] conclusion that the Indian Corporation has waived its immunity." *Id.* at 1384. Instead, it merely resulted "in a situation where any resulting judgment may be for all practical purposes unenforceable." *Id.*; see also generally *McCarthy & Associates v. Jackpot Junction Bingo Hall*, 490 N.W.2d 156 (Minn. Ct. App. 1992) (same). These cases are

According to the U.S. Supreme Court, there are three elements necessary to create a pledge: 1) a debt; 2) an offer of property to secure that debt; and 3) transfer of the property from the debtor to the creditor. *Mechanic's & Trader's Ins. Co. v. Kiger*, 103 U.S. 352, 356 (1880); see also *In re Alabama Land and Mineral Corp.*, 292 F.3d 1319, 1325 (11th Cir. 2002). The Employment Agreement appears to be a fairly standard contract that specifies a term, salary, and termination conditions. As noted by the Tribal Court, however, there is nothing in the Employment Agreement that could reasonably be construed as a transfer of any property from the Nation to the Appellant. Consequently, even assuming that the "personalty" requirement of Article V, Section 3(d) is satisfied by the specified salary, no pledge was made within the meaning of the Quinault Constitution.

Appellant claims that such an interpretation renders other constitutional provisions invalid. We share no such concern. As noted by the U.S. Supreme Court, "[W]e are obligated to construe [a] statute to avoid [constitutional] problems if it is 'fairly possible' to do so." *Boumediene v. Bush*, 553 U.S. 723, 787 (2008) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). Both Q.T.C. §80.05.020 and §99.02.020 may be read in accordance with the above canon of statutory interpretation. As such, they may be construed as outlining situations where QHA or the Tribe may waive sovereign immunity when the underlying constitutional requirements have already been met. Indeed, Article V, Section 3(d) expressly limits the Business Committee's ability to waive sovereign immunity to a certain prescribed circumstance: where the Nation has pledged National realty or personalty not held in trust, or where it has made such a pledge with the permission of the United States. The insurance provision of Q.T.C. §99.02.020 is instructive and analysis of case law indicates that the pledge of insurance proceeds may satisfy the requirement of a "pledge." "It is a well-established, general rule that, if the parties so provide, a pledge of a life insurance policy can be made to secure all existing indebtedness of the assignor to the assignee." *Sun Life Ins. Co. v. Weyen*, 136 F. Supp. 592, 596 (E.D. Wash. 1955). Moreover, such a pledge of insurance proceeds may be in accordance with the transfer requirements for a pledge:

distinguishable. Here, the Nation's Constitution makes the pledge of realty or personalty a *condition precedent* to a waiver of immunity, rather than a mere limitation on damages. See Quinault Constitution, Article V, § 3(d).

At common law, actual, physical possession by the pledgee himself was not strictly necessary. Rather, a court may find that a pledge was perfected if the collateral was in the possession of a third party acting as the pledgee's agent...This third party agent cannot be the pledger itself.

McCoy v. American Express Co., 253 N.Y. 477, 483 (1930). It is not the province of this Court to instruct the Nation on an exhaustive list of means whereby it may waive its sovereign immunity in accordance with the Constitution. Instead, it is sufficient to demonstrate that the requirements of Article V do not necessarily render the statutory provisions of Q.T.C. §80.05.020 or §99.02.020 unworkable. Additionally, it is sufficient to conclude that the Employment Agreement did not include a pledge sufficient to withstand Quinault constitutional requirements for waiver of sovereign immunity.

In addition to the concerns about the pledge requirements of Article V rendering certain statutory provisions invalid, the Appellant also contends that Article V is not the only means whereby the Tribe may waive its sovereign immunity. Appellant's Br., at 21-22. Specifically, the Appellant argues that the Nation may consent to suit and points to Q.T.C. §80.05.020 and §99.02.020 as situations where it has done so. Based on the analysis above, however, we disagree. Any waiver of sovereign immunity that ignores the express provisions of Article V violates the well-known principle of statutory interpretation that courts give specific language precedence over general language. See *Varsity Corp. v. Howe*, 16 U.S. 489, 511 (1996) (describing this approach as a "warning against applying a general provision when doing so would undermine limitations created by a more specific provision."). As such, we decline the Appellant's invitation to find alternate methods to waive sovereign immunity.

Finally, regarding the Appellant's argument that the signature by the Tribal official on the Employment Agreement should work toward the Appellant's favor by virtue of equity, case law does not support that conclusion. Courts typically hold that unauthorized acts by tribal officials do not waive sovereign immunity. See e.g. *Native American Dist. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1295 (10th Cir. 2008) (holding that tribal entity was not equitably estopped from asserting immunity because "misrepresentations of the Tribe's officials or employees cannot affect its immunity from suit"); *Sanderlin v. Seminole Tribe of Florida*, 243 F.3d 1282, 1288 (11th Cir. 2001) (rejecting argument that tribal representative had actual

or apparent authority to waive immunity because "[s]uch a finding would be directly contrary to the explicit provisions of the Tribal Constitution"); *World Touch Gaming v. Massena Mgmt., LLC*, 117 F. Supp. 2d 271, 276 (N.D.N.Y. 2000) (holding that a senior vice president's signature to an agreement with an express waiver of sovereign immunity provision did not waive sovereign immunity because that right was reserved exclusively to the tribal council.). As such, any act by a Nation official that purportedly waived sovereign immunity in this case was *ultra vires* and beyond the clear requirements of Article V, Section 3(d) of the Quinault Constitution.

F. ICRA Claims

Appellant also claims violations of her rights under the Indian Civil Rights Act of 1968. 25 U.S.C. 1301 *et seq.* Specifically, Appellant claims violations of her equal protection and due process rights. Appellant's Br., at 32-39. The Respondent counters by claiming that the section of the Appellant's brief pertaining to the ICRA allegations should be struck as it violates the page limitations of Q.T.C. §31.11.010. Respondent's Br., at 32, n. 23. Respondent also claims that the ICRA claims are time barred by the one-year statute of limitations contained at Q.T.C. §99.01.010 and that the ICRA claims should be rejected as the Complaint was never served on the Nation. *Id.* at 32-33, 35.

In *Santa Clara Pueblo*, the U.S. Supreme Court determined that, with the exception of petitions for *habeas corpus*, the ICRA did not waive the sovereign immunity of tribes and that claims under the ICRA may only be brought in tribal courts. *Santa Clara Pueblo*, 436 U.S. at 58. Since that decision, a split has developed in tribal jurisdictions on whether the ICRA constitutes a waiver of tribal sovereign immunity in tribal court. Compare e.g. *Satiacum v. Sterud*, No. 82-1157 (Puy. Tr. Ct. 1982); *Stone v. Sondag*, 10 Indian L. Rep. 6039 (Colv. Tr. Ct. 1983); *Kotch v. Absentee Shawnee Tribe*, 3 Okla. Trib. 184, 195 (Absentee Shawnee Tribe. Sup. Ct. 1993); *Pawnee Tribe v. Franseen*, 19 Indian L. Rep. 6006, 6008 (Ct. Indian App. - Pawnee 1991); *Board of Trustees v. Wynde*, 18 Indian L. Rep. 6033, 6035 (N. Plns. Intertr. Ct. App. 1990); *Johnson v. Navajo Nation*, 14 Indian L. Rep. 6037, 6040 (Nav. Sup. Ct. 1987); with e.g. *Oglala Sioux Tribal Personnel Bd. v. Red Shirt*, 16 Indian L. Rep. 6052, 6053 (Oglala Sioux Ct. App. 1983); *Works v. Fallon Paiute-Shoshone Tribe*, 24 Indian L. Rep. 6033 (Intertr. Ct. App. Nev. 1997); *Dupree v. Cheyenne River Hous. Authority*, 16 Indian L. Rep. 6106, 6108-09 (Chy. R. Sx. Ct. App. 1988); See also *Bellue*

v. Puyallup Indian Tribe, No. 94-3045 (Puy. Tr. Ct. 1994) (explaining that "[a]t least two tribal courts have rejected sovereign immunity as an affirmative defense when tribal members or employees seek redress [under ICRA] against the tribe in the tribal court") (citing *Hudson v. Hoh Indian Tribe*, HOH-CIV 4/19015 (Hoh Tr. Ct. 1992); *O'Brien v. Fort Mojave Tribal Court*, 11 Indian L. Rep. 6001 (Fort Mojave Ct. App. 1984)).

The question of whether the ICRA constitutes a waiver of sovereign immunity in the courts of the Quinault Nation appears to be an issue of first impression. Although this Court has applied the principles of the ICRA in previous cases, it has not had occasion to determine this particular issue. See e.g. *Quinault Indian Nation v. Rocky D. Johnson*, CV 10-083, at 3-4 (Quinault Ct. App. 2010) (examining a potential due process right to testify in a civil matter). The alleged ICRA claims were not addressed by the Tribal Court. Absent a ruling and factual record by the Trial Court on this issue, the appropriate course of action is to remand for consideration of the Appellant's ICRA claims, in light of our decision outlined above. This case is so remanded. As this issue is remanded, it is unnecessary for us to decide the Respondent's request to strike the overlength portions of the Appellant's brief. We note, however, that Appellant "is proceeding *pro se*, and therefore must be afforded some leniency in the construction of [her] pleadings and compliance with court rules." *Tucker v. Thomasville Toyota*, 623 F.Supp.2d 1378, 1381 (M.D.Ga. 2008). We also note that page limitations exist to promote economy for the Court and the litigants, and this Panel will not hesitate to act as it deems appropriate if faced with similar briefing by either party.

G. Request for New Tribal Judge on Remand

Although the Appellant's first three allegations of error were consolidated as pertaining to the awarding of summary judgment, there remains the Appellant's fourth allegation of error regarding the removal of Judge Neal from the case. The Appellant contends that a new judge must be assigned on remand in order to preserve the appearance of fairness. Appellant's Br., at 39. Specifically, the Appellant argues that "[e]xperience suggests the [Business] Committee will terminate judges who rule in favor of Ms. Pura creating the threat of undue pressure to rule against her." *Id.* Additionally, Appellant argues that "at this point remanding to any judge assigned by the Business Committee will necessarily perpetuate the appearance of unfairness." *Id.* at 40.

While the Respondent does not directly address the appearance of unfairness argument, the Respondent notes that the recently-appointed Tribal Court judge is an experienced trial court and appellate judge with the State of Washington. Respondent's Br., at 1-2.

In any jurisdiction, tribal or otherwise, the termination of a judge in the middle of litigation profoundly undermines confidence by the parties in their ability to receive a full and fair trial before an impartial decision maker. Unfortunately, this is a recurring and serious concern throughout Indian Country. This Court notes that the Quinault judiciary is an independent judiciary under Article V, Section 3(b) of the Quinault Constitution. We also note that the appointment of Tribal Court judges is entrusted solely to the Business Committee under Q.T.C. §5.03.010. Additionally, we note that the term of office for judges is fixed under Q.T.C. §5.04.020 and the process for removal is specified under Q.T.C. §5.04.030. Finally, we observe that the process for disqualifying a Tribal Court judge is found at Q.T.C. §5.04.090.

We presume the independence and professionalism of all judges duly appointed to the Quinault bench, unless presented evidence to the contrary. The circumstances of Judge Neal's removal are not properly before this Court in this case. Moreover, it does not appear the Appellant moved to disqualify the later-appointed Tribal Court judge under Q.T.C. §5.04.090 before the ruling on summary judgment. Additionally, examination of the Tribal Court judge's credentials indicate they are exemplary. Based on the presumption of independence and the Tribal Court judge's demonstrated experience, we decline the Appellant's request to remand to a new Tribal Court judge. This Court remains, however, acutely sensitive to the appearance of fairness in this case and strongly encourages the Business Committee to refrain from any action that suggests Ms. Pura may be unable to receive a fair trial in the Quinault judiciary.

H. Costs, Fees, and Sanctions

Respondent requests costs and fees from the initiation of litigation to the conclusion of the Appeal. Respondent's Br., at 37. The awarding of costs and/or attorneys' fees to the winning party is permissible under Q.T.C. §30B.26.010 if it would be "equitable to do so." Despite the Respondent's success on the sovereign immunity issue, we find that the equities do not support awarding of attorneys' fees or costs. The issues

presented in this case are novel and of significant importance to the parties, the Nation, and the entities doing business with the Nation. Moreover, the Appellant's ICRA claims remain to be adjudicated and the sovereign immunity claims, while ultimately unsuccessful, were colorable. Consequently, the Respondent's request for costs and fees is denied.

This Court also notes with dissatisfaction that the language employed by counsel for both parties in their written briefs approached or exceeded the ordinary bounds of professionalism. Just as importantly, however, the Court notes there are allegations that at least two sanctions orders dating from October 2012 against the QHA remain unpaid as of the date of briefing. Upon remand, the Tribal Court is directed to hold a hearing within thirty (30) days to inquire into the status of the sanctions payments and, if necessary, take additional steps as it deems appropriate.

III. Conclusion

This case is unfortunate. At the inception, it appears all parties were hopeful for a fruitful working relationship. It also appears that all parties negotiated in good faith an express waiver of sovereign immunity. The result outlined above may seem unjust to those unfamiliar with sovereign immunity. As noted under similar circumstances, however, "The result may seem unfair, but that is the reality of sovereign immunity: '[I]mmunity can harm those who...are dealing with a tribe...'" *Memphis Biofuels, LLC v. Chickasaw Nations Industries, Inc.*, 585 F.3d 917, 922 (6th Cir. 2009), (citing *Kiowa*, 523 U.S. at 758). We note that sovereign immunity protects the U.S. government and state governments as well, and that litigation against any sovereign is notoriously fraught with peril. *Santa Clara Pueblo*, 436 U.S. at 58 ("Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers."). As such, Ms. Pura joins a long line of disappointed litigants vis-à-vis sovereign immunity.

Finally, we echo the sentiments of the Tribal Court encouraging the Business Committee to reexamine the wisdom of the particularly strenuous requirements of Article V, Section 3(d).

NOW THEREFORE, IT IS ORDERED:

The Tribal Court's decision is AFFIRMED in part and REMANDED in part for further action in accordance with this opinion.

DATED this 27th day of August, 2013.

For the Panel:

Suzanne O. Townsend
Presiding Judge

Gabriel S. Galanda
Judge


Hunter M. Abell
Judge

EXHIBIT F

Sue Gearhart

From: Elizabeth Ames
Sent: Friday, March 11, 2016 9:42 AM
To: Sue Gearhart
Subject: RE: re: Business Licensure of Gabriel Galanda and/or Galanda Broadman

Good morning Sue,

Per my records, no one at Galanda Broadman inquired about, applied for, paid for, nor received a Nooksack Business License through the date February 24, 2016.

Elizabeth

Elizabeth Ames
Controller
Nooksack Indian Tribe

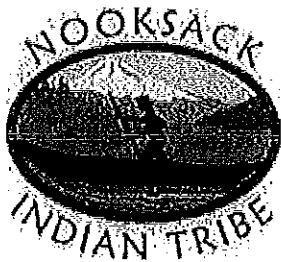
From: Sue Gearhart
Sent: Friday, March 11, 2016 9:39 AM
To: Elizabeth Ames
Subject: re: Business Licensure of Gabriel Galanda and/or Galanda Broadman

Good morning Elizabeth,

Please check your records to verify whether or not anyone at Galanda Broadman had inquired about, applied for, paid for, or received a Nooksack business license up to and including February 24, 2016.

Respectfully,

Susan Gearhart
Legal Assistant
Office of Tribal Attorney
Nooksack Indian Tribe
P.O. Box 63
Deming, WA 98244
Phone: (360) 592-4158 ext. 3354



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message or the information in it or attached to it by any unintended recipient is unauthorized, strictly prohibited by the sender, and may be unlawful.

EXHIBIT G

Attorneys, Advocates/ Spokesperson's that are admitted to the Nooksack Tribal Bar

1. **Grett Hurley** entered into Bar on **October 20, 2010**
2. **Sharon DeGrave** entered into Bar on **March 25, 2011**
3. **Kristen Cavanaugh – Reid** entered into Bar **February 25, 2011**
4. **Michelle Hull** entered into Bar on **May 11, 2011**
5. **Mary L. Dickenson** entered into Bar **August 26, 2011**
6. **Danyal Zapata** entered into Bar on **December 14, 2011**
7. **Rickie Armstrong** entered into Bar on **December 21, 2011**
8. **Thomas Manning** entered into Bar on **January 11, 2012**
9. **Charity Bernard** entered into Bar on **February 8, 2012**
10. **Matt Peach** entered into Bar on **April 17, 2012**
11. **Lori Smith** entered into Bar on **May 15, 2012**
12. **Carl Munson** entered into Bar on **May 16, 2012**
13. **Bernard P. Haggerty** entered into Bar on **June 6, 2012**
14. **Constance S. M. Martin** entered into Bar on **August 22, 2012**
15. **John R. Guardi** entered into Bar on **December 12, 2012**
16. **Gabriel Galanda** entered into Bar on **March 8, 2013**
17. **Ryan D. Dreveskracht** entered into Bar on **March 8, 2013**
18. **Anthony S. Broadman** (Pending)
19. **Thomas Schlosser** entered into Bar on **March 28, 2013**
20. **Adrienne DelCotto** entered into Bar on **June 6, 2013**
21. **Eric Nielsen** entered into Bar on **August 20, 2013**
22. **Mark Pouley** entered into Bar on **August 20, 2013**
23. **Randy Doucet** entered into Bar on **August 20, 2013**
24. **Douglas Nash** entered into Bar on **August 20, 2013**
25. **Gregory Silverman** entered into Bar on **August 20, 2013**
26. **Rebecca Jackson** entered into Bar on **September 4, 2013**
27. **Amber Penn – Row** entered into Bar on **April 9, 2014**
28. **Millie Kennedy** entered into Bar on **April 23, 2014**
29. **Andrew D. Peach** entered into Bar on **June 11, 2014**
30. **Jennifer Yogi** entered into Bar on **July 23, 2014**

31. **Sue Gearhart** entered into Bar on **February 23, 2015**
32. **Jared Miller** entered into Bar on **February 23, 2015**
33. **Dana HALBERT** entered into Bar on **June 17, 2015**
34. **William Johnston** entered into Bar on **June 17, 2015**
35. **Raymond Dodge Jr.** entered into Bar on **September 23, 2015**
36. **Michael Brodsky** entered into Bar on **November 18, 2015**
37. **Matthew Deming** entered into Bar on **November 18, 2015**

EXHIBIT H

11-04-13 P04:30 IN

Deanna Francis

RECEIVED

NOV 4 2013

Office of Tribal Attorney
Nooksack Indian Tribe

IN THE NOOKSACK TRIBAL COURT

SONIA LOMBLI; et al.,

Plaintiffs/Appellants,

v.

ROBERT KELLY, et al.,

Defendants/Appellees.

NO. 2013-CI-CL-001

DECLARATION OF ANTHONY S.
BROADMAN IN SUPPORT OF
MOTION FOR ORDER TO SHOW
CAUSE RE: CONTEMPT

I, Anthony S. Broadman, say:

1. I am over eighteen years of age, I am competent to testify, and I have personal knowledge of the facts set forth herein.

2. I am co-counsel of record for Plaintiffs in the above-captioned action.

3. Attached to this declaration, as Exhibit A, is a true and correct copy of a Written Request for Reconsideration, signed and submitted by Cody M. Narte on September 12, 2013.

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

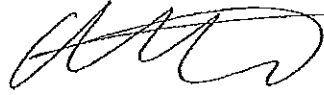
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DECLARATION OF ANTHONY S. BROADMAN IN SUPPORT
OF MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT - 1

Galanda Broadman PLLC
8606 35th Avenue NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, WA 98115
(206) 555-1100

1 DATED this 4th day of November, 2013, at Seattle, Washington

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3 

4 Anthony S. Broadman

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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 Plaintiffs.

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

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

DATED this 4th day of November, 2013.

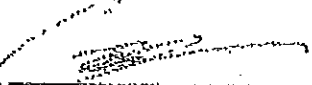
Attest

GABRIEL S. GALANDA

Exhibit A

Written Request for Reconsideration
Cody M. Narte
Enrollment No. 1934
Involuntary Disenrollment: Resolution No. 13-123, 8/8/2013

Signed and submitted this 12th day of September, 2013

By: 

HAND DELIVERED, EMAILED AND MAILED TO:

Nooksack Indian Tribe
Nooksack Tribal Council
P.O. Box 63
Deming, WA 98244
meeting@nooksack-nsn.gov

I am the above-named enrolled Nooksack Tribal member and a direct descendent of Annie George. The Bob Kelly Faction of the Nooksack Tribal Council disenrolled me based on "erroneous enrollment." Doing so was illegal and unconstitutional.

First, I was promised that I would not be disenrolled until all disenrollment meetings were held. A March 18, 2013, audio recording of the initial hearing in *Lomeli v. Kelly* evinces that the Tribe's attorney, Thomas P. Schlosser, promised that "whether a person has requested a hearing or not, they are not going to be removed from the rolls until the hearings have been held." On March 18, 2013, a letter from Mr. Schlosser promised the same: "In any event, no person will be disenrolled before completion of the timely requested hearings." On March 20, 2013, the Tribe agreed that "no person will be disenrolled prior to the completion of the meetings before the Tribal Council, regardless of whether that individual has requested a meeting with the Tribal Council." See Stipulation, *Lomeli v. Kelly*, No. 2013-CI-CL-001 (Nooksack Tribal Ct. Mar. 20, 2013). I am a "person" who was not supposed to be, but who was,

Cody M. Narte
Enrollment No. 1934

disenrolled before all of the disenrollment meetings with the Tribal Council involving the "Nooksack 306" have been completed.

Second, I should never been disenrolled because I satisfy applicable membership criteria. I am at least $\frac{1}{4}$ Indian and can prove Nooksack ancestry because my ancestor, Annie George, was Nooksack. Annie George was Nooksack because her father Matsqui George and adoptive mother, at least, were Nooksack. See Exhibit A ("Genealogy Chart"); Exhibit B ("Bruce Miller Report"); Exhibit C ("Jay Miller Report").

Article II, Section 4 of the Nooksack Constitution clearly states that the "reasons for [loss of membership] shall be limited exclusively to failure to meet the requirements set forth for membership in this constitution." It is therefore unconstitutional to disenroll me for "erroneous enrollment" when I meet applicable¹ constitutional membership criteria. The Nooksack

¹ At the time that Nooksack Tribal Council Resolution No. 13-02 was enacted, the Nooksack Constitution decreed that "[t]he membership of the Nooksack Indian Tribe shall consist of . . . [a]ny persons who possess at least one-fourth ($\frac{1}{4}$) degree Indian blood and who can prove Nooksack ancestry to any degree." It is irrelevant that this membership criteria arguably no longer exists today as a result of a recent Secretarial election at Nooksack, which remains under formal administrative protest and the subject of federal court litigation. See *Vartelas v. Holder*, 132 S.Ct. 1479, 1486-87 (2012) ("Numerous decisions of this Court repeat the classic formulation Justice Story penned for determining when retrospective application of a law would collide with the doctrine. It would do so, Story stated, when such application would 'tak[e] away or impai[r] vested rights acquired under existing laws, or creat[e] a new obligation, impos[e] a new duty, or

Constitution grants an absolute right to membership to all persons meeting the requirements contained therein. In order to revoke membership, the Tribal Council has an obligation to prove that the member does not meet the criteria for enrollment at the time of proposed disenrollment, period, regardless of the boxes checked on an original enrollment application.²

Further, the fundamental rights of due process and equal protection of law, each of which are guaranteed to me in Articles II and IX of the Nooksack Constitution, Nooksack Tribal Code Title

attac[h] a new disability, in respect to transactions or considerations already past.”) (citations omitted; alteration in original).

² See *Terry-Carpenter v. Las Vegas Paiute Tribal Council*, Nos. 02-01, 01-02, at 10-11 (Las Vegas Paiute Ct. App. 2003).

[Constitutions grant a] right of membership to all persons meeting the requirements contained therein. It is not a right of membership, subject to majority vote of the other members of the Tribe; it is an absolute right of membership. Indian tribes are not social fraternities or sororities in which the right to membership depends on the votes and disposition of other members. They are governments with entitlements to citizenship (membership) spelled out, as here, in their governing documents. . . . Any contrary interpretation would make the tribal membership of any member . . . subject to vote at any time, even thirty years after initial enrollment for example

See also *Henrickson v. Ho-Chunk Nation Office of Tribal Enrollment*, No. SU02-06 (Ho-Chunk Sup. Ct. Mar. 21, 2003) (although Enrollment Committee claimed to have uncovered evidence that member failed to meet the criteria for enrollment at the time she was enrolled, the Court held that the burden on Tribal Council was to prove *at the time of proposed disenrollment* that the member was not entitled to enrollment—not that her original enrollment application was insufficient).

63, and otherwise at Nooksack law, including Nooksack Custom Law, have been violated by the Bob Kelly Faction of the Nooksack Tribal Council since at least February 12, 2012.

The Tribal Council does not possess the power to initiate disenrollment proceedings as the Bob Kelly Faction did on February 12, 2013, when they passed Tribal Council Resolution No. 13-02. Instead, the Tribal Council has the power to enact ordinances to “prescribe rules and regulations governing involuntary loss of membership.” Const. art. II, § 4; *see also id.* at § 2 (“The Tribal Council shall have the power to enact ordinances in conformity with this constitution”); *id.* at art. VI, § 1 (delegating specific powers to the Tribal Council, none of which is the power to initiate disenrollment proceedings).

The Nooksack Enrollment Department (“Department”) also does not possess the power to initiate disenrollment proceedings as Roy Bailey did prior to February 12, 2013, according to Resolution No. 13-02 (the Department initiated disenrollment when it “discovered that persons on the current tribal roll did not meet the then existing Constitutional requirements at the time of enrollment and were erroneously enrolled into the tribe.”). This is expressly prohibited by N.T.C. § 63.04.001(B), which states “at no time will staff employed in the Enrollment Department purposefully initiate a reason for loss of membership.”

Further, on February 5, 2013, Nooksack Tribal Attorney Grett Hurley, acting on behalf of the Bob Kelly Faction, was aware of an official, United States Bureau of Indian Affairs probate order of the Estate of Louis (Louie) George, listing “Matsqui George” as his father, and clearly identifying Matsqui George as “Nooksack” (Exhibit E). I take Nooksack blood from Matsqui George, by way of his daughter Annie George. Based on this February 5, 2013 email, which was never disclosed to me by the Bob Kelly Faction, disenrollment proceedings should have never commenced against me.

Cody M. Narte
Enrollment No. 1934

Moreover, neither Resolution No. 13-02 nor the Notice of Intent to Disenroll ("Disenrollment Notice")³ that was sent to me on or about February 14, 2013, cites, provides or constitutes "present[ation of] written documentation on how the information was obtained that warrants disenrollment" or "evidence submitted to support a statement of fact," as required by N.T.C. §§ 63.00.004 or 63.04.001(B). Further, the Disenrollment Notice states that I am entitled to a "meeting" with the Tribal Council to dispute their disenrollment, but that letter is vague as to the process and/or procedures that will be employed at the "meeting," if any. The letter does not inform me of my right to a reconsideration request, as provided by N.T.C. § 63.04.001(C).

In addition, this disenrollment was commenced against me with racial animus, because I am of partial Filipino descent. That is made clear by an April 29, 2013 letter from Bob Kelly, a man who has no Nooksack blood and was adopted into my tribe. In that letter to those selected Nooksack members who are not subject to disenrollment, Bob Kelly confirmed my belief that the various decisions of his Tribal Council faction since February 12, 2013, have been designed to "control [the] cultural identity of the Nooksack Tribe" by targeting me and my family as "large groups or families that [allegedly] have much weaker ties to Nooksack than the rest of us who are currently enrolled here." I wholeheartedly refute that my ties to my tribe are weak. The Bob Kelly Tribal Council Faction have violated my rights of equal protection under Article IX of the Nooksack Constitution, which fully incorporates, by reference, the federal Civil Rights Act of 1968.

³ The Notices referenced herein, and all materials appended thereto, as well as any and all current or prior contents of my enrollment file, are fully incorporated by reference herein. I reserve the right to amend this Written Response and supplement my accompanying Exhibit List.

On August 13, 2013, the Bob Kelly Tribal Council Faction mailed me a Notice of Meeting ("Meeting Notice"). Prior to that, the Kelly Council Faction denied me, through my counsel, access to seven of my "enrolled Nooksack member-deceased relatives/ancestors' enrollment files," which I needed (and still need) "in order to properly defend against the disenrollment process that commenced on February 12, 2013." See April 1, 2013 Letter from Gabriel S. Galanda to Bob Kelly.

Also, in the Meeting Notice, a hearing date was unilaterally imposed upon me, in violation of N.T.C. §§ 63.04.001(B)2. I was not given the opportunity to "contact the Tribal Council Secretary to obtain a date for the meeting" that was mutually convenient for everyone involved. *Id.*

I understand that until August 20, 2013, my disenrollment proceeding was halted. Needing to now submit this written response, I was not given sufficient time to gather evidence supporting my proper status as an enrolled Nooksack member and in turn prepare my response, especially according to the strict requirements of the new Tribal Council Procedures For Involuntary Disenrollment Meetings ("Disenrollment Procedures"). It is unclear whether my response papers and supporting evidence need be filed by "five (5) calendar days prior to the scheduled Meeting" according to the Procedures, or "six (6) calendar days prior to [my] meeting" according to my Meeting Notice materials. Either way, it is a wholly insufficient amount of time.

Among other things, the Disenrollment Procedures, which were passed in secret by the Bob Kelly Tribal Council Faction and without any opportunity for Nooksack public comment, also:

- Forbid me from being represented in my administrative hearing before the Tribal Council by my counsel of record, Galanda Broadman, PLLC, during my disenrollment meeting — in contravention of a March 20, 2013 Tribal Court-entered Stipulation whereby the Bob Kelly Tribal Council Faction acknowledged that Galanda Broadman, PLLC was "authorized to act in . . . the related proceedings regarding disenrollment" on my behalf;

Cody M. Narte
Enrollment No. 1934

- Forbid me from having any "other persons" such as my close family or other relatives present for my administrative hearing, in order to provide me moral support or help as I defend my life;

- Allow me "a maximum of ten (10) minutes to present [my] case" — which I do not feel is nearly enough time to explain my entire ancestry, dating back to Matsqui George in the late 1800s, and why I am and have always been properly enrolled Nooksack; and

- Require that my meeting "be held v [sic] telephonically via conference call," rather than in person — thereby disallowing me to even face my accusers and look them in the eye.

The Disenrollment Procedures were not written or passed with any appreciation for our nature, customs or ways as Indian people. The procedures are wholly foreign and non-tribal—and in fact non-Nooksack customarily speaking—in every way. While on the one hand the procedures deprive me of legal counsel and advocacy, on the other hand they are so legal and technical, especially with page numbering, formatting, spacing, font size, labeling and other rigid requirements, that they require legal assistance to understand and follow. The Disenrollment Procedures have obviously been carefully crafted and implemented to cause my disenrollment.

In all, I have not been provided due process in the form of:

(1) notice of the specific charges or allegations at a time reasonably prior to the hearing in order to allow preparation of a defense; (2) right to retain private counsel and be represented by such counsel at a hearing; (3) right to present a reasonable quantum of argument and evidence at a hearing on the charges; (4) right to confront and cross-examine adverse witnesses at the hearing; (5) a brief written statement of reasons and evidence relied upon to support the determination of (6) an impartial adjudicative body.⁴

⁴ *Prosser v. Butz*, 389 F.Supp. 1002 (D.C. Iowa 1974). See also *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Gardner v. Pierce County Bd. of Com'rs*, 617 P.2d 743, 745 (Wash. Ct. App. 1980) (citing *Prosser* for the proposition that not even ten days does not constitute sufficient notice).

Cody M. Narte
Enrollment No. 1934

Beyond my procedural objections above: I satisfy applicable membership criteria. I am at least $\frac{1}{4}$ Indian and of Nooksack ancestry because my ancestor, Annie George, was Nooksack. Annie George was Nooksack because her father Matsqui George (also known as George Matsqui and George Troukeyemellou) and adoptive mother, at least, were Nooksack. See Exhibits, A, B, C.

The Tribal Council has the burden of showing that I am not Nooksack. N.T.C. § 63.04.001(B). They cannot meet their burden. The Kelly Council Faction claims that Matsqui George was a "Canadian Indian[]" from the Matsqui Band of British Columbia CANADA." Notice of Basis for Commencement for Disenrollment Proceedings, at 2. This is false.

• **Annie George Was Nooksack, based on at least the following:**

1. Her father, Matsqui George, was Nooksack as explained below.
2. Her adoptive mother, Madeline Jobe, was Nooksack. Bruce Miller Report, 2. Even if the Kelly Faction believes Matsqui George was not Nooksack, Annie George possessed Nooksack ancestry through her adoptive mother, Madeline Jobe. *Id.* at 2-3. By the time Annie George was five years old, her adoptive mother and her father had had children and married. Indeed, a Canadian census of 1881 shows then 6-year-old Annie George living in the household of Madeline Jobe. *Id.* at 3. After the death of her biological mother, Annie George was considered to be the child of Madeline Jobe. *Id.* As the Kelly Faction is aware, adoption is as profound an ancestral connection under Nooksack ways, as birth. *Id.*; N.T.C. § 63.01.001(G). Indeed, Chairman Kelly is adopted, without having any Nooksack blood. Annie George was treated as Madeline Jobe's daughter. See Exhibit D (Tom Schlosser Letter), 1 ("George Samson believed Madeline was Annie's mother. Other witnesses at the probate proceeding, including Mary Thomas and Roy S. George agreed with George Samson's account.")

Cody M. Narte
Enrollment No. 1934

3. Annie George was "from here, in Nooksack" and a descendant of Chief Nooksack, Bruce Miller Report, at 3.

• **Matsqui George Was Nooksack**, based on at least the following:

1. According to BIA Probate records, he was "Nooksack." Jay Miller Report, 6. In the official probate order of the Estate of Louis (Loule) George, his parents are listed as "Matsqui George" and "Madeline George." Next to Matsqui George's name, he is identified as "Nooksack (Unal)." "Unal" presumably stands for unallotted. Louis George is identified as Nooksack. *See id.*, at 3. And according to the BIA he took this Nooksack blood from Matsqui George. *See id.*, at 6.

2. "The evidence shows that Madeline Jobe (George) and Matsqui George were nooksack." Bruce Miller Report, 2.

3. "In all, it is my informed professional opinion that because at least Matsqui George was Nooksack by blood, his biological daughter, Annie George Mack James, was too." Jay Miller Report, 1.

4. The fact that there is a place called Matsqui and that Annie George or Matsqui George had geographical connections in Canada is irrelevant. There were Nooksack villages located in Canada, Bruce Miller Report, 2. Nooksack territory "extended into British Columbia on the north..." *Id.* Louisa James George, for instance, who is also Nooksack was reported born on the "Matsqui Indian Reserve (Nootsack)," *Id.*, at 3. The international border is an arbitrary line drawn and memorialized into non-Indian law by European settlers, and this border does not and cannot define who is and who is not Nooksack.

• **The Kelly Council Faction Lacks Proof For Their Libel**, lacking any competent evidence that that Matsqui George and Madeline Jobe were not Nooksack. The sole material set forth in support of the Kelly Faction's accusations are that George Matsqui was referred to as "Chief of the

Masqui Tribe"; (12/25/1863) "Chief of Matsqui" (12/14/1875); and "chief of the Matsqui" (12/16/1875); (9/16/1880).

But the Kelly Council Faction cannot rebut the evidence showing, officially, according to the United States in 1972, that Matsqui George was "Nooksack." The Kelly Council Faction cannot rebut the expert opinion regarding oral and cultural history that Matsqui George was Nooksack. And the Kelly Council Faction cannot rebut the evidence Madeline Jobe's father, Jobe was one of six Nooksack homesteaders prior to the Indian Homestead Act of 18. Bruce Miller, at 2. Most critically, the Kelly Council Faction has never argued, shown, proven, or suggested that Matsqui George's name, or his role as a chief, means that he is not Nooksack. Indeed, the only proof shows that he is in fact Nooksack. There is no proof anywhere that anything regarding "Matsqui" meant that Matsqui George was exclusively part of another tribe or non-Nooksack. Indeed, all the evidence suggests the opposite: Matsqui George was Nooksack.

In turn, so was Annie George, and so am I. Accordingly, the disenrollment process that has been carried out against me since at least February 12, 2013, should stop today. It must be dismissed with prejudice.

COVER PAGE FOR EVIDENCE

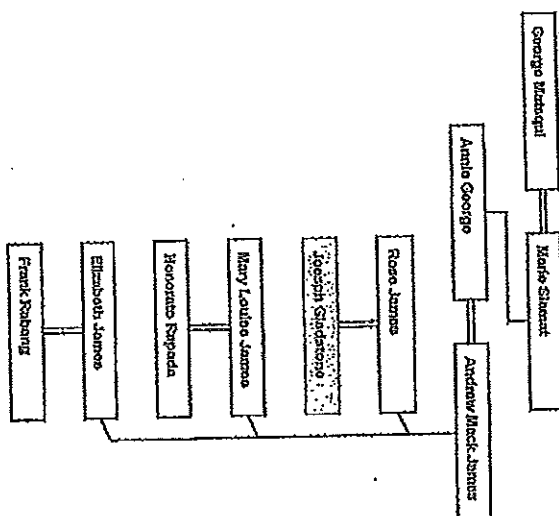
**Cody M. Narte
Enrollment No. 1934
Involuntary Disenrollment: Resolution No. 13-123, 8/8/2013**

EXHIBIT LIST

- Exhibit A: Descendant Chart for Matsqui George ("Genealogy Chart")
- Exhibit B: June 11, 2013 Expert Opinion Letter from Bruce Miller, Ph.D. ("Bruce Miller Report");
- Exhibit C: May 7, 2013 Expert Opinion Letter from Jay Miller, Ph.D., with attachments ("Jay Miller Report");
- Exhibit D: October 25, 1996 Opinion Letter and Enrollment Record from Thomas P. Schlosser;
- Exhibit E: February 5, 2013 Email from Nooksack Tribal Attorney Grett Hurley, Esq., to the Bureau of Indian Affairs, with attachment.

Exhibit A: Descendant
Chart for Matsqui
George ("Genealogy
Chart")

Descendant Chart for George Matsqui



Family Group Sheet for Annie George

Husband:		Andrew Mack James
	Birth:	1866 In Chilliwack, British Columbia, Canada
	Death:	10 Apr 1952
	Father:	James Kamapkren
	Mother:	Marianne Tatarey
Wife:		Annie George
	Father:	George Matsqui
	Mother:	Marie Slamet
Children:		
1	Name:	Rose James
F	Birth:	03 Jul 1908 In Chilliwack, British Columbia, Canada
2	Name:	Mary Louise James
?		
	Spouse:	Honorato Rapada
3	Name:	Elizabeth James
F	Birth:	1917
	Spouse:	Frank Rabang
Notes:		

Prepared By:

Preparer:	Address:
Phone:	
Email:	

Kinship Report for George Matsqui

Name:	Birth Date:	Relationship:	Civil:	Canon:
Matsqui, George		Self		
Siamat, Marie		Wife		
George, Annie		Daughter	I	1
James, Rose	03 Jul 1908	Granddaughter	II	2
James, Elizabeth	1917	Granddaughter	II	2
James, Mary Louise		Grandchild	II	2
Kamapkren, James	1843	Father-in-law of daughter		
Rapada, Honorato		Husband of grandchild		
Gladstone, Joesph		Husband of granddaughter		
Rabang, Frank		Husband of granddaughter		
Wallam, Peter	1800	Maternal grandfather of husband of daughter		
Tafaren, Catherine	1800	Maternal grandmother of husband of daughter		
Tafarey, Marianne		Mother-in-law of daughter		
James, Andrew Mack	1866	Son-in-law		

Exhibit B: June 11, 2013

Expert Opinion Letter

from Bruce Miller, Ph.D.

("Bruce Miller Report")

THE UNIVERSITY OF BRITISH COLUMBIA

Department of Anthropology
6303 NW Marine Drive
Vancouver, BC Canada V6T 1Z1

Tel: 604.822.2878, Fax: 604.822.6161
www.anth.ubc.ca

RE: Rabang, Rapada and Narte/Gladstone extended family tribal enrollment

June 11, 2013

I have been asked to render an anthropological opinion concerning whether the members of the Rabang, Rapada and Narte/Gladstone extended family can be regarded as members of the Nooksack Indian Tribe. Here, I am not solely considering the requirements of membership as outlined in the contemporary tribal constitution and in tribal code. Rather, I consider historical documents, family oral history, and well-established concepts of identity, affiliation, and membership within anthropology regarding the social organization of the Coast Salish peoples, a conceptual category that includes the Nooksack and their neighbors.

My understanding of the Coast Salish is derived in part from my own ethnographic fieldwork with many of the Coast Salish communities over the last thirty-five years, including nearby neighboring communities (the Sto:lo, Upper Skagit, Hwlitsum), and others. The results of these studies have been published in six books and many journal articles. My books include *"Be of Good Mind": Essays on the Coast Salish* (University of British Columbia Press) and *The Problem of Justice: Tradition and Law in the Coast Salish World* (University of Nebraska Press). I have served as an expert witness regarding Coast Salish communities in a number of courts and tribunals.

My opinion is also based on the published and unpublished anthropological work of distinguished scholars such as Wayne Suttles, William Elmendorf, Pamela Amoss, Sally Snyder, June Collins, and others. The work of anthropologist Allan Richardson with the Nooksack over several decades is of particular value.

Historically, Coast Salish social organization included affiliation between people on several levels. A sense of commonality was extended to one's nuclear family (husband and wife and children), to fellow members of villages and village clusters, those within a river system, those who spoke the same Coast Salish language, those who participated within the same extended family (or corporate group). In the early contact period, patterns of affiliation shifted as villages aggregated into clusters and leaders emerged who consolidated authority over river systems. Formal tribal structures were created for the convenience of colonial authorities. These structures are represented in the current

arrangement of tribes with direct relations with the federal government, some formed under the Indian Reorganization Act. This description is only partial, and is not intended to represent all of the ways in which peoples of the region have interacted or local variations. In brief, the patterns of affiliation, or "membership" in a group are complex and have changed over the decades.

Tribes of northern Puget Sound have long held close relationships with Coast Salish peoples living in what is now Canada. The international border, created in 1846, now divides a people. But prior to the Canadian Immigration Act of 1976, Coast Salish people commonly freely moved across the international border. This movement was affirmed earlier by the Jay Treaty of 1794, which guaranteed free passage for Indians. The Treaty of Ghent of 1814 extended all previous rights to Indians. The United States has subsequently passed legislation underscoring these rights.

In the case of the Nooksack, tribal members have long lived on both sides of what is now the international border. Richardson reports in his online article, "Nooksack Territory," (published on the Nooksack tribe website February 6, 2012; <http://nooksackindiantribe.org/about/>, accessed June 3, 2013.)

"Nooksack territory, within which they had direct access to resources, . . . extended into British Columbia on the north . . ."

Richardson writes in *Nooksack Place Names*, pp. 191-192, regarding "Stick Peter's place": ". . . It's general location is clearly marked on maps as Matsqui Reserve No. 4. It is one of the many Nooksack place names in British Columbia, but the only definite Nooksack village located in Canada. The Nooksack identity is emphasized by the elders and backed up with statements that Stick Peter spoke 'real Nooksack.' "

The Rabang, Rapada and Narte/Gladstone extended family ancestry shows their continuing connections to the Nooksack. George, Chief of Matsqui (otherwise known as Matsqui George) married Marie Slamet in 1863, a woman of his tribe according to Oblate records. Their offspring included Annie George, born 1875. Two days after Annie George's birth, her mother died. Subsequently, she was adopted by Madeline Jobe, who raised her. Madeline Jobe married Matsqui George in 1880 (but had children earlier on). The evidence shows that Madeline Jobe (George) and Matsqui George were Nooksack. Her parents were Nooksack and their children shared that identity, in preference to any others. A Canadian census of 1881 shows Annie George in the household of Mary Jobe George (otherwise known as Madeline).

Madeline Jobe's father was Jobe (Chúm), who held a 160-acre homestead east of Lynden. His was one of six Nooksack homesteads prior to the Indian Homestead Act of 1884 with its provision for trust titles. One of the Nooksack Tribal cemeteries is located on a portion of the Jobe homestead. Two of Madeline Jobe's sons, Frank George and Louis George, lived on part of this homestead property in the 20th century.

Adoption has been an important social practice among Coast Salish peoples historically. On the death of a parent, children were commonly raised by relatives who considered the child as their own. In any case, cousins were regarded as siblings. After the death of

Annie George's mother, she was considered to be the child of what in English terminology we would call a stepmother. For Native people of the 19th century, this would not have been the case. Family oral history indicates that Annie called Madeline George by the term "Mom."

The evidence that George Matsqui can be regarded as Nooksack comes from several sources. One of these, and perhaps the most important, comes from the transcript of a tape recorded interview with Elizabeth Martha Rabang Eugeno, daughter of Annie George, in 1996 and 1997. The transcript is in my possession. Mrs. Eugeno states that Annie George's father was Chief Matsqui and her great grandfather was Chief Nooksack. She writes that Annie George was "from here in Nooksack." She described Chief Matsqui's role in the church and his activities going up and down the Nooksack River. Her statement references movement by canoe to church, and I infer that Chief Matsqui also travelled by canoe. Chief Matsqui, according to this document, played a significant role in teaching religious and agricultural practices to Nooksack people.

This oral history was not given in the context of the present circumstances relating to tribal enrollment. Oral history is commonly accepted as evidence in courts in common law countries, as I have documented in my book *Oral History on Trial*. Note that the name Matsqui ought not be taken solely as a Canadian-linked term. Richardson writes on page 67 of his book *Nooksack Place Names* that "... although long traditional occupation is implied by the designation of the Nooksack village as an Matsqui Indian Reserve by the Canadian Indian Reserve Commission in June 1880 ... " In addition, Richardson writes that a trail from Masqui [sic] to Skeleko Prairies is described as crossing the International boundary close to the site of Méqsen. Rather than being taken as evidence of Canadian identity or occupation, the name Matsqui is associated with Nooksack.

Evidence of Matsqui George's identity also comes from a US Census of 1910 that shows Louis George [son of Matsqui George and Madeline Jobe] married to Josie George. Josie George is shown to be the daughter of Santla Sampson and Sallie. The document shows the place of birth of all of these people as Washington [state] and the tribal affiliation as "Nooksack." The evidence shows a continuing affiliation and membership in the Nooksack Indian community.

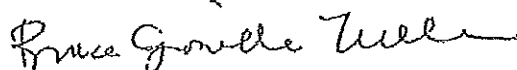
Official government and church documents show the connection between people from villages in what is now Canada and those in the United States. For example, in a document from the British Columbia Division of Vital Statistics of 1931, Louisa James George, deceased, is reported under the questions "Where born" as Matsqui Indian Reserve (Nootsack).

It is important in considering patterns of affiliation to understand that Coast Salish are bilateral in kinship. This means that individuals reckon affiliation and descent through both parents and all grandparents. However, people are also members of extended families which include not simply lineal descendants of a given ascendent but also collateral relatives. Identity therefore cannot simply be regarded as an outcome of lineal descent.

Significantly, three sisters, all daughters of Annie George, had children who are the ancestors of the 306 people in question. The names of these three sisters are Elizabeth Eugeno Rabang (married to Frank Rabang), Mary Louise Rapada (married to Honorato Rapada) and Emie Rose Gladstone (married to Joseph Gladstone).

Based on the evidence, I conclude that the Annie George regarded herself as fully Nooksack, and was taken to be so by others. Her descendants, a number of whom I have met, consider themselves to be fully Nooksack people. This is so, as in common with other Coast Salish communities with whom I have worked, even though many were forced to move to Seattle, Bainbridge, the Kent Valley and other nearby locations to earn a living. However, they retained their identity as members of their tribe. Further, also as in common with other Coast Salish communities, residence in Canada does not preclude identity as a Nooksack person.

With my best regards,

A handwritten signature in cursive script that reads "Bruce Granville Miller".

Bruce Granville Miller, PhD
Professor, Anthropology

Exhibit C: May 7, 2013

Expert Opinion Letter

from Jay Miller, Ph.D.,

with attachments ("Jay

Miller Report")

Nooksack Pedigrees
RE: Annie George Mack James

Nooksack People, living on the slopes of Mount Baker and speaking a distinctive Central Coast Salish language, meshed into the regional native cultures. Families interlinked within overlapping networks, as many scholars have noted, especially myself, Dr. William Elmendorf, Dr. Wayne Suttles, and Dr. Dorothy Kennedy.¹ Highest prestige came from neighbors and others outside the home community, so intermarriage with important families in those networks farther away assured nobility across generations.

Diseases triggered what is called "Morey's Law" whereby upriver peoples moved downriver to occupy orphaned lands after many coastal people died off before and after 1800. As a result, many Nooksack moved down off the slopes and along the Fraser and other rivers, spreading members widely. US law and boundaries further complicated these networks, but they persisted.

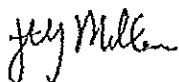
Periodic censuses were taken to determine the numbers of tribes and service populations, but no census was fully effective and portions of tribes were always missed, both by accident and by malicious intent of US or tribal officials.

The attached certified BIA documentation from Louie George's probate file (PO 61 K71) raises all of these issues since both his parents Matsqui George and Madeline appear in US records as full-blooded Nooksack Indians, yet his half-sister Annie George Mack James, and especially her children, were left out.

Louie is on the 1942 US Indian Census Roll, but Annie is not. Although I am of the opinion that Annie was entitled to be on that federal Census, she was possibly omitted by simple clerical error. In any event, Annie undoubtedly meets Nooksack membership criteria as set out in the 24 September 1973 Constitution and Bylaws of the Nooksack Indian Tribe of Washington as amended.

In all, it is my informed professional opinion that because at least Matsqui George was Nooksack by blood, his biological daughter, Annie George Mack James, was too. As such, Annie and her heirs are fully qualified to be enrolled Nooksack, as they have been for decades.

Sincerely,



Dr Jay Miller
Seattle, Washington
7 May 2013

Attachments: Certified Probate Records (PO 61 K71)
Curriculum Vitae

¹ Jay Miller, *Lushootseed Culture and the Shamanic Odyssey: An Anchored Radiance*, 1999; Dorothy Kennedy, *Looking For The Tribe In The Wrong Places: An Examination Of The Central Coast Salish Social Network*, 1993; *Threads To The Past: Construction and Transformation of Kinship In Coast Salish Social Networks*, 2000.



United States Department of the Interior

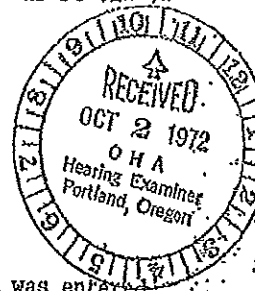
OFFICE OF HEARINGS AND APPEALS

Box 3785, Portland, Oregon 97208

IN REPLY REFER TO:

PROBATE
IDENTIFICATION Nos.

IP PO 61K 71



EXAMINERS NOTICE
TO ALL PERSONS HAVING AN INTEREST IN THE
SUBJECT MATTER OF THIS PROCEEDING

NOTICE IS GIVEN That on September 28, 1972 a decision was entered
in the estate of Louis (Louis) George, Nooksack (Unallotted)
A copy is attached to this notice.

THIS DECISION BECOMES FINAL SIXTY (60) DAYS FROM THE DATE OF MAILING OF THIS NOTICE UNLESS
WITHIN SUCH PERIOD A WRITTEN PETITION FOR REHEARING SHALL HAVE BEEN FILED WITH THE SUPERINTENDENT BY
AN AGGRIEVED PARTY IN ACCORDANCE WITH THE PROVISIONS OF 43 CFR 4.241.

THE PETITION FOR REHEARING MUST BE UNDER OATH AND MUST GIVE A CONCISE BUT COMPLETE STATEMENT
OF THE GROUNDS UPON WHICH IT IS BASED. IF IT IS BASED UPON NEWLY DISCOVERED EVIDENCE, IT SHALL BE
ACCOMPANIED BY THE AFFIDAVITS OF WITNESSES STATING FULLY WHAT THE NEW TESTIMONY IS TO BE. THE
PETITION SHALL INCLUDE THE PETITIONER'S JUSTIFIABLE REASONS FOR THE FAILURE TO DISCOVER AND PRESENT
THAT EVIDENCE, TENDERED AS NEW, AT THE HEARINGS HELD PRIOR TO THE ISSUANCE OF THE DECISION.

NO CLAIMS SHALL BE PAID AND NO DISTRIBUTION SHALL BE MADE DURING THE Pendency OF PROCEEDINGS
FOLLOWING THE FILING OF A PETITION FOR REHEARING, EXCEPT AS SPECIFICALLY AUTHORIZED BY THE EXAMINER.

The probate fee of \$ 30.00 is to be collected and distribution of the
estate and payment of claims will be made by the Superintendent of the
Western Washington Indian Agency, Everett, Washington. For
information thereon consult the Superintendent.

PARTICULAR NOTICE IS GIVEN TO PARTIES IN INTEREST HERE NAMED:

Title Plant, BIA, Portland, Oregon (original),
Western Washington Indian Agency, Federal Bld'g., 3006 Colby Avenue, Everett,
Wash. 98201 (Probate & IIM Divisions),
Examiner's Accounting Copy,

Mr. Cornelius Kelleher, 2742 Maple Ave., Abbotsford, B. C., Canada,
Mr. Franklin Hawley, C/o Indian Agency, Everett, Wash.,
Mr. Ernest Hawley, Do
Mr. George Sampson, Rt. 2, Everson, Wash. 98247,
Mrs. Mary Thomas, Rt. 1, Everson, Wash., (current address unknown)

Department of Public Assistance, State of Washington, Box 1162, Olympia, Wash.
98501.

Dated and mailed: 9/28/72.

By: ELAINE B. KIKES
(signature)

R. J. MONTGOMERY,
Hearing Examiner

OFFICIAL

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
PO BOX 3785, PORTLAND, OREGON 97208

ORDER DETERMINING HEIRS

WHEREAS, Louis (Louie) George, Allottee No. Unallotted
of the Nooksack Indian Tribe
in the State of Washington died intestate possessed of trust or restricted
property on January 14, 1966 at the age of 89 years, and
WHEREAS, a hearing was duly held/concluded at Bellingham, Washington
on May 15, 1967, for the purpose of ascertaining the heirs of said decedent:

NOW, THEREFORE, by virtue of the power and authority vested in the Secretary of the Interior
by section 1 of the act of June 25, 1910 (25 USC 872), and other applicable statutes, and pursuant to
28 CFR 1.101 I hereby find that the heirs of said decedent, determined in accordance with the laws of
the State of Washington and their respective shares in decedent's estate are:

Cornelius Kelleher, Canadian Indian (Born 1872)	Half-brother (Same Mother)	4/8
George Sampson, Nooksack (Unal.) (born 10-30-21)	Nephew	1/8
Mary Sampson Thomas, do. (born 12-5-25)	Niece	1/8
Ernest Hawley, do. (born 1914)	Nephew	1/8
Franklin Hawley, do. (born 1918)	Nephew	1/8

Cornelius Kelleher, being Canadian, takes his interest in this estate in a
non-trust fee status.

The records indicated that Franklin Hawley, nephew, may have been adopted by
the decedent, but no proof of such adoption is filed.

The claim of the Department of Public Assistance, State of Washington, Box 1162,
Olympia, Washington, for decedent's funeral, in the sum of \$300.00, is approved and
the Superintendent or other officer in charge of the Western Washington Indian Agency,
is authorized to pay this claim from funds to the credit of the estate or which may
hereafter accrue thereto, after the payment of the probate fee.

The estate of said decedent subject to the jurisdiction of this Department having been valued at
\$ 2,000.00, a fee of \$ 30.00 shall be collected by the Superintendent or
other officer in charge, pursuant to the act of January 24, 1923 (25 USC 877).

Done at the city of Portland, Oregon and dated September 28, 1972.

THE VALUE SHOWN IN THIS ORDER MAY BE AN ESTIMATE.

It is made for the purpose of fixing the probate fee required
by law to be collected and it may not necessarily represent
the present market value of the property. Further investiga-
tion of values should be made before entering into any
negotiations involving this property.

R. J. MONTGOMERY

Hearing Examiner.

DEPARTMENT OF THE INTERIOR, OFFICE OF HEARINGS AND APPEALS

REGULATIONS OF THE UNITED STATES DEPARTMENT OF THE INTERIOR

43 CFR 4.251 Priority of Claims

After allowance of the costs of administration, including the probate fee, claims shall be allowed:

(a) Priority in payment shall be allowed in the following order except as otherwise provided in paragraph (b) of this section;

(1) Claims for expenses for last illness not in excess of \$500, and for funeral expenses not in excess of \$500;

(2) Claims of unsecured indebtedness to the United States or any of its agencies;

(3) Claims of unsecured indebtedness to a Tribe or to any of its subsidiary organizations;

(4) Claims of general creditors, including that portion of expenses of last illness not previously authorized in excess of \$500, and that portion of funeral charges not previously authorized in excess of \$500.

(b) The preference of the probate fee and of other claims may be deferred, in the discretion of the Examiner, in making adjustments or compromises beneficial to the estate,

(c) No claims of general creditors shall be allowed if the value of the estate is \$2,500 or less and the decedent is survived by a spouse or by one or more minor children. In no event shall claims be allowed in an aggregate amount which is in excess of the valuation of the estate; the general creditors' claims may be prorated or disallowed entirely, and the preferred claims may be prorated subject to the limitations contained in paragraph (d) of this section.

(d) If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

(e) In the event that it is determined that a part or portion of the estate is to lose its trust character pursuant to findings made under §4.206, then the Examiner may in his discretion prorate all claims and reduce the allowance thereof on a ratio comparable with that existing between the total value of the estate and the value of that portion which is to lose its trust character.

§4.252 Property subject to claims.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS

SUMMARY OF FAMILY HISTORY AND INVENTORY

ESTATE OF Louis (Louie) George TRIBAL Hooksett No. Unallotted
MARRIAGES. Died 1/14/1966, age 89, intestate.

NAMES	MARRIED		DATE OF DEATH	DIVORCED		TRIBE AND ALLIANCE NUMBER (If white, so state)
	Date	How		Date	How	
Josie Sampson George	1900	License	11/23/54	Not Divorced		Hooksett (Una)

CHILDREN. (Show facts regarding illegitimacy and adoption under "Additional Information.")

NAMES	SEX AND AGE	NAME OF OTHER PARENT	DATE OF DEATH
None			

CHILDREN OF DECEASED CHILDREN.

NAMES	SEX AND AGE	NAMES OF BOTH PARENTS (If one is white, so state)	DATE OF DEATH
None			

PARENTS. (If either is white, so state.)

NAMES	MARRIED		DATE OF DEATH	TRIAL AND ALLOTMENT NOTICE (If white, so state)
	Date	How		
Father: Matsqui George	B/A	License	B/A	Hooksack (Unal)
Mother: Madeline George	B/A	Do	1905	Do

BROTHERS AND SISTERS.

NAMES	SEX AND AGE	NAME OF COMMON PARENT IF NOT OF WHOLE BLOOD	DATE OF DEATH
Amanda Hawley George	F. (born) Adult	Whole Blood	2/14/1932
Cornelius Kelleher	M. 1872	Madeline George.	Living

CHILDREN OF DECEASED BROTHERS OR SISTERS.

NAMES	SEX AND AGE	NAMES OF BOTH PARENTS	DATE OF DEATH
George Sampson	M. 10/30/1921	Fa. William Sampson Mo. Amanda Hawley George	Living
Mary Sampson Thomas	F. 12/5/1925	Do	Living
Ernest Hawley	M. 1914	Fa. Lick Hawley Mo. Amanda Hawley George	Living
Franklin Hawley	M. 1918	Do	Living

35844

GRANDPARENTS. (If any are white, so state.)

NAMES	MARRIED		DATE OF DEATH	TOMB AND ALLOTMENT NUMBER (If white, so state)
	Date	How		
Paternal gf, Not Shown				
Paternal gm, Do				
Maternal gf, Do				
Maternal gm, Do				

COLLATERAL RELATIVES. (Give line of descent from common ancestor of decedent; give names and designate parents and grandparents of heir, in line from common ancestor by letters *f, m, s, gm, ggf, ggm*, etc.)

NAMES OF NEAREST RELATIVES WHO SURVIVED DECEDENT	IS DEAD. GIVE DATE; AND USE EXTRA SHEETS FOR SURVIVING FAMILY	HOW RELATED--DEGREE	ANCESTRY IN LINE FROM COMMON ANCESTOR
Not involved.			

ADDITIONAL INFORMATION. (Discuss all material facts not clearly stated elsewhere herein. Attach extra sheets if necessary.)

16-57112-2

None

INVENTORY OF ESTATE, SO FAR AS KNOWN, UNDER GOVERNMENT CONTROL.

PERSONAL PROPERTY.

AMOUNT	DESCRIPTION AND SOURCE	WAS AT DEATH
None at death		

REAL PROPERTY. (Show allotment number, name and description of original allotment. Show all inherited interests, with number and name of allottee, fractional share, and probate numbers; and all interests acquired by partition, purchase, or otherwise. Use extra sheets as required.)

16-57212-1 U. S. GOVERNMENT PRINTING OFFICE

DECEDENT WAS NOT ALLOTTED

Value of trust realty \$2,000.00
 Value of trust personalty at death None
 Total value of trust estate at death \$2,000.00

GPO 932-147

CERTIFICATE OF APPRAISEMENT

ESTATE OF LOUIS (LOUIE) GEORGE, NOORSACK UNALOTTED

INHERITED INTERESTS:

1/4 Interest in Homestead allotment H. C. 4096, Sampson Kantla, Pro. P-162-36, described as: Lot 3, Sec. 21, T. 39 N., R. 4 E., Willamette Meridian, Washington, containing 31.23 acres. (1/4 thru Josie Sampson George, Pro. 9991-36).

1/4 interest Estimated Appraisal \$ 1,000.00

ALL interest in a portion of Homestead allotment H. C. 3912, Tom Buchanan, Pro. 4269-19, described as: ~~Homestead~~ Sec. 18, T. 39 N., R. 4 E., Willamette Meridian, Washington, containing .9 acres. (Thru Mary Buchanan, Pro. 8906-38).

1/4 interest Estimated Appraisal \$ 1,000.00

TOTAL ESTIMATED APPRAISAL \$ 2,000.00

JIM Account No. 0 None

By Robert Deakery
Robert Deakery, Probate Clerk
Western Washington Agency
September 13, 1968



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE REGIONAL SOLICITOR

IN THE MATTER OF THE ESTATE OF:

April 5, 1967

Louis (Louie) George, Hooksack (Unallotted)
Deceased.

Notice of Hearing To Determine Heirs or Probate Will
and NOTICE TO CREDITORS

Franklin Hawley, C/o Whatcom County Welfare Office, Bellingham, Wash. 98225,
Counseling Kelleher, Abbotsford, B. C., Canada,
Mildred Sampson, Rt. 2, Everson, Wash. 98247,
Joe Louis, Bt. 2, Do
Mr. Roy S. George, Box 134, Everson, Wash. 98247,
Leo Sampson, C/o Mr. Roy S. George,
DUI

ANY OTHER PARTIES WHO MAY BE INTERESTED.

CLAIMANT:

Department of Public Assistance, Support Enforcement and Collections Unit,
PO Box 1162, Olympia, Wash. 98501

Notice is HEREBY GIVEN that on MONDAY, May 15, 1967, at 3:30 PM

at Room 208, Old Postoffice Bldg., Cornwell & Magnolia, Bellingham, Wash. I will take testimony and receive evidence for the purpose of determining the heirs, or probating the will if a will be found, of Louis (Louie) George and to consider creditors' claims.

If sufficient reason appears, the Examiner of Inheritance, in his discretion, may continue the hearing to another time and place to be announced at the hearing.

All persons having an interest in the estate of the above-named decedent, and all creditors having claims against said estate, are hereby notified to be present at the hearing and furnish such evidence as they desire. Persons interested in the estate as probable heirs should make sure there are also present at the hearing at least two disinterested witnesses who know and can testify as to the family history of the decedent and the relationship of such probable heirs to the decedent.

This hearing is to be held pursuant to the act of June 25, 1910 (36 Stat. 855), as amended by the act of February 14, 1913 (37 Stat. 678), and the Probate Regulations of the Department of the Interior, Code of Federal Regulations, title 25, chapter I, subchapter J, part 15.

POSTED AT: Indian Agency, Everett, Wash.

Postoffices at:

Narrishta, Wash.,

Ferndale, Wash.,

Bellingham, Wash.,

Everson, Wash.

R. J. MONTGOMERY

Examiner of Inheritance,

I certify that copies of the within notice were publicly posted at the several places hereon listed for the 21 days next preceding the date of hearing, and that copies were mailed to all parties above named. (SOD) R. J. MONTGOMERY
EXAMINER OF INHERITANCE

MAIL ADDRESS: Box 36212

Portland, Oregon 97202

IN THE MATTER OF THE ESTATE OF: }
Louis George

CLAIM OF
Department of Public
Name: Assistance
Address: Support Enforcement and
Collections Unit
P. O. Box 1162
Olympia, Washington

ITEMIZED STATEMENT

PUBLIC ASSISTANCE

FUNERAL * \$300.00
1-17-66

Balance due and unpaid * \$300.00



I, the above mentioned claimant solemnly swear that the foregoing claim is just and true; that the above was furnished to said decedent at his request; that no part thereof has been paid, except _____; that there are no offsets against said claim and there is still due and owing thereon from the said decedent to claimant, the sum of \$ 300.00.

Subscribed and sworn to before me this 15th day of February 19 66

Paul R. [Signature] Supervisor
Paul R. [Signature] Claimant
Notary Public in and for the State of
Washington, residing at Olympia

My commission expires May 21, 1967

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS

INDIAN PROBATE

IN THE MATTER OF THE ESTATE OF]
Louis (Louis) George, Hocksack]
(Unallotted) of the Western]
Washington Indian Agency,]
Everett, Washington]

DECEASED

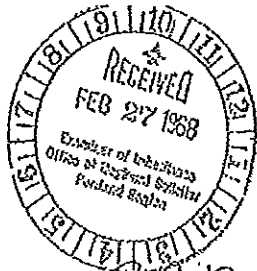
NO. IP FO 62K 71

Bellingham, Washington

Monday, May 15, 1967

TRANSCRIPT OF PROCEEDINGS BEFORE:

RICHARD J. MONTGOMERY, HEARING EXAMINER



274 2 Maple Ave.,
Abbotsford, B.C.
Feb. 24, 1968.

R. J. Montgomery
United States Dept. of Interior
Portland, Oregon. 97208

Dear Mr. Montgomery,

Re Probate of estate
of Louis George, deceased Nooksack.
After writing you, yesterday, Feb. 23/68
my dad spoke again about Annie Mac
he says she is a half sister, in that
Uncle Louis George's father, Matsqui George,
and Annie Mac had the same father, but
different mothers. He does not know about
her children.

The reason we did not attend the hearing
last May 1967 re Louis George's estate is my
dad doesn't want to have any part
of the estate, and is quite willing for the
heirs in the Nooksack tribe to have the
proceeds of the estate of Louis George.
We hope this will help you settle the
estate.

Thanking you,

Sincerely,

(Miss) Irene M. Kelleher

EXAMINER: This is the time and place set for the hearing in the matter of the estate of Louis A. (Louis) George, Hoodsack (Unallotted).

PERSONS PRESENT:

R. J. Montgomery, Hearing Examiner.

George Samson, Nephew, Rt. 2, Everson, Wash. 98247,
Mary Thomas, Niece, Rt. 1, Everson, Wash.,
Roy B. George, Box 134, Everson, Wash., (witness)
Norbert Charles, Marietta, Wash. (witness), 98268,
Addie Charles (witness), Marietta, Wash.

DOCUMENTS FILED:

Letters, dated 2/23/68 and 2/24/68, from Miss Irene Kelleher, daughter of
Cornelius Kelleher, 1/2 brother of decedent.

Examiner explained the purpose of the hearing and all witnesses sworn and testified.

2742 Maple Ave.,
Abbotsford, B.C.
Feb. 23, 1968.

United States Dept. of Interior,
P.O. Box 3621 Portland, Oregon, 97208.

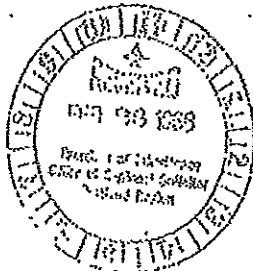
Dear Mr. Montgomery, -

Re. probate of estate
of Louis George, deceased. Nooksack.

My dad knows about Annie Mack,
(Annie Joe) but, he says she is not related
to Louis George. She did live in Chilliwack,
B.C. but moved around a great deal.

My dad is a citizen of Canada - his
mother went to her people at Lynden, Washington
where he was born, but she came back
to her home at Mission City, B.C. Columbia
soon after his birth. His baptism is registered
at the C. M. I. Mission school, Mission City, B.C.
He was born April 22, 1872.

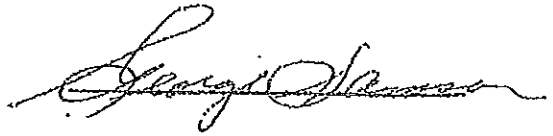
Sincerely,
(Miss) Irene J. Kelleher



Estate of Louis (Louie) George, Nooksack (Unallotted)

George Samson, being first duly sworn, testifies as follows:

I do solemnly swear that the testimony I am about to give in the matter now pending, entitled the matter of the estate of the decedent, shown above will be the truth, the whole truth and nothing but the truth, so help me God.



Subscribed and sworn to before me this 15th day of

May, 1967, at Bellingham, Washington.

Examiner of Inheritance.

- Q. What is your name, age, and mailing address?
A. George Samson, I was born October 30, 1921, and live at Everson, Washington, Route 2.
- Q. To what tribe do you belong?
A. Nooksack tribe.
- Q. Did you know William Samson (Sampaon)?
A. Yes, my father.
- Q. Is he living?
A. No, he died February 13, 1957.
- Q. How old was he when he died?
A. About 81 years old.
- Q. Who was your mother?
A. Amanda George, a Nooksack, who died February 14, 1932.
- Q. When and how were they married?
A. By license before allotment time.
- Q. How many children did your father have by your mother?
A. As follows:
1. Myself, (George Samson).
2. Mary Ann Samson Thomas, daughter, born 12-5-23, living now at Everson, Washington, Rte 1.

Estate of Louis (Louie) George, Nooksack (Unallotted)
Testimony of George Samson, contd.---

3. Louie Sampson, son, died 1943, age 14, no issue.

Q. Did your father and mother live together all the time until your mother died?

A. Yes.

Q. After your mother died, did your father marry again?

A. No.

Q. Did he have a wife before your mother?

A. Yes, Lizzie George Samson, a Lummi, who died before my parents married.

Q. Did your father have children by Lizzie?

A. Yes, Matilda (Mathilda) Sampson, age 54, living now.

Q. Did your father have a child by any other woman besides your mother and Lizzie George?

A. No.

Q. Did he adopt a child?

A. No.

Q. Did he make a will?

A. No.

Q. Where was he living when he died?

A. Everson, Washington.

Q. Did you know Louis (Louie) George?

A. Yes.

Q. Is he living?

A. No, he died January 14, 1966.

Q. How old was he when he died?

A. About 89 years old.

Q. Did Louis George ever marry?

A. No.

Q. Did he have a child by any woman?

A. No.

Q. Did he adopt a child?

A. No.

Q. Did he make a will?

A. No.

Estate of Louis (Louis) George, Hooksack (Unallotted)
Testimony of George Samson, contd.,---

- Q. Where was Louis George living when he died?
A. Route 2, Everson, Washington.
- Q. Do you know a man named Franklin Hawley?
A. Yes.
- Q. Where is he living?
A. The last I knew was Bainbridge Island, Winslow, Washington.
- Q. Did you ever hear that Louis George adopted Franklin Hawley?
A. Not through the Courts.
- Q. Did Franklin Hawley live at the home of Louis George?
A. Yes, on Route 2, Everson, Washington.
- Q. What would be the Courthouse there?
A. Bellingham, Washington.
- Q. Did you know the father of Louis George?
A. No.
- Q. Did you ever hear what his name was?
A. No. Birth certificate at school in Mission, B.C.
- Q. Did you know the mother of Louis George?
A. No.
- Q. Did you ever hear what her name was?
A. No.
- Q. Are you related to Louis George?
A. Yes, my mother, Amanda George, was a full sister to Louis George.
- Q. Did they have the same father and same mother?
A. Yes, as far as I know.
- Q. Did Louis George have any other sisters?
A. Yes, Annie Mack (Annie Joe), from Canada, died about 1940. She was a half-sister to Louis George, I think they had the same mother.
- Q. Did Annie Mack have children?
A. Yes, but none living now that I know of.
- Q. Where was Annie Mack living when she died?
A. Chilliwack, B.C., under Vancouver Indian Agency.
- Q. Did Louis George have any full brothers?
A. No.

Estate of Louis (Louie) George, Nooksack (Unallotted)
Testimony of George Samson, contd.---

- Q. Did Louis George have any half-brothers?
A. Yes, Cornelius Kelleher, age about 96, living now in Canada.
- Q. Did Cornelius and Louis George have the same father or same mother?
A. I think the same mother.
- Q. Is Cornelius the only half-blood relation you know about?
A. Yes.
- Q. The Dept. of Public Assistance, Olympia, Washington, has a claim in the sum of \$300.00, for funeral expenses, do you know about that?
A. I think the Welfare buried him.
- Q. Is there anything else you wish to say?
A. No.

I certify that this transcript contains a true and correct recital of the testimony as given by this witness, George Samson.

(S&D) R. J. MONTGOMERY
Examiner of Inheritance

Estate of Louis (Louie) George, Nooksack (Unallotted)

Mary Thomas, being first duly sworn, testifies as follows:

Q. What is your name, age, and mailing address?

A. Mary Thomas, I was born December 5, 1925, and live at Everson, Washington, Route 1.

Q. You have heard the testimony of your brother, George Samson, about the family history of William Samson and Louis (Louie) George, is that all true and correct?

A. Yes.

Q. Is there anything else you wish to say?

A. No.

I certify that this is a true and correct recital of the testimony as given before me, under oath, by the above person, this 15th day of May, 1967, at Bellingham, Washington.

(SGD) R. J. MONTGOMERY
Examiner of Inheritance

Estate of Louis (Louie) George, Nooksack (Unallotted)

Norbert Charles, being first duly sworn, testifies as follows:

- Q. What is your name, age, and mailing address?
A. Norbert Charles, I was born February 22, 1907, and live at Marietta, Washington.
- Q. To what tribe do you belong?
A. Nooksack tribe.
- Q. Did you know Louis George?
A. Yes.
- Q. Is he living?
A. No, he died January 14, 1966.
- Q. Did he ever get married?
A. He lived with a woman until she died, before allotment time; it was Josie Sampson, sister to William Sampson.
- Q. Did Louis George have children by her?
A. No.
- Q. Did he have a child by any woman?
A. No.
- Q. Did he adopt a child?
A. Not legally.
- Q. Did he make a will?
A. Not that I know of.
- Q. Did you know the father of Louis George?
A. No, he died long ago.
- Q. Did you know the mother of Louis George?
A. No, but she was a sister to my grandmother, my mother's mother, my grandmother was Mary ~~Tuchan~~ Tuchanon.
- Q. You say Louis' mother was a sister to Mary ~~Tuchan~~ Tuchanon?
A. Yes.
- Q. Did Louis George have any full blood sisters?
A. Yes, Amanda Hawley George, who died in 1932.
- Q. Did Amanda have children?
A. Yes, as follows:
1. Ernest Hawley, son, don't know if he is living now.
2. Franklin Hawley (Hanley), living now.
3. George Sampson (Samson), living now.
4. Mary Sampson Thomas, living now.

Estate of Louis (Louie) George, Nooksack (Unallotted)
Testimony of Norbert Charles, contd.,----

- Q. Who was the father of Ernest and Franklin?
A. Dick Hawley, who died in 1927.
- Q. Who was the father of George and Mary Sampson?
A. William Sampson, who died.
- Q. Was Amanda married to William Sampson and Dick Hawley?
A. Yes.
- Q. Did Louis George have any full blood brothers?
A. Yes, two brothers, but they left no children.
- Q. Did Louis George have any half-blood sisters?
A. Yes, Annie Mack, half-sister, who died in Canada.
- Q. Does Annie Mack have children?
A. She did have, but don't know if they are living.
- Q. Did Louis George have any half-blood brothers?
A. Yes, Cornelius Kelleher, half-brother, by the same mother, living now.
- Q. Do you know the parents of Cornelius Kelleher?
A. His mother was a sister to my grandmother, Mary ~~TUCKER~~ Tuckanon.
- Q. Is there anything else you wish to say?
A. No.

I certify that this is a true and correct recital of the testimony as given before me, under oath, by the above person at Bellingham, Washington, on May 15, 1967.

(SGD) R. J. MONTGOMERY
Examiner of Inheritance

Estate of Louis (Louie) George, Nooksack (Unallotted)

Roy S. George, being first duly sworn, testifies as follows:

Q. What is your name, age, and mailing address?

A. Roy S. George, I was born August 17, 1924, and live at Everson, Washington, P. O. Box 134.

Q. To what tribe do you belong?

A. Nooksack tribe.

Q. Did you know Louis (Louie) George and William Samson?

A. Yes.

Q. Are they living?

A. No, both died; William Samson died in 1957, and Louis George died in 1966.

Q. You have heard the testimony given by George Samson about the family history of William Samson, is that all true and correct?

A. Yes, that is correct.

Q. You also heard the testimony given by George Samson about the family history of Louis (Louie) George; to the best and belief of your knowledge, do you think that is all true and correct?

A. Yes.

Q. Do you claim any interest in this matter?

A. No.

Q. Is there anything else you wish to say?

A. No.

I certify that this is a true and correct recital of the testimony as given before me, under oath, by Roy S. George, at Bellingham, Washington, on this 15th day of May, 1967.

(SGD) R. J. MONTGOMERY
Examiner of Inheritance

Estate of . Louis (Louie) George, Nooksack (Unallotted)

Addie Charles, being first duly sworn, testifies as follows:

Q. What is your name, age, and mailing address?

A. Addie Charles, I was born December 6, 1910, and live at Marietta, Washington.

Q. To what tribe do you belong?

A. Colville tribe.

Q. Did you know Louis George?

A. Yes.

Q. Is he living?

A. No, he died January 14, 1966.

Q. Did he ever get married?

A. He lived with a woman until she died. She died before allotment time. Her name was Josie Sampson, a sister to William Sampson.

Q. Did Louis have children by her?

A. No.

Q. Did he have a child by any woman?

A. No.

Q. Did he adopt a child?

A. Not legally.

Q. Did he make a will?

A. Not that I know of.

Q. Did you know the father of Louis George?

A. No, he died long ago.

Q. Did you know the mother of Louis George?

A. No.

Q. Did Louis George have any full blood sisters?

A. Amanda Hawley George, who died in 1932.

Q. Did Amanda have children?

A. Yes, as follows:

1. Ernest Hawley, son, don't know if he is living now.
2. Franklin Hawley, living now.
3. George Samson, living now.
4. Mary Samson Thomas, living now.

Q. Who was the father of Ernest and Franklin?

A. Dick Hawley, who died in 1927.

Q. Who was the father of George and Mary?

A. William Samson (Sampson), he died.

Estate of Louis (Louie) George, Nooksack (Unallotted)
Testimony of Addie Charles, contd,---

Q. Was Amanda married to Dick Hawley and William Samson?

A. Yes.

Q. Did Louis George have any full blood brothers?

A. Yes, two brothers, but they left no children.

Q. Did Louis have any half-blood sisters?

A. Yes, Annie Mack, she died in Canada.

Q. Did Annie Mack have any children?

A. She did have, but I don't know if they are living.

Q. Did Louis have any half-blood brothers?

A. Yes, Cornelius Kelleher, half-brother by same mother, living now.

Q. Do you know the parents of Cornelius Kelleher?

A. No.

Q. Is there anything else you wish to say?

A. No.

I certify that this is a true and correct recital of the testimony as given before me, under oath, by the above person at Bellingham, Washington, on May 15, 1967.

(SGD) R. J. MONTGOMERY
Examiner of Inheritance

Estate of Louis (Louie) George, Nooksack (Unallotted)

Joe Louie, being first duly sworn, testifies as follows:

Q. What is your name, age, and mailing address?

A. Joe Louie, I was born September 15, 1894, and live at Everson, Washington, 6613 Mission Road.

Q. To what tribe do you belong?

A. Nooksack tribe.

Q. Did you know Louis (Louie) George?

A. Yes.

Q. Is he living?

A. No, he died January 15, 1966.

Q. Are you related to Louis George?

A. Yes.

Q. Was your mother or your father related to Louis George?

A. My mother, Annie Louie, who died long ago.

Q. Was Annie Louie related to Louis' father or mother?

A. Louis' mother, who died.

Q. What relation was Annie to Louis' mother?

A. I think they were sisters. He claimed me as a second cousin.

Q. Did you know the father of Louis George?

A. No.

Q. Did Louis George have any full sisters?

A. Yes, Amanda George, she died.

Q. Did Amanda George have children?

A. Yes, as follows:

1. Fred Harnay, son, who died without issue.
2. Ernest (John) Hawley, son, living now on Vishon Island, Washington.
3. Franklin Hawley, son, living now at Bainbridge Island, Winslow, Wa.
4. George Samson, son, living now.
5. Mary Thomas, daughter, living now.

Q. Who was the father of Fred Harry?

A. Peter Fidel, from Canada.

Q. Who was the father of Franklin and Ernest Hawley?

A. Dick Hawley, who died.

Q. Who was the father of George Samson and Mary Thomas?

A. Willie Sampson, who died.

Estate of Louis (Louie) George, Nooksack (Unallotted)
Testimony of Joe Louie, contd.---

- Q. Did Willie Sampson have any full blood sisters?
A. Yes, but all died without issue.
- Q. Did Louis George x have any full blood brothers?
A. Two, but both died without issue long ago.
- Q. Did Louis George have any half-blood brothers?
A. Yes, Cornelius Kelleher, living now at Abbotsford, B.C.
- Q. Did Louis and Cornelius have the same father or same mother?
A. Same mother.
- Q. Did you ever know the father of Cornelius Kelleher?
A. No.
- Q. Did Louis George have any half-blood sisters?
A. Yes, Annie Mack, who died.
- Q. Does Annie Mack have any children living now?
A. Yes, some are living now at Chilliwack, B.C.
- Q. Who was the father of Annie's children?
A. Andrew Mack, who died.
- Q. Do you know the first names of any of Annie's children?
A. No.
- Q. Is there anything else you wish to say?
A. No.

I certify that this is a true and correct recital of the testimony as given before me, under oath, by the above person, at Bellingham, Washington, on May 15, 1967.

(SGD) R. J. MONTGOMERY
Examiner of Inheritance

April 5, 1967

Notice of Hearing To Determine Heirs or Probate Will
and NOTICE TO CREDITORS

Franklin Hawley, c/o Whitson County, Hallara 94140, Billingham, Wash, 98227,
Bernolius Kallander, Abbotstown, B. C., Canada, 2774-7448, 91157,
Harold Samson, Rt. 2, Grosvenor, Wash, 98277,
Joe Louis, Rt. 2, " " " "
Mr. Roy H. Grosvenor, Box 134, Grosvenor, Wash, 98277,
Leo Samson, c/o Mr. Roy H. Grosvenor,
and

参考文献

Department of Public Assistance, Support Enforcement and Collections Unit,
PO Box 1162, Olympia, Wash. 98501

NOTICE IS HEREBY GIVEN that on WEDNESDAY, May 15, 1967 at 3:30 PM

at Room 200, Old Post Office Bldg., Kansas City, Mo. I will take testimony and receive evidence for the purpose of determining the heirs, or probating the will if a will be found, of Louis (Louis) George and to consider creditors' claims.

If sufficient reason appears, the Examiner of Inheritance, in his discretion, may continue the hearing to another time and place to be announced at the hearing.

All persons having an interest in the estate of the above-named decedent, and all creditors having claims against said estate, are hereby notified to be present at the hearing and furnish such evidence as they desire. Persons interested in the estate as probable heirs should make sure there are also present at the hearing at least two disinterested witnesses who know and can testify as to the family history of the decedent and the relationship of such probable heirs to the decedent.

This hearing is to be held pursuant to the act of June 25, 1910 (36 Stat. 855), as amended by the act of February 14, 1913 (37 Stat. 678), and the Probate Regulations of the Department of the Interior, Code of Federal Regulations, title 25, chapter I, subchapter J, part 15.

POSTED AT Indian Agency, Everett, Wash.
Postoffice at
Harbottle, Wash.
Everett, Wash.
Bellingham, Wash.,
Everett, Wash.

取美、徐增、徐增

Examiner of Inheritance.

MAIL ADDRESS: BOX 3621

Portland, Oregon 97203

Mr. R. J. Montgomery
Examiner of Inheritance

September 13, 1966

John Vaninetti, Real Property Management Officer
Western Washington Agency

Estate of Louis (Louie) George, Nooksack Unallotted. Died:
January 14, 1966

Attached to the Certificate of Appointment, Data for Relationship Finding and
Claims of State of Washington Department of Public Assistance, in the amount
of \$300.00, for subject estate.

There is no record of indebtedness to U. S.

Real Property
Management Officer

RDoulevy

Subject File
Ballroom Chrony
Branch Chrony

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

DATE September 13, 1966

DATA FOR HEIRSHIP FINDING

NAME OF DECEDENT (Give all names by which decedent was known): Louis (Louie) George

TRIBE AND ALLOTMENT OR IDENTIFICATION No. Nooksack Unallotted

DOB: 1876 or 1877

DATE OF DEATH January 14, 1966 AGE _____ IS DEATH CERTIFICATE ON FILE? _____

FATHER'S NAME Matsqui George DATE OF DEATH Unknown ALLOTMENT No. Unknown

MOTHER'S NAME Madeline George DATE OF DEATH 1905 or 1906 ALLOTMENT No. Unknown

DECEDENT'S MARRIAGES (Give name of each spouse, allotment number, date and manner of each marriage, and date and manner of dissolution of each): Married to Josie Sampson George, Nooksack Unallotted; date of marriage unknown, died November 23, 1954.

DID DECEDENT EXECUTE A WILL? None on file (If so, forward all copies except one, which is to be left in agency file, and all previous wills. Show addresses of witnesses to will under "PROBABLE HEIRS," below)

BALANCE TO CREDIT OF DECEDENT'S ACCOUNT AT TIME OF DEATH: \$ 0.00 ACCOUNT No. None

WHAT OTHER TRUST OR RESTRICTED PERSONAL PROPERTY DID DECEDENT OWN? (Give complete description and appraisal, using separate sheet if necessary): See attached Certificate of Appraisal

CLAIMS (Attach all claims to this form, in triplicate, including debts owed the United States, the tribe, general creditors, and claims for old age assistance grants) see attached

PROBABLE HEIRS (For minor heirs and beneficiaries, give name and address of legal guardian or custodian):

<u>Allotment or Identification No.</u>	<u>Name</u>	<u>Relationship</u>	<u>DATE OF BIRTH</u>	<u>Post-office Address</u>
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SEE ATTACHED SHEET

INVENTORY (Attach, in triplicate, complete inventory and appraisal of REAL property, including decedent's own allotment, whether fee patented or not, and all inherited interests. Show date of trust patent covering decedent's own allotment and act under which patented).

16-50107-2 U. S. GOVERNMENT PRINTING OFFICE

DATA FOR HEIRSHIP FINDING - CON'T

Adopted Son - Franklin Hawley, DOB: 1918, Nooksack unallotted, address unknown.

NOTE: Above information taken from the Nooksack Census Rolls of January 1, 1942. We are unable to locate further information concerning the legal adoption of Franklin Hawley by Louis George. The 1928 Nooksack Census Rolls shows Franklin as being a nephew. We have very little information concerning Franklin Hawley. The last correspondence with him was in 1940. At that time he was living with Louis George and refers to him as his uncle. The parents of Franklin are Dick Hawley, Homestead allottee H. G. 3920, who died in 1927. His allotment was sold for taxes prior to his death. As he owned no other property there was no probate. We can show no relationship with Louis George. Franklin's mother was Amanda Hawley, we have no other information on this individual. The records of the Whatcom-San Juan County Welfare Office list Franklin as an adopted son, but no address.

Other Relations: (Information furnished by Whatcom-San Juan County Welfare Office)

Cornelius Kelleher - Halfbrother, address: Abbotsford, British Columbia. Mr. Kelleher furnished us with the names of Louis George's parents. States Louis had no children.

Matilda Sampson - Niece, address: Route 2, Everson, Washington. Several letters written to this individual with no reply.

Louis Sampson - Nephew, address: Unknown.

Joe Louis - Cousin, address: Route 2, Everson, Washington.

Jay Miller, Ph.D.

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Triumphs of Native Ohio: Success Strategies From the Civil Engineering of
Monuments To the Social Engineering of International Alliances. AISES Region
6 Annual Conference April 2006

Editor at the D'Arcy McNickle Center: = 16

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233pp.

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Editor For Lushootseed Press: = 5

The Wisdom of Aunt Susie Sampson Peter, A Skagit Elder (Lushootseed~English) 1994

The Wisdom of Ruth Shelton, A Tulalip Elder (Lushootseed~English) 1995

The Wisdom of Isadore Tom, A Lummi Elder 1995

Vi Hilbert, Jay Miller, and Zalmal Zahir 2001 Puget Sound Geography. Sda?Da? Gel
Dibel? Lesucid? Acaci?albix. A Draft Study of the Thomas Talbot Waterman
Place Name Manuscript and Other Sources, Edited With Additional Material.
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Regaining Dr Herman Haebertlin. Early Anthropology and Museology in Puget Sound,
1916-17. With 4Culture, King County, Revised Yearly and Posted On Line At
Ohio State Library Knowledge Bank.

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Academic Advisor, Time-Life Books: = 2

The Spirit World

Keepers of the Totem

Entire Series, North American Indians, Specific Queries

Academic Advisor, Media

Huchuseda ~ Teachings From the Heart: VI Hilbert (Video) KCTS/PBS &

BBC/Cymru/Wales TV

Teachings of the Tree People: Bruce Miller

Native Honors: [On Request, or See Kan, ed. 2001 above]

Education:

B.A., University of New Mexico (Anthropology, Archaeology, Ethnohistory, Linguistics)

Ph.D., Rutgers University (Anthropology, in Consortium with the Princeton Anthropology Department)

Exhibit Advisor:

National Museum of the American Indian, Custom House, NYC (Northwest), 2005

Seattle Art Museum (Salish), 2008 +

136 titles are listed on this resume, with several more currently in review and publication. Reviews and children's books are not listed here.

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Exhibit D: October 25,
1996 Opinion Letter and
Enrollment Record from
Thomas P. Schlosser

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PLEASE REPLY TO THE
SEATTLE OFFICE

October 25, 1996

Elizabeth M. Johnson
Enrollment Clerk
Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244

Re: Descendants of Louisa Mary James Rapada

Dear Elizabeth:

Thank you for the beautifully prepared tree chart and backup documentation on this family. As I see it, the question whether this information should be used in a proceeding under the Enrollment Ordinance really depends upon Louisa Rapada's ancestry. I can suggest several steps to take in evaluating the ancestry issue.

First, I need a copy of the old Nooksack Constitution, as it existed in 1983. I have the version as amended in 1989. I think the reference in Resolution No. E83-33 to enrolling Louisa Rapada under Article II, section 1(a), means she was determined to be a lineal descendant of a Nooksack public-domain allottee. Also, as I understand it, Madeline Jobe Kanum was a Nooksack original allottee descendant. A key issue in evaluating the validity of enrollment as a descendant of an allottee is whether Madeline is Annie George's mother. (I assume Annie was Louisa Rapada's mother. Resolution No. E83-33 indicates that a birth certificate for Louisa Rapada is part of the file; that is needed but is missing.)

George Samson's testimony in the Louis George probate bears on this and seems to support Resolution E83-33. He says that Annie Mack (Annie Joe) "was a half-sister to Louis George, I think they had the same mother." Is the Annie Mack or Annie Joe he refers to the same person as Annie George James? If so, then George Samson believed Madeline was Annie's mother. Other witnesses at the probate proceeding, including Mary Thomas and Roy S. George agreed with George Samson's account. But Samson's testimony is not supported by the two letters from Irene Kelleher written on February 23 and 24, 1968. Ms. Kelleher reports that her father, Mortimer Kelleher, first said Annie Mack and Louis George were not related, next said that she was his half-sister, and also said that Annie Mack and Matsqui George had the same father, which

Elizabeth M. Johnson
October 25, 1996
Page 2

would make Annie Mack Louis George's aunt. Mortimer Kelleher himself appears to be unrelated to Louis George.

Annie George's birth certificate is a crucial missing document. School records, medical records, marriage records, housing records, census records, death certificate and probate records may also help identify Annie George's parents. The page following Resolution No. E83-33, concerns Skway Band No. 28; it seems to indicate that Annie James was born in 1875 and died February 13, 1949. Where did she live and die?

Another approach that might produce useful information would be the review of Amanda George's records. If she is deceased, does she have a probate? What about Madeline Jobe Kanum's probate? Because the allottee descendant issue rests upon Annie George James' ancestry, the Tribe may have to hire a genealogist unless more records can be obtained. I can make some inquiries about the costs and availability of a genealogist if you would like me to do so.

Another question arises from the probate of Louis George, and that is the lands involved and from whom he inherited them. The homestead patent to Job Kanum is for property in Township 40 N, Range 3 E. The inherited properties in Louis George's probate are in Township 39 N, Range 4 E. From whom did he inherit these properties? Did Job Kanum obtain public domain allotments in addition to his homestead?

I also remain concerned that the focus of this inquiry may be too narrow. Could the descendants of Annie George James qualify under other sections of the Constitution, in particular the category in Article II, section 1(H), that encompasses "persons who possess at least 1/4th degree Indian blood and who can prove Nooksack ancestry to any degree." You must also determine whether Annie George James is listed on the 1942 census roll or received a payment under the 1965 Distribution Act.

Thank you for your patience with me as I try to understand this dispute. You have done a fine job of assembling records on Louisa James' family.

Sincerely,

MORISSET, SCHLOSSER, AYER & JOZWIAK



Thomas P. Schlosser

TPS:sap
sep102596
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Exhibit E: February 5, 2013

Email from Nooksack Tribal

Attorney Grett Hurley, Esq., to

the Bureau of Indian Affairs,

with attachment.

3/18/13

DEPARTMENT OF THE INTERIOR Mail - Question about Louis George Probate



Donald Chambellan, Donald.Chambellan@bia.gov

Question about Louis George Probate

Message:

Grett Hurley <GHurley@nooksack-nsn.gov>
To: "donald.chambellan@bia.gov" <donald.chambellan@bia.gov>

Tue, Feb 5, 2013 at 12:27 PM

Hi Don,

I need your help explaining a description in the Louis George probate. Can I call you about the attached page from the probate?

Grett

Grett Hurley

Tribal Attorney

Office of Tribal Attorney

Nooksack Indian Tribe

5047 Mt. Baker Hwy

P.O. Box 157

Deming, WA 98244

Phone: 360-592 4158 Ext. 1012

Fax: 360-592-2227

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1/2

IRS CIRCULAR 230 DISCLOSURE: The views expressed herein or in any attachments hereto are not intended to constitute a "reliance opinion" under applicable treasury regulations, and accordingly are not intended or written to be used, and may not be used or relied upon, for the purposes of (a) avoiding tax-related penalties that may be imposed by the IRS or (b) promoting, marketing or recommending to another party any tax-related matters addressed herein.

 Louis George Probate Parents Page.pdf
37K

PARENTS. (If either is white, so state.)

NAMES	MARRIED		DATE OF DEATH	TENS AND ALLOTMENT NUMBERS (If white, so state)
	Date	How		
Father: Matsqui George	B/A	License	B/A	Noaknock (Unal)
Mother: Madeline George	B/A	Do	1905	Do

BROTHERS AND SISTERS.

NAMES	SEX AND AGE	NAME OF COMMON PARENT IF NOT OF WHOLE BLOOD	DATE OF DEATH
(b) (6) (b) (6) (b) (6)	F. (born) Adult	Whole Blood	(b) (6) (b) (6)
(b) (6) (b) (6) (b) (6)	M. 1872	Madeline George, ...	Living

CHILDREN OF DECEASED BROTHERS OR SISTERS.

NAMES	SEX AND AGE	NAMES OF BOTH PARENTS	DATE OF DEATH
(b) (6)	M. (b) (6)	Fa. William Sapphon	Living
(b) (6)	F. (b) (6)	Mo. Amanda Hawley George	Living
(b) (6)	M. (b) (6)	Fa. Dick Hawley	Living
(b) (6)	M. (b) (6)	Mo. Amanda Hawley George	Living

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