

MAY 16 2016

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NOOKSACK INDIAN TRIBE  
NOOKSACK COURT OF APPEALS  
DEMING, WASHINGTON

ELEANOR J. BELMONT, OLIVE T.  
OSHIRO, enrolled members of the Nooksack  
Indian Tribe, including MICHELLE JOAN  
ROBERTS, et al.,

Plaintiffs and Counterclaim  
Defendants,

v.

ROBERT KELLY, Chairman of the Nooksack  
Tribal Council, et al.,

Defendants and  
Counterclaimants.

NO. 2014 -CI-CL-007

SECOND DECLARATION OF  
MICHELLE JOAN ROBERTS IN  
SUPPORT OF PETITION FOR WRIT OF  
MANDAMUS

I, Michelle Joan Roberts, hereby depose and state as follows:

1. I am the above-named, enrolled Nooksack Tribal member and a direct descendant of Annie George. I am over the age of 18, have knowledge of the facts herein, and am competent testify. I am one of the named plaintiffs in Case No. 2014-CI-CL-007, pending in Nooksack Tribal Court.

2. On April 15, 2016, I filed a Petition for Writ of Mandamus with this Court, asking this Court to require the Nooksack Tribal Council to establish a functional Tribal County by either restoring Judge Susan Alexander, the Chief Judge handling Case No. 2014-CI-CL-0007, or by appointing a judge to hear as soon as possible three critical, pending motions filed in this case.

3. The purpose of my second declaration is to provide additional information to the Nooksack Tribal Court of Appeals about what has happened since I filed the Petition for Writ of Mandamus. In short, the Nooksack Tribal Court remain non-functional and closed to me and my family, depriving us of justice.

1           4.       As I described in my first Declaration, I filed two motions that remain pending:  
2 a Motion to Show Cause re Contempt and a Motion for Declaratory Judgment. The first seeks  
3 to hold the Defendants in contempt for failing to comply with the March 21, 2016 Order issued  
4 by Judge Alexander (Exhibit B to the first Declaration of Michelle Joan Roberts), to provide  
5 me with the Resolutions disbaring my counsel, Galanda Broadman, from representing me. To  
6 date, I have not received the documents that were to be provided to me pursuant to the March  
7 21, 2016, Order. I cannot get this motion scheduled for hearing.

8           5.       The second motion is a Motion for Declaratory Judgment declaring that the  
9 Nooksack Tribal Council is not properly constituted and cannot take legal action under the  
10 Nooksack Constitution and Bylaws. I cannot get this motion scheduled for hearing either.

11          6.       The third pending motion was filed on January 29, 2016, by plaintiffs through  
12 our law firm, Galanda Broadman, filed on January 29, 2016. It is an emergency Petition for  
13 Writ of Mandamus to compel the election for the now-expired council seats.

14          7.       Judge Susan Alexander, who issued the March 21, 2016, ruling in our favor was  
15 fired by the Nooksack Tribal Council in March 28, 2016. On April 15, 2016, she provided a  
16 written response to her termination to a reporter for the *Bellingham Herald*. The article is  
17 attached as Exhibit A to this second declaration. In her statement, Judge Alexander said,  
18 “When the appellate court denied defendants’ request for interlocutory appeal on plaintiffs’  
19 right to vote, I was poised to decide plaintiffs’ mandamus petition seeking to compel  
20 defendants to hold the elections.” She was fired before she could issue this ruling.

21          8.       As I described in my first declaration, the confusion and chaos at the Nooksack  
22 Tribal Court continues, and no judge has been appointed yet.

23          9.       In addition to the pending three motions, I filed a Motion for Default in *Belmont*  
24 *v. Kelly*, No. 2014-CI-CL-007, and in *Kelly v. Belmont*, No. 2016-CI-CL-001. When they were  
25 brought to the Nooksack Tribal Court for filing on April 21, 2016, the Nooksack Court clerk  
26 said that she would not stamp them and accept them because they would need to be “reviewed

1 by attorneys” before they could be stamped. Then on April 25, 2016, I received a notice from  
2 the Nooksack Tribal Court advising me that these Motions for Default will not be put on the  
3 court calendar “due to the fact that both motions for default were replied to on March 11, 2016,  
4 by the defendants.” Attached as Exhibit B hereto is a true and correct copy of the letter I  
5 received regarding the two motions for default. However, no answers from the Defendants  
6 were ever filed or served on me or any of the other plaintiffs. The only documents that we  
7 received from the Defendants were in response to the Motion for Judicial Notice that was  
8 granted by Judge Alexander in her March 21, 2016, Order. These were not an answer, so the  
9 Defendants remain in default and the Tribal Court will not take action.

10 10. I have made several attempts to get my motions filed and scheduled for  
11 resolution. On May 6, 2016, I emailed Judge Doucet, because I had been informed that the  
12 Nooksack Tribal Council authorized him to serve in some sort of interim or *pro tem* judge  
13 manner. I received an email from Mr. Doucet stating, “Please contact the clerk’s office  
14 regarding the status of cases. Please do not contact me directly because to do so is improper.”  
15 I then emailed the clerk’s office as directed by Judge Doucet. Attached hereto as Exhibit C are  
16 true and correct copies of the emails that demonstrate my attempts to get the pending motions  
17 resolved.

18 11. To date, I have not received any information from the Nooksack Tribal Court  
19 clerk’s office regarding the status of my cases. It is clear to me that no action will be taken by  
20 the Nooksack Tribal Court on them without assistance or direction from this Court.

21 I declare under penalty of perjury under the laws of the Nooksack Tribe and the State of  
22 Washington the foregoing is true and correct.

23 Dated this 16<sup>th</sup> day of May, 2016, at Deming, Washington.

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26 Michelle J. Roberts, *Pro Se*

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12. I am over the age of 18 and have knowledge of the facts stated herein;

13. On the date below I caused the foregoing **Second Declaration of Michelle Joan Roberts** to be filed with the referenced court; and

Raymond Dodge, Senior Tribal Attorney  
Rickie Armstrong, Tribal Attorney  
Nooksack Indian Tribe  
Office of Tribal Attorney  
PO Box 63  
5047 Mt. Baker Hwy  
Deming, WA 98244  
Email: [rdodge@nooksack-nsn.gov](mailto:rdodge@nooksack-nsn.gov)

DATED this 16th day of May, 2016, at Deming, Washington.

Michelle Roberts  
Michelle J. Roberts, Pro Se

GSB:7777927.1

# EXHIBIT A

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.

# EXHIBIT B



**NOOKSACK TRIBAL COURT**

5016 Deming Road  
P.O. Box 157  
Deming, WA 98244  
360.306.5125

April 25, 2016

Re: Kelly V. Kelly Case No 2016-CI-CL-001  
Re: Belmont V. Kelly Case No. 2014-CI-CL-007

The documents submitted April 21, 2016 will not be put on the Court Calendar, due to the fact that both Motions for Default were replied to on March 11, 2016 by the Defendants.

# EXHIBIT C

----- Forwarded message -----

From: **Michelle Roberts** <michelle.roberts3012@gmail.com>

Date: Fri, May 6, 2016 at 1:23 PM

Subject: Fwd: Status of Motions

To: Betty Leathers <BLEathers@nooksack-nsn.gov>, Deanna Francis <dfrancis@nooksack-nsn.gov>

Cc: "Rickie W. Armstrong" <rarmstrong@nooksack-nsn.gov>, Ray Dodge <rdodge@nooksack-nsn.gov>, "Thomas P. Schlosser" <t.schlosser@msaj.com>, Rebecca Jch Jackson <r.jackson@msaj.com>

Betty/Deanna,

Could you give me a status on the lawsuits and motions that are pending in the Nooksack court?

Thank you,

Michelle Roberts

----- Forwarded message -----

From: **randy doucet** <doucetlaw@gmail.com>

Date: Fri, May 6, 2016 at 12:28 PM

Subject: Re: Status of Motions

To: Michelle Roberts <michelle.roberts3012@gmail.com>

Cc: Ray Dodge <rdodge@nooksack-nsn.gov>, "Rickie W. Armstrong" <rarmstrong@nooksack-nsn.gov>, "Thomas P. Schlosser" <t.schlosser@msaj.com>, Rebecca Jch Jackson <r.jackson@msaj.com>, Betty Leathers <BLEathers@nooksack-nsn.gov>, Deanna Francis <dfrancis@nooksack-nsn.gov>

Please contact the clerk's office regarding the status of cases. Please do not contact me directly, because to do so is improper.

Thank you

JPT Doucet

Sent from my iPhone

On May 6, 2016, at 2:15 PM, Michelle Roberts <michelle.roberts3012@gmail.com> wrote:

Judge Doucet:

I apologize if this email in any way bothers you or is in any way inappropriate decorum. Word at Nooksack is that since you emailed me, the Nooksack Tribal Council authorized some form of arrangement with you as Nooksack Tribal Court Judge or Pro Tem Judge. My family and I have several lawsuits and motions that have been pending before the Court for the last couple months. Can you once again confirm or deny whether you are currently a Judge at Nooksack?

Thank you again.

Michelle Roberts, Pro Se Plaintiff