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

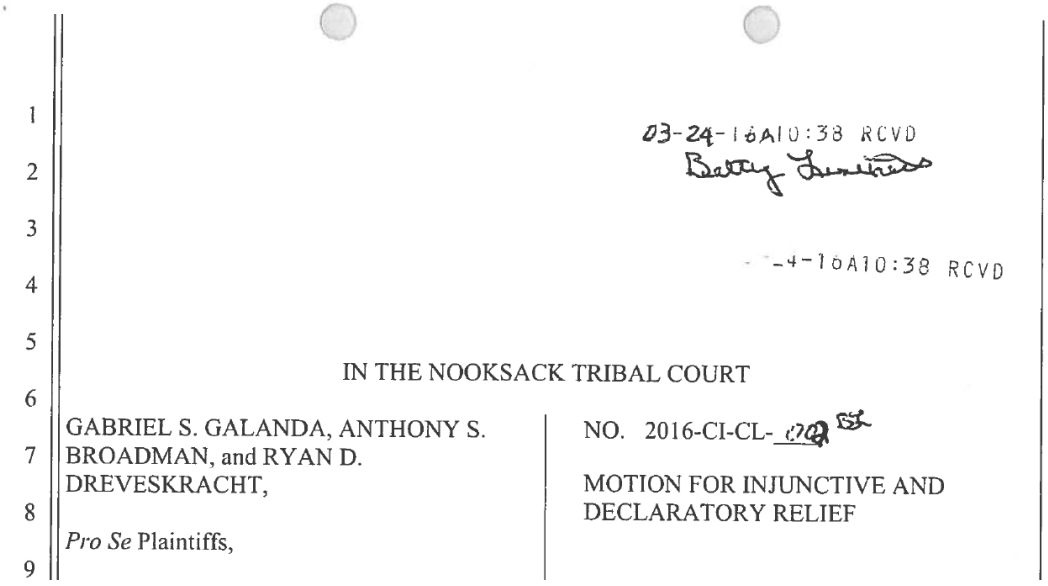
In re Gabriel S. Galanda, pro se, Anthony S. Broadman, pro se, and Ryan D. Dreveskracht, Petitioners, v. **Nooksack Tribal Court.,** Respondent.	**Court No. 2016-CI-CL-001 & 002** **Order Finding Betty Leathers in Contempt**

On February 24th, 2016, the Nooksack Tribal Council adopted a resolution that stated, in relevant part, "BE IT RESOLVED, Mr. Galanda and his firm are not fit to practice law in the Nooksack Tribal Court and [are]hereby barred from . . . practicing in the Tribal Court." Nooksack Tribal Council, Resolution #16-28 (February 24, 2016). This Resolution purports to bar Mssrs. Gabriel S. Galanda, Anthony S. Broadman, Ryan D. Dreveskracht as well as five other members of the Galanda Broadman law firm from practicing law in the Nooksack Tribal Court. Mssrs. Galanda, Broadman and Dreveskracht currently represent more than 300 members of the Nooksack Indian Tribe who are being threaten with disenrollment by the Nooksack Tribal Council in a lawsuit known in the popular press as "the Nooksack 306."

In the recitals composing the preamble to the Resolution, the Nooksack Tribal Council appears to justify its disbarment of Attorney Galanda by taking issue with a ruling handed down by him while serving as a pro tem judge for the Quinault Tribal Court and by a reference to "numerous other unethical acts before the Nooksack Tribal Court". *Id.* No recitals attempt to justify barring the other seven Mssrs. from practice before the Nooksack Tribal Court. Mssrs. Galanda, Broadman and Dreveskracht were given no notice that the Tribal Council was intending to take up this Resolution at its meeting on February 24th, 2016, nor were they given any opportunity to be heard prior to the Nooksack Tribal Council adopting the Resolution.

Insofar as the process adopted by the Nooksack Tribal Council and the Resolution that it produced possibly violate the due process rights afforded to Mssrs. Galanda, Broadman and Dreveskracht by Title II of the Indian Civil Rights Act, it is hardly surprising that these three Mssrs. subsequently filed a Complaint and a Motion for Injunctive and Declaratory Relief in

Nooksack Tribal Court challenging the action of the Nooksack Tribal Council.[1] The Court Clerk, Betty Leathers, accepted these documents for filing on March 24th, 2016 at 10:38. Each document is date-stamped "03-24-16A10:38 RCVD" and signed "Betty Leathers" in the upper righthand corner of its first page. The Court Clerk also assigned a case file number to each document, assigning case file number 2016-CI-CL-001 to the Complaint and case file number 2016-CI-CL-002 to the Motion for Injunctive and Declaratory Relief. That the Court Clerk Betty Leathers assigned these numbers to the two documents is evident both from the fact that she initialed the case file number on the Motion for Injunctive and Declaratory Relief and from the fact that the last three digits of the assigned case file numbers on both documents are written with the same pen and in the same hand that produced Betty Leathers' signature on each document. Finally, the two shadowy grey circles produced by a two-hole punch at the top of each document suggest that both the Complaint and the Motion for Injunctive and Declaratory Relief were place in a Court case file after being accepted. See the images immediately below.



03-24-16A10:38 RCVD
Betty Leathers

-4-16A10:38 RCVD

IN THE NOOKSACK TRIBAL COURT

GABRIEL S. GALANDA, ANTHONY S. BROADMAN, and RYAN D. DREVESKRACHT,

Pro Se Plaintiffs,

NO. 2016-CI-CL-002

MOTION FOR INJUNCTIVE AND DECLARATORY RELIEF

[1] We do not decide whether there has been a due process violation. That issue is not before us and is properly decided in the first instance by the tribal judge.

03-24-16A10:38 RCVD

IN THE NOOKSACK TRIBAL COURT

GABRIEL S. GALANDA, ANTHONY S. BROADMAN, and RYAN D. DREVESKRACHT, *Pro Se* Plaintiffs,	NO. 2016-CI-CL-001 COMPLAINT

Curiously, on April 1st, 2016, Mssrs. Galanda, Broadman and Dreveskracht received a letter from the Nooksack Tribal Court returning their Complaint and Motion for Injunctive and Declaratory Relief. The letter stated that "[t]hese documents, which were filed on the day before a Court holiday, are rejected for the following reasons:" It then went on to state three different reasons for the rejection and return of the documents.

This letter is curious for at least three reasons. First, the letter is unsigned. While the letter is written on the stationary of the Nooksack Tribal Court, no one actually signed the letter. Hence, there is no way to tell who actually sent the letter or who is resonsible for the letter being sent. Somewhat suspiciously, it is as if whoever is responsible for the letter is attempting to cloak their identity. Second, the letter involes the Tribal Court in an action that is neither customary nor lawful. Once a document has been filed, there is no provision in the Nooksack Tribal Code for returning it. Once a pleading or other document is filed with the Court Clerk, it is pending before the Court and can only be disposed of through judicial action. If a filed pleading is somehow improper, then a judge may dismiss it. If a filed motion is improper, a judge may strike it from the record. In no case can documents accepted for filing be disposed of or returned extrajudicially.

Here, the very letter returning the documents acknowledges that the Complaint and the Motion for Injunctive and Declaratory Relief had already been accepted for filing, that is, had already been filed: it states that the documents "were filed on the day before a Court holiday." Accordingly, assuming, *arguendo*, that the Complaint was filed improperly, the proper course of action is not for the Tribal Court to return the Complaint, but for the defendants in the action to move the Court to dismiss the Complaint. Similarly, assuming, *arguendo*, that the Motion for Injunctive and Declaratory Relief was accepted for filing improperly, the proper course of action is for the defendants to submit a motion to strike or, perhaps, a memorandum in opposition to the requested relief.

Nor do the recent amendments to Title 10 of the Nooksack Tribal Code alter this conclusion. On April 18th, 2016, ten days after the Complaint and Motion for Injunctive and Declaratory Relief had been returned to Mssrs. Galanda, Broadman and Dreveskracht and 55 days

after the two documents had been accepted for filing, the Nooksack Tribal Council adopted a resolution making various amendments to Title 10, Tribal Court System and Court Rules, of the Nooksack Tribal Code. Nooksack Tribal Council, Resolution #16-47 (April 18th, 2016). One of these amendments added new section 10.04.030, Review of Filed Documents. This section states that "[t]he clerk is responsible for determining whether a document shall be accepted for filing. A document that fails to comply with the requirements of this Title shall be rejected and returned to the filing party along with a Notice of Rejection stating the basis for the rejection." It is worth emphasizing that even under this new section 10.04.030, the Court Clerk only has the authority to reject a non-complying document when it is presented for filing. In other words, the Court Clerk has the authority to refuse to accept for filing a non-complying document, but once she has accepted a document for filing, it requires judicial action to dismiss or strike it—the Court Clerk cannot simply remove a document from the file and return it as if it never existed. In the present matter, the Court Clerk did determine "whether the Complaint and Motion for Injunctive and Declaratory Relief shall be accepted for filing." The second sentence of the letter from the Nooksack Tribal Court dated April 1, 2016—"[t]hese documents, which were filed on the day before a Court holiday . . . "—unequivocally evinces the Court Clerk determined that they should be accepted, and then accepted the documents for filing.

Nor did the Court Clerk err in accepting the Complaint and Motion for Injunctive and Declaratory Relief for filing. The second section of 10.04.030 states that "[a] document that fails to comply with the requirements of this Title shall be rejected and returned to the filing party along with a Notice of Rejection stating the basis for the rejection." Neither the Complaint, nor the Motion for Injunctive and Declaratory Relief failed to comply with the requirements of Title 10. Title 10 contains three provisions containing requirements with which any document submitted to the Court for filing must comply. Section 10.05.060(a) states that "[u]nless otherwise specified by the judge or in these rules, defenses, motions, arguments, and other requests made to the court have to be in writing." Both the Complaint and the Motion for Injunctive and Declaratory Relief accepted for filing by the Court Clerk on February 24th , 2016 were in writing. Thus, both documents complied with section 10.05.060(a).

Section 10.05.060(b) states, in relevant part, that

> All pleadings should be clear and legible and shall contain the name of the court, the names of all parties, the court file number of the case, the signature of the party filing the pleading, or the signature of the party's advocate, and any other information required by these rules.

Both the Complaint and the Motion for Injunctive and Declaratory Relief accepted for filing by the Court Clerk on February 24th , 2016 were clear and legible—they were typed documents. Both documents contained the name of the court, the names of all parties, the court file number of the cases, and the signature of the party filing the document—all of the specific information required by this section. Thus, both documents complied with section 10.05.060(b).

Finally, section 10.05.050(g) requires that "[a]ny document submitted for filing for which a filing fee is required must be accompanied by the appropriate fee. The clerk will not accept for

filing any document for which a filing fee is required, without prepayment." The filing fee for both the Complaint and Motion for Injunctive and Declaratory Relief was paid as required by section 10.05.050(g): the last sentence of the letter from the Nooksack Tribal Court dated April 1, 2016 informs Mssrs. Galanda, Broadman and Dreveskracht that "[a] refund of the filing fees will be processed shortly." Thus, the Complaint and Motion for Injunctive and Declaratory Relief complied with this section as well. In short, the Court Clerk was correct to accept for both documents for filing because there were no reasons based in Title 10 to reject them: the documents formally complied with Title 10 and the filing fees had been paid.

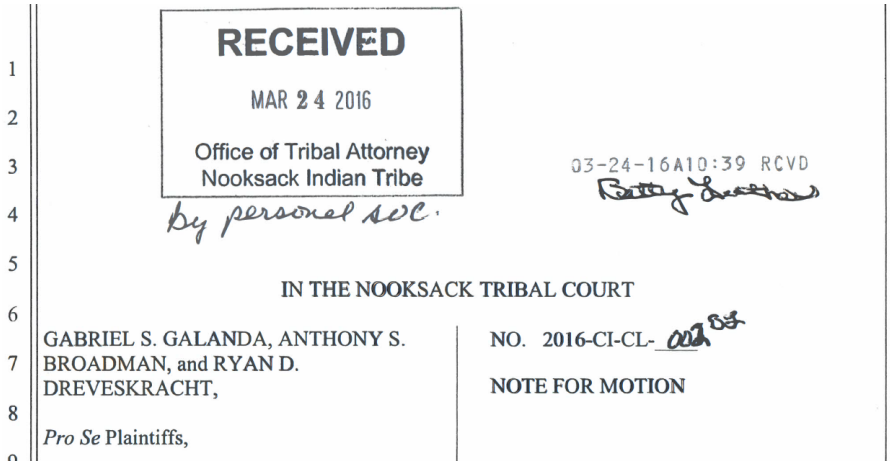
This brings us to the second reason why the letter from the Nooksack Tribal Court returning the Complaint and Motion for Injunctive and Declaratory Relief is so curious. None of the three reasons recited in the letter from the Nooksack Tribal Court dated April 1, 2016 are based in the Nooksack Tribal Code. Indeed, none of the reasons offered stand a moment's scrutiny. We will consider each in turn.

The first reason that the letter from the Tribal Court offers for returning the Complaint and the Motion for Injunctive and Declaratory Relief is that "[t]he motion and the complaint should not have had two different cause numbers, because they are the same matter." On its face, this reason is bizarre. As we have already noted, it was the Court Clerk herself, Betty Leathers, who wrote the case file numbers on each of the documents. Betty Leathers wrote "2016-CI-CL-001" on the Complaint and Betty Leathers wrote "2016-CI-CL-002" on the Motion for Injunctive and Declaratory Relief. If a clerical mistake was made, it was Betty Leathers, the Court Clerk, who made the mistake and it was Betty Leathers who had the responsibility for correcting the mistake. This responsibility is clearly placed on the Court Clerk by the Nooksack Tribal Code. Section 10.04.020(a) states that "[o]fficial records of the Tribal Court shall be maintained by the clerk." Moreover, section 10.05.020(c) states, in relevant part, that "[o]fficial Tribal Court records kept by the clerk are: . . . [a] docket book which shows, for each case filed in Tribal Court, *the case file number*, the parties' names and short description of every document filed and every order issued in the case, including the date of the order or filing." (emphasis added). If the Court Clerk had mistakenly entered two different case file numbers on the Complaint and the Motion for Injunctive and Declaratory Relief, then it was her duty and within her authority to correct this administrative error. To do this, she simply had to scratch out the second case file number assigned to the Motion in the docket book and enter the case file number already assigned to the Complaint. Then, just to be complete, she needed to enter the case file number that she had assigned to the Complaint on the first page of the Motion for Injunctive an Declaratory Relief, scratching out the case file number that she herself had placed on the Motion and initialed at approximately 10:38 am on February 24th, 2016. Instead of making this simply administrative fix, the letter cites the Court Clerk's own mistake as a reason for returning the Complaint and the Motion for Injunctive and Declaratory Relief to the Petitioners. Needless to say, the first profferred reason is specious, unpersuasive and utterly without merit.

The second reason proffered for returning the documents in the letter from the Nooksack Tribal Court does not even pretend to justify returning the Complaint, but is concerned only with the Motion for Injunctive and Declaratory Relief. The letter states, in relevant part, that

> Your Motion was [] improperly noted and will not be set for hearing. Pursuant to NTC 10.05.030(c) [now (d) in amended Title 10], the Court Clerk is charged with setting hearings. For a complaint filed against the Nooksack Indian Tribe or its officers, employees or agents, the answer shall be due within 60 days, exclusive of the day of service, and no hearing may be set until 14 days after the deadline for filing the answer. NTC 10.05.040(b)(i), 10.05.040(f). The earliest a motion could be heard, **if the Complaint had not been rejected**, is 74 days after the date of service of the Complaint on the Tribal employees/agents.

(emphasis and underlining in the original). This first sentence of the quoted paragraph refers to a third document, Note For Motion, accepted for filing on February 24th, 2016. Like the Complaint and the Motion for Injunctive and Declaratory Relief, this document was signed by the Court Clerk Betty Leathers, inscribed with a case file number also initialed by Betty Leathers and date-stamped "03-24-16A10:39 RCVD"—having been received and accepted for filing one minute after the other two documents. The letter correctly observes that the proposed date for a hearing on the Motion for Injunctive and Declaratory Relief does not comply with the Nooksack Tribal Code. The hearing date proposed, April 1, 2016, is only 38 days after service on the Tribe and the Nooksack Tribal Code requires a hearing no earlier than 14 days after the deadline for filing an answer. Accordingly, the Note For Motion should have proposed a hearing no earlier than June 6th, 2016. See image immediately below.



RECEIVED
MAR 24 2016
Office of Tribal Attorney
Nooksack Indian Tribe
by personal svc.

03-24-16A10:39 RCVD

IN THE NOOKSACK TRIBAL COURT

GABRIEL S. GALANDA, ANTHONY S. BROADMAN, and RYAN D. DREVESKRACHT,

Pro Se Plaintiffs,

NO. 2016-CI-CL-002

NOTE FOR MOTION

Nonetheless, for reasons already discussed, it is quite clear that an error in calculating a date for a hearing on a motion does not justify returning the motion, let alone the complaint that commenced the action, as if neither the complaint, nor the motion had ever been filed.

This is especially the case when, as here, the Court Clerk herself is complicit in the error. Under section 10.05.030(d) of the Nooksack Tribal Code, the Court Clerk is responsible for setting the time for a hearing. Section 10.05.030(d) states that "[u]nless otherwise provided in these rules, the court clerk shall set and record the time for trials and other hearings." It is for this reason that section 10.05.050(e)(i) requires that "[t]he time and date for [a] hearing shall be scheduled in advance by the moving party by contacting the clerk prior to filing the motion."

Mssrs. Galanda, Broadman and Dreveskracht all signed the Note For Motion and therein state that "[t]he time and date for this hearing was scheduled in advance by contacting the Court." Even if the movants only consulted with the Court Clerk when presenting the Note For Motion for filing, it was the duty of the Court Clerk to ensure that the date proposed for the hearing met the requirements of the Nooksack Tribal Code. Once the error was discovered, rather than return the Complaint and Motion for Injunctive and Declaratory Relief, the proper remedy was for the Court Clerk to set a hearing date that complied with the requirements of the Nooksack Tribal Code and notify the parties of the change.

The third and final reason that the letter from the Tribal Court proffers Mssrs. Galanda, Broadman and Dreveskracht for returning the Complaint and the Motion for Injunctive and Declaratory Relief is that

> You have captioned this matter, and are appearing as, "pro se plaintiffs." However, you also assert in your complaint that each of you are admitted to the practice of law in Washington. The Clerk's Office has sought the advice of legal counsel regarding whether a lawyer who is acting pro se is "practicing in tribal court," prohibited by Resolution #16-28. In the interim, or until such time as the Nooksack Tribal Council takes further action, the Tribal Court is bound by Resolution #16-28 barring you from practicing in Nooksack Tribal Court.

The quoted paragraph does not expressly state the advice sought and received from legal council, but it is clear from the last sentence that it amounted to the claim that a lawyer who representes himself pro se is engaged in the practice of law. Accordingly, the anonymous sender of the letter concludes that Mssrs. Galanda, Broadman and Dreveskracht are barred from proceeding pro se berfore the Nooksack Tribal Court by Resolution #16-28. This interpretation of the letter is confirmed by a second letter that Mssrs. Galanda, Broadman and Dreveskracht received from the Nooksack Tribal Court dated May 9, 2016 in which the same or another anonymous sender writes

> [u]nder Washington's Rules of Professional Conduct, a lawyer who is acting pro se is "representing a client." *In re Discipline of Haley*, 156 Wn.2d 324, 338, 126 P.3d 1262 (2006). Thus, as practicing lawyers, you are each "representing a client" in the *Galanda v. Bernard* and *In re Galanda v. Nooksack Tribal Court and Nooksack Indian Tribe* matters. Your appearance on your own behalf constitutes conduct prohibited by Resolution #16-28.

In the case *In re Disciplinary Proceeding Against Haley*, the Washington Supreme Court held that a lawyer acting pro se is "representing a client" for purposes of RPC 4.2(a). That Rule of Profession Conduct states that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." The decision does *not* hold that a lawyer who is acting pro se is

practicing law. In fact, just the opposite is true: in the State of Washington, a lawyer who is acting pro se is *not* practicing law. General Rule 24, Definition of the Practice of Law, of the Washington Court Rules states very clearly in section 24(a) that "[t]he practice of law is the application of legal principles and judgment with regard to the circumstances or objectives *of another entity or person(s)* which require the knowledge and skill of a person trained in the law." (emphasis added). A lawyer who is acting pro se and representing himself is not applying legal principles and judgment with regard to the circumstances or objectives *of another person*. Thus, an attorney who is acting pro se and representing himself is not practicing law as that phrase is defined under Washington law. In defining the practice of law in a manner that excludes an attorney who is acting pro se and representing himself, the State of Washington is following the recommendation of the Amercian Bar Association's Task Force on the Model Definition of the Practice of Law. That Task Force adopted the following resolution on August 11, 2003:

> RESOLVED, That the American Bar Association recommends that every state and territory adopt a definition of the practice of law.
>
> FURTHER RESOLVED, That each state's and territory's definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives *of another person or entity*.

http://www.americanbar.org/content/dam/aba/migrated/cpr/modeldef/recomm.authcheckdam.pdf. (emphasis added). While it is clear from the letters that the Nooksack Tribal Court accepts Washington law as persuasive authority as to what constitutes the practice of law, it is equally clear that the anonymous sender of the two letters has misinterpreted Washington law. Under both Washington law and the recommendation of the American Bar Association, Mssrs. are not engaged in the practice of law when they represent themselves in a lawsuit. If, like the Nooksack Tribal Court in its two anonymously sent letter, we too accept Washington law as persuasive authority regarding the definition of the practice of law, it follows that when Attonreys Galanda, Broadman and Dreveskracht proceed pro se, they are not engaged in the practice of law and, therefore, are not barred by Resolution #16-28 from commencing a lawsuit on their own behalf in the Nooksack Tribal Court. Accordingly, just like the first two reasons discussed above, this third and final reason for returning the Complaint and the Motion for Injunctive and Declaratory Relief to Mssrs. Galanda, Broadman and Dreveskracht is also specious, unpersuasive and wholly without merit.[2]

Just as troubling as the faulty reasoning and the misinterpretations of law embodied in the three specious reasons proffered in the letter from the Nooksack Tribal Court is the attempt of its sender to usurp the judicial function of a tribal judge. It is the exclusive province and role of a tribal judge to interpret the words of the Tribal Council in a resolution relevant to a case pending before the Tribal Court. The administrative personnel of the Tribal Court lack the expertise, power and authority to interpret a Tribal Council resolution or any other tribal law. Interpretations of tribal law that affect the rights and duties of the parties before the Court must be left to a duly

[2] In her order in *Belmont v. Kelly*, 2014-CI-CL-007, the disbarment issue was addressed and the now terminated tribal judge noted "…the Galanda Broadman attorneys have not lost their right to self-representation in the matter. *Id.* at 14, n. 3.

appointed tribal judge. If a defendant before the Tribal Court believes that a Tribal Council resolution bars the plaintiff's action, then the defendant must make his argument to the Court and the tribal judge will interpret the resolution and rule on the merits of the defendant's position. It is not up to the administrative personnel of the Tribal Court to short-circuit this process and interpret the law for themselves. All lawsuits are contested matters that must be adjudicated by a judge. The role of a court clerk is not to substitute her legal judgment for that of the judge, but to support and assist the judge by managing and coordinating the smooth flow of cases that come before the judge. If an individual seeks to commence a lawsuit in the Tribal Court and presents a complaint for filing, the role of a court clerk is to collect the filing fee and review the document to ensure that it is properly formatted. If the complaint passes that review and the fee is paid, then the court clerk is to accept the complaint for filing. It is not the role of the court clerk to determine if the court has jurisdiction over the subject of the lawsuit, whether the Tribal Court is the proper venue, or to answer any other question of law presented by the lawsuit. Such questions must be left to the judge when properly raised by the parties to the lawsuit.

Compounding the error of usurping the function of a tribal judge, the letter also discloses that the court clerk—apparently recognizing her lack of expertise to interpret Tribal Council Resolution #16-28—sought "the advice of legal council" as to how this Resolution should be interpreted. In doing so, the administrative personnel of the Tribal Court placed an unknown and unaccountable private attorney in the role of a duly appointed tribal judge. That a court clerk or any other administrative personnel of the Tribal Court could so subvert the judicial process of the Court that they are charged with protecting and facilitating is mind-boggling. For all we know, the court clerk could have consulted the attorney for the defendants in a potential lawsuit about whether the plaintiffs should be allowed to file their complaint against the attorney's clients. The perversion of justice that this represents should be patently obvious even to those untrained in the law.

In sum, it is clear from the letter from the Nooksack Tribal Court dated April 1, 2016 that Mssrs. Galanda, Broadman and Dreveskracht's Complaint and Motion for Injunctive and Declaratory Relief were accepted for filing on February 24th, 2016. It is also clear that sometime later the Complaint and Motion for Injunctive and Declaratory Relief were removed from their case file and returned to Msssrs. Galanda, Broadman and Dreveskracht under cover of a letter dated April 1, 2016. Finally, it is equally clear that the removal and return of these documents was unlawful and without justification under either the Nooksack Tribal Code or Resolution #16-28 and that the three reasons offered for the removal and return of the documents were specious and wholly without merit.

We thus have a rather curious and unprecedented situation. The letter from the Nooksack Tribal Court dated April 1, 2016 admits that the Complaint of Mssrs. Galanda, Broadman and Dreveskracht was filed on February 24th, 2016—the day before a Court holiday—and that the filing fees were paid. Accordingly, under Title 10 of the Nooksack Tribal Code, a lawsuit was commenced and a case file for the matter opened. The improper actions of the Court Clerk in removing the Complaint and returning it to Mssrs. Galanda, Broadman and Dreveskracht does not alter the fact that on February 24th, 2016, a lawsuit was commenced and is currently pending before the Nooksack Tribal Court. A bell cannot be unrung. Before this lawsuit can proceed,

however, the Complaint and Motion for Injunctive and Declaratory Relief must be returned to their empty case file in the courthouse.

When Mssrs. Galanda, Broadman and Dreveskracht attempted to return the documents to the Court, the Court Clerk acting for the Nooksack Tribal Court refused to accept them. The Court Clerk refused to accept the return of the documents because as explained in the letters from the Nooksack Tribal Court dated April 1, 2016 and May 9, 2016, she believed that Resolution #16-28 prevented her from doing so. On April 6th, 2016, believing this to be an obvious error that limited their freedom to pursue their lawsuit, Mssrs. Galanda, Broadman and Dreveskracht filed an interlocutory appeal with this Court. While Mssrs. Galanda, Broadman and Dreveskracht captioned and titled their filing in terms of the relief they sought—a petition for a writ of mandamus directed to the Nooksack Tribal Court—strictly speaking, it was a request for permission to file an interlocatory appeal in the case that was commenced when the Complaint was accepted for filing on February 24th, 2016. *See*, Petition for Writ of Mandamus, at 2, n. 1 (where the petitioner's argue in the alternative that their request be treated as an appeal under Title 80 given their Complaint was returned by the court). Under section 80.03.020 of the Nooksack Tribal Code, "[a]n aggrieved party may seek review of acts of the Nooksack Tribal Court . . . . Permission to file an interlocutory appeal shall be granted only if the Nooksack Tribal Court has committed an obvious error which . . . substantially limits the freedom of a party to act." Agreeing that in failing to accept the return of the Complaint and Motion for Injunctive and Declaratory Relief, the Nooksack Tribal Court had committed an obvious error that substantially limited the freedom of Mssrs. Galanda, Broadman and Dreveskracht to pursue their lawsuit, on April 25th, 2016, this Court accepted the interlocatory appeal and issued a writ of mandamus ordering the Court Clerk to accept the return of the Complaint and Motion for Injunctive and Declaratory Relief or file an answer with this Court on or before May 16th, 2016. May 16th came and went without the Court Clerk accepting the return of the documents or filing an answer with this Court. Accordingly, on May 26th, 2016, this Court ordered that the Court Clerk accept and file all pleadings the Petitioners have presented for filing in this case by June 3, 2016 or show cause by affidavit why we should not find her in contempt and order the Nooksack Chief of Police to hold her in jail until she purges the contempt by filing the pleadings, for willfully failing to comply with our orders. Now June 3rd has come and gone, and the Court Clerk has neither accepted the documents nor shown cause by affidavit why we should not find her in contempt of this Court.

While the Court Clerk has not responded to our prior orders, this Court received an unsolicited and unprecedented ex parte letter from the Chairman of the Nooksack Tribal Council on June 2, 2016. In this letter, the Chairman states that he writes on behalf of the Nooksack Indian Tribe and the Nooksack Tribal Court. This Court accepts that his letter is written on behalf of the Nooksack Indian Tribe, but we note that he has no authority to speak for the Nooksack Tribal Court. While the constitutional authority to create the Nooksack Tribal Court is vested in the Tribal Council, the Tribal Council has no role in the day-to-day operations of the Court.[3] This is by constitutional design and is required by the most fundamental principles of due process and an independent judiciary. It ensures that no person—not even the Tribe itself—will be judge in his own cause. We respect the Chairman's view that the doctrine of tribal sovereign immunity bars

[3] This is not to deny the important role of the Tribal Council in periodically appointing tribal judges and approving the annual budget for the Tribal Court

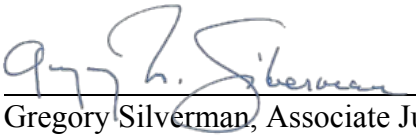
the lawsuit commenced by Mssrs. Galanda, Broadman and Dreveskracht in effect challenging the Tribal Council's authority to disbar them under the Nooksack Constitution and Title II of the Indian Civil Rights Act. Rather than communicating his views to this Court, we would advise him to consult with the Tribal Attorney about intervening in the action and filing a motion to dismiss the lawsuit of Mssrs. Galanda, Broadman and Dreveskracht based on a theory of sovereign immunity once the Court Clerk accepts the return of the Complaint and the Motion for Injunctive and Declarative Relief so the case can properly and legally proceed to an initial hearing before the trial division of the Nooksack Tribal Court.

This Court is troubled, however, by two passages in the letter received from the Chairman. The two passages are statements by the Chairman concerning the Court's two prior Orders requiring the Court Clerk to accept the Complaint and related motion of Mssrs. Galanda, Broadman and Dreveskracht or show cause why she should not be held in contempt. The Chairman states that "the Court will do neither" and that "the Tribal Court Clerks will not be accepting the Galanda Broadman documents for filing." This Court fears that these two statements could be read to suggesst that the Chairman and the Tribal Council are attempting to improperly influence the course of a lawsuit in which they have an interest and that was properly filed and is currently pending before the Nooksack Tribal Court. While this Court is certain that the Chairman would not deliberately coerce or intimidate the Court Clerks into violating the lawful orders of this Court, it fears that others may not be so generous. To give the appearance of interfering with the proper operation of the Nooksack Tribe's justice system undermines the sovereignty of all tribes across the nation because it suggests to those who would curtail and thwart the progress we have made as Indians over the last forty years that we are still not able to operate an independent judiciary.

IT IS HEREBY ORDERED that having not heard from the Court Clerk, Betty Leathers, as required in our two previous Orders, this Court has no alternative but to find Betty Leathers in contempt. If the contempt is not purged by the Court Clerk accepting the return of the Complaint and Motion for Injunctive and Declaratory Relief from Mssrs. Galanda, Broadman and Dreveskracht on or before July 6th, 2016, the Nooksack Chief of Police is ordered to arrest and jail Betty Leathers until such time as the return of the documents from Messrs. Galanda, Broadman and Dreveskracht are accepted by a clerk of the Nooksack Tribal Court and the contempt purged.

It is so ordered, this 28th day of June, 2016, for the panel,

Douglas Nash, Associate Judge
Eric Nielsen, Chief Judge



Gregory Silverman, Associate Judge