

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

**In re Gabriel S. Galanda, pro se, Anthony S.
Broadman, pro se, and Ryan D.
Dreveskracht,**

Petitioners,

v.

Nooksack Tribal Court.,

Respondent.

Court No. 2016-CI-CL-002

**Order Re: Petition for Writ of
Mandamus**

Petitioners request that this Court issue a *writ of mandamus*. A *writ of mandamus* “is a writ issuing from a court of competent jurisdiction, commanding an inferior tribunal, board, corporation, or person to perform a purely ministerial duty imposed by law.” *Nebel v. Nebel*, 241 N.C. 491, 499, 85 S.E.2d 876, 882 (1955).

Here, the Petitioners request a *writ of mandamus* directed to the Clerk of the Nooksack Tribal Court that commands her to accept and file their complaint, and related motion, challenging their disbarment by a recent ordinance of the Nooksack Tribal Council. Petitioners aver the Court Clerk refused to accept and file their complaints. Attached to the writ is an April 1, 2016 letter from the Court Clerk rejecting their complaints for filing and advising Petitioners that because they were disbarred and no longer entitled to practice law in tribal court, they were also barred from commencing an action in tribal court as pro se litigants. The letter does not cite any code provision or any other legal authority that prohibits a person who is not entitled to practice law from self-representation in the tribal court.

Based on the Court Clerk’s refusal to accept and file their complaint and related motion the Petitioners submitted their Petition for Writ of Mandamus directly to the Nooksack Appellate

Court by mailing it to the office of the Northwest Indian Tribal Court System (NICS), which administers the Nooksack Appellate Court. While submitting a Petition directly to this Court is unusual, it does not violate any appellate court rule.

Under Title 80 of the Nooksack Tribal Code (hereinafter “NTC”), an appeal from the trial court division of the Nooksack Tribal Court is commenced by “[a] written notice of appeal [that] must be filed with the trial court division of the Nooksack Tribal Court” and then the Court Clerk provide[s] the “Chief Judge of the Court of Appeals with a copy” NTC 80.01.010, 80.04.010 & 80.05.010. Title 80, however, only governs appeals from decisions of the trial court division and the youth court division of the Nooksack Tribal Court. NTC 80.01.010. However, the extraordinary process of a *writ of mandamus* is neither an appeal, nor a substitute for an appeal. *See Ex parte Harding*, 219 U.S. 363, 371 (1911) (a “writ of mandamus . . . cannot be used to perform the office of an appeal or writ of error.” *quoting Ex parte Nebraska*, 209 U.S. 436, 441 (1908)); *see also In Re Politz*, 206 U.S. 323 (1907); *Ex parte Hoard*, 105 U.S. 578 (1881).¹ Thus, the appellate rules in Title 80 of the Nooksack Tribal Code only govern appeals from decisions of the trial courts. The rules do not govern petitions for writs of mandamus.

Because Title 80 does not apply to the extraordinary process of a *writ of mandamus*, two questions arise. First, does the Nooksack Tribal Court have the power to issue the *writ of mandamus* requested by the Petitioners? Second, what is the process through which a petitioner

¹ The reason why a *writ of mandamus* is not a substitute for an appeal also explains the one narrow exception to this rule. As the United States Supreme Court noted in *Re Winn*, 213 U.S. 458 (1909), “Mandamus, it is true, never lies where the party praying for it has another adequate remedy [such as the remedy of an appeal or writ of error] But where, without any right, a court of the United States has wrested from a state court the control of a suit pending in it, an appeal or writ of error, at the end of long proceedings, which must go for naught, is not an adequate remedy. . . . It is only in [such] cases where the record makes it clear, as matter of law, that the circuit court was without jurisdiction to take any action whatever that [there is an exception to the general rule that a writ of mandamus cannot serve as a substitute for an appeal and] the writ of mandamus lies.” Because there is no possibility of an appeal in the present matter as the Court Clerk refused to allow any judicial process whatsoever when she refused to accept and file the complaints submitted by the petitioners, this exception does not apply to the matter before the Court.

should submit and the Court should entertain a petition for such a writ? We take up each question in turn.

To answer the first question, whether the Court has the power to issue the *writ of mandamus* requested by the Petitioners, we consult the Nooksack Tribal Code. But before doing so we observe that while the *mandamus*, like the *quo warranto*, was originally a remedy in the courts of the common law distinct from the injunction issued by the courts of equity, the merger of law and equity brought “together *mandamus* and *quo warranto* at law with the injunction in equity as remedies to be used as justice and expediency demand by a single court which is both a court of law and equity,” and “has resulted in the use of injunctions . . . just as *mandamus* and *quo warranto* are used, . . . , irrespective of their labels at law or in equity prior to code merger.” William F. Walsh, A TREATISE ON EQUITY 279 (1930). The Nooksack Tribal Code does not distinguish between courts of law and equity.

The Nooksack Tribal Court of the Appeals is a division of the Nooksack Tribal Court. NTC 10.05.010 and 80.02.010. NTC 10.00.100 states, in relevant part,

(b) Subject to the Limitation of Remedies in § 10.00.90, any officer, employee or agent of the Nooksack Indian Tribe may be sued in this court to compel him/her to perform his/her non-discretionary duties under the laws of the Nooksack Indian Tribe and the United States.

(1) Relief awarded by the court under this section shall be limited to declaratory or prospective injunctive relief.

(2) This paragraph (b) shall not apply to the Nooksack Tribal Council.

Under this provision the Nooksack Tribal Court, which includes the Court of Appeals, has the authority to issue a permanent injunction directed at an employee of the Tribe that commands him or her to perform his or her nondiscretionary duties under the laws of the Nooksack Indian Tribe. While NTC 10.00.090 prohibits the court from issuing a temporary or preliminary restraining order against an employee of the Tribe, it does not prohibit the issuance

of a permanent injunction. And, because a *mandamus* is equivalent to an injunction, we find this Court as well as the trial court has the power to issue a *writ of mandamus*.

The Court Clerk is an employee of the Nooksack Indian Tribe. The only question is whether the Court Clerk had a nondiscretionary duty to accept and file the Petitioners complaint. A court clerk is an officer of the court who is responsible for performing various administrative and ministerial duties related to the operation of the court, including managing the flow of cases through the court and maintaining official court records. One of the clerk's nondiscretionary, ministerial duties directly related to both the management of the flow of cases through the court and maintenance of official records is the duty to accept every document a person seeks to file with the court. *See* NTC 10.04.020(c) (“[r]ecords kept by the clerk *shall include* a separate file for each case filed in the Tribal Court, with *a copy of every document submitted in the case.*”) (emphasis added). Moreover, a complaint initiating a lawsuit must be filed with the court clerk: “A copy of every complaint . . . shall be filed with the clerk.” NTC § 10.05.040. There is nothing in the Nooksack Tribal Code that purports to confer on the Court Clerk the authority or power to refuse to accept a complaint for filing.

Also, as a practical matter, if a court clerk refuses to file a complaint it prevents the judge from performing his or her duty adjudicate the complaint. NTC 10.03.040. If a defendant believes a complaint fails to state a cause of action, suffers from some other infirmity, or was filed by a party not entitled to file a complaint, the defendant can file the appropriate motion with the court and request the judge dismiss the complaint. The refusal to file a complaint, however, is akin to dismissing the complaint and the Clerk does not have the authority to perform that judicial function. To prevent the judge from performing his or her duty to adjudicate a complaint is tantamount to interfering with a court proceeding, something the Clerk has sworn not to do: “[b]efore taking office, the court clerk shall state in the presence of the judge that he or she will

perform the clerk's duties faithfully and honestly, ... [and] will not attempt to influence the course of court proceedings" NTC 10.040.010(a).

We find that under the above provisions of the code the Court Clerk has a non-discretionary duty under the laws of the Nooksack Indian Tribe to accept and file complaints submitted to the court. Thus, this Court as a division of the Nooksack Tribal Court has the power to issue the *writ of mandamus* requested by the Petitioners.

Having answered the first question in the affirmative, we turn now to the second question: what is the process through which a petitioner should submit and the Court should entertain a petition for a *writ of mandamus*? There is no process in the Nooksack Tribal Code that addresses this question. Nonetheless, NTC 10.03.040(b) provides,

Whenever the Tribal Court has jurisdiction over a person and subject, the court shall have the power to use reasonable means to protect and carry out its jurisdiction. If the means to enforce its jurisdiction are not spelled out in these rules or in the Tribal Code, the court may use any appropriate procedure that is fair and consistent with the spirit and intent of the tribal law being applied.

In exercising its power to use reasonable means to protect and carry out its jurisdiction and develop an appropriate procedure that is fair and consistent with the spirit and intent of the tribal law being applied, this Court does not apply but draws inspiration from Rule 21 of the Federal Rules of Appellate Procedure (Fed. R. App. P.).

Generally, under the Tribe's codes, a party would be required to file a writ with the court clerk and the trial judge would rule on the writ in the first instance. The aggrieved party could then appeal the ruling to this Court by filing a Notice of Appeal. Here, however, Petitioners seek a *writ of mandamus* directed at the Court Clerk because she has allegedly refused to accept and file their complaints. It is unreasonable to expect the Clerk to accept and file a document commencing an action (a petition for *writ of mandamus*), the sole purpose of which is to require

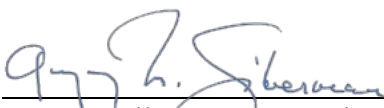
the same Clerk to accept and file another document commencing an action (the complaints) that she has already refused to accept and file. Under these circumstances, if we were to require Petitioners to file their writ with the Clerk and confined our review to the judge's ruling following an appeal from that ruling before we could entertain the writ, then the Clerk could effectively thwart any legal action taken against her. Accordingly, we hold that under the unique circumstances of this case the Petitioners properly filed their Petition for a Writ of Mandamus when they filed it by mail with the Nooksack Tribal Court of Appeals. Our holding is similar to Rule 21 of the Federal Rules of Appellate Procedure that requires a *writ of mandamus* be filed with the circuit court of appeals.

Once a petition for a writ of mandamus is filed with the appellate court, under Rule 21 of the Federal Rules of Appellate Procedure, the court may deny the petition without an answer; however, if the court believes that the petition may have merit, it must order the respondent at whom the requested *writ of mandamus* is directed to answer within a fixed time. *See* Fed. R. App. P. 21(b)(1). We also find this process to be reasonable, appropriate and fair because it ensures that the respondent receives due process before the appellate court rules on the petition.

Thus, we hereby order (1) that the Court Clerk of the Nooksack Tribal Court shall either accept and file Petitioners complaints and related motions or file an answer to the Petition for Writ of Mandamus with this Court on or before May 16th, 2016, and (2) that the NICS administrator serve a copy of the petition together with this order by mail on the Court Clerk.

It is so ordered, this 25th day of April, for the panel,

Douglas Nash, Associate Judge
Eric Nielsen, Chief Judge



Gregory Silverman, Associate Judge