

April 21, 2016

TO: Samantha Wohlfeil  
Reporter, The Bellingham Herald

FROM: Susan M. Alexander

RE: Termination as Nooksack Chief Judge

Until now, I have remained silent regarding my termination as Nooksack Chief Judge on March 28, 2016, because I believe that judges speak during legal proceedings and through judicial orders and decisions. My comfort zone is in the courtroom, not in the media. I am very concerned, however, about Nooksack Chairman Bob Kelly's recent remarks regarding my termination, as you have conveyed those remarks to me in your email, and I feel a response is necessary in order to set the record straight. Thank you for providing me the opportunity.

After I issued a ruling against Defendants in *Belmont v. Kelly* on Monday, March 21<sup>st</sup>, and the appellate court issued a ruling against Defendants in the same case on the morning of Tuesday, March 22<sup>nd</sup>, the Tribal Council met in the afternoon of March 22<sup>nd</sup>. Mid-afternoon, I was in my office at the Tribal Court in Deming. I received a call from a Nooksack HR staffer informing me I had come up for "random" drug testing and directing me to leave for the lab in Bellingham immediately. I noted I had just had a "random" UA in January. She said again it was "random," both on the phone and in an email with the lab form attached. I drove to Bellingham and submitted to testing.

Shortly after the UA on March 22<sup>nd</sup>, I received an email from the Nooksack General Manager, who is also a Tribal Council member and a Defendant in *Belmont*. She said, "Your recent court order clearly undermines the authority of my position as the General Manager of the Nooksack Indian Tribe and seems to be out of character. I have decided to have you drug tested. You are not to return to work pending the test results." In other words, the drug test was not "random," as represented earlier. Therefore, pursuant to Nooksack Personnel Policy Section 7.9, the Tribe needed "reasonable suspicion" that I was under the influence of drugs or alcohol in order to test me. The reasonable suspicion was apparently that my March 21<sup>st</sup> judicial decision was "out of character."

On Wednesday, March 23<sup>rd</sup>, a court clerk cancelled court hearings scheduled for March 23<sup>rd</sup> and 24<sup>th</sup>, telling litigants "the judge is sick." In the morning, I received a call at home from the General Manager wanting to discuss how I had undermined her authority. Because the Nooksack Chief Judge answers to the General Manager from an administrative standpoint, I spoke with her on the subject generally, but I had to remind her several times of my ethical limitations as a judge. Late afternoon, I received an email from the General Manager informing me the UA results "could take up to 3 days" and directing me, "You are not to work and you are not to report to work until I notify you." The Nooksack organization was on holiday for Good Friday, March 25<sup>th</sup>, and I remained sidelined at home through the weekend.

These events occurred at a critical juncture in the *Belmont* litigation. As the press has reported, there were two issues proceeding through the Tribal Court in parallel fashion. Through a counterclaim and motion for preliminary injunction, Defendants sought to prevent Plaintiffs from voting in the 2016 Tribal Council elections. Through a mandamus petition, Plaintiffs asked the court to compel Defendants to go forward with the belated 2016 Tribal Council elections.

In January, I denied Defendants' motion for preliminary injunction and, in February, I denied Defendants' motion for reconsideration of that decision. To afford Defendants full due process, however, I held Plaintiffs' mandamus petition in abeyance pending those decisions and any appellate review, although I had already heard oral argument on the mandamus petition. When the appellate court denied Defendants' request for interlocutory appeal on Plaintiffs' right to vote, I was poised to decide Plaintiffs' mandamus petition seeking to compel Defendants to hold the elections. The terms of the four Council members subject to reelection were set to expire in late March.

Thus, it was just a few hours after the appellate order was filed on March 22<sup>nd</sup>, as I was preparing a final draft of my ruling on Plaintiffs' mandamus petition, that I was sent for "random" drug testing and ordered off the job.

On Monday morning, March 28<sup>th</sup>, I received a call at home from the Nooksack HR Director informing me that my UA was clean and I should report to work, which I did. Approximately 45 minutes after I arrived at the Tribal Court, the HR Director summoned me to her office. She informed me I was being terminated "without cause." As I gathered my belongings at the courthouse, I received a memo by email from the General Manager



stating, "I regret to inform you that your employment with the Nooksack Indian Tribe is terminated immediately. The Tribe has elected to take a different direction with regards to your position and this termination is deemed 'without cause'."

So, after the UA fishing expedition failed, my termination was "without cause" according to both the HR Director orally and the General Manager in writing. Before I left the courthouse on March 28<sup>th</sup>, I inquired of the HR Director by phone whether the Tribal Council had passed a resolution. Pursuant to Nooksack law, only the full Council has authority to hire or fire the Chief Judge, and not the General Manager acting alone. The HR Director said she had not been given a resolution and, to this day, I have never seen one. Technically and legally, I may still be Nooksack Chief Judge. Indeed, several weeks later, I am still awaiting my final paycheck and payment for accrued annual leave.

Chairman Kelly's remarks indicate he is searching for "cause" after the fact. He references the March 21<sup>st</sup> order in which I granted a pro se Plaintiff's motion for judicial notice in *Belmont*. As courts routinely say, "The order speaks for itself." In 14 pages, I carefully set forth my reasoning for the decision. If I exceeded my authority, then that was a proper subject for reconsideration or for appeal, either on an interlocutory basis or after finality in the *Belmont* case. Indeed, I believe Defendants filed a request for interlocutory appeal from the March 21<sup>st</sup> order, and the appellate court may have ruled by now. But rather than await word from the appellate court, the General Manager summarily fired me for the decision. Or at least that appears to be what Mr. Kelly now views as "cause" after the fact.

I will address only one matter regarding the March 21<sup>st</sup> order. Mr. Kelly complains that I made my decision without conducting a hearing on the motion for judicial notice. In fact, Plaintiff requested disposition without a hearing, and Defendants did not request a hearing. Coincidentally, I had discussed motions procedures with counsel during a hearing in *Belmont* just a few weeks earlier. Pursuant to those procedures, had Defendants' counsel requested a hearing on the motion, I would have been more than happy to schedule one.

As to Mr. Kelly's allegation regarding "advocates" and "movements" for "changing how courts work in Indian country," I have no idea what he is talking about. I am not part of, nor have I ever been part of, in his words, "some movement towards

changing tribal courts in a certain direction." His language is ironic, given the General Manager's statement in her March 28<sup>th</sup> termination memo that "[t]he Tribe has elected to take a different direction with regards to your position . . . ." Mr. Kelly says, "I don't claim to understand what it was but that's what I was told." I would surely like to know: Told by whom? And where did that person get the information? The allegation is complete nonsense.

During my interview for the Nooksack Chief Judge position on April 13, 2015, I was asked to discuss Tribal sovereignty. I talked about sovereignty generally, but I also talked about the meaning of sovereignty as it relates specifically to the Tribal Court and to the relationship between the Tribal Council and the Tribal Court. The interview committee, which included most of the Tribal Council Defendants in *Belmont*, seemed very satisfied with my answer. Indeed, they hired me. It was not until I began making decisions in *Belmont* that they fully understood the import of my answer regarding sovereignty and of the essential independence of the Tribal Court. Once they realized I was not on their "team," they could no longer afford to employ me.