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NOOKSACK TRIBAL COURT  
NOOKSACK INDIAN TRIBE  
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Galanda Broadman PLLC

IN THE COURT OF APPEALS  
FOR THE NOOKSACK TRIBE OF INDIANS

GALANDA, *et al.*,

Plaintiffs,

Case No. [2016-CI-CL-002]

v.

BERNARD, *et al.*,

Defendants.

RESPONSE OF THE NOOKSACK  
INDIAN TRIBE AND THE  
NOOKSACK TRIBAL COURT  
CLERK TO THE ORDERS OF THE  
COURT OF APPEALS

COPY

Comes now, Nooksack Indian Tribe through its Office of Tribal Attorney, and provides this Response to orders from the Court of Appeals dated Orders of April 25, 2016 and May 27, 2016 directing the Court Clerk of the Nooksack Tribal Court – under penalty of arrest and confinement - to either accept and file the complaint and related motions of attorneys Gabriel Galanda, Anthony Broadman, and Ryan Dreveskracht (hereinafter, collectively, “Galanda et al”), or respond to the Nooksack Tribal Court of Appeals.

This Court is appellate in nature only, and lacks the jurisdiction to entertain matters that are not appeals from the Nooksack Tribal Court. In accepting the pleadings of Galanda, the Court exceeded its authority, and acted contrary to the rules and procedures established by the

1 Nooksack Tribal Council for the administration of the Nooksack Tribal Courts. The Court's  
2 orders also threatened to impose relief in violation of Nooksack Tribal law because they threatened  
3 to impose injunctive relief against the Nooksack Indian Tribe without a waiver of sovereign  
4 immunity.

5 The Court also violated Nooksack Tribal law by recognizing a right to a writ of  
6 mandamus, where no such claim is cognizable under Nooksack law. NTC 10.05.020(e) ("The  
7 Tribal Court is not granted the power or jurisdiction to issue writs of mandamus against the  
8 Tribe, nor against Tribal Council members or the Chairman of the Nooksack Tribe in their  
9 official capacities."); Resolution #16-47.

10 The Court's orders are void and unenforceable, because the Court lacked the jurisdiction  
11 to issue them. The orders must be vacated, and the unlawful action dismissed. The Tribe  
12 requests an award of fees and costs incurred in responding to the Galanda filings.

## 13 I. ARGUMENT

### 14 A. The Court Lacks Substantive Authority To Act.

15 It is black letter law that a court must have jurisdiction in order to act, and an order  
16 entered by a court without jurisdiction is void and unenforceable. *In re Marriage of Ortiz*, 108  
17 Wn.2d 643, 649, 740 P.2d 843 (1987). When a court is faced with a void order, it has no  
18 discretion and the order must be vacated whenever the lack of jurisdiction comes to light.  
19 *Mitchell v. Kitsap County*, 59 Wn. App. 177, 797 P.2d 516 (1990). A party served with a void  
20 order has no obligation to comply with its directives, and a court lacking jurisdiction has no  
21 contempt powers. *See, e.g., United States Catholic Conf. v. Abortion Rights Mobilization*, 487  
22 U.S. 72, 79 (1988).

23 The Nooksack Tribal Court of Appeals is a legislative, not a constitutional court, and has  
24 no independent jurisdiction or authority to act that is not granted by the Nooksack Tribal



1 Council through the Nooksack Tribal Code or resolutions adopted by the Council. NTC  
2 10.00.030 (“The court shall have subject matter and personal jurisdiction over civil and criminal  
3 matters specifically enumerated in the Nooksack Code of Laws.”). “In its most elemental terms,  
4 the [Nooksack] Constitution authorizes what parties and what subject matter the Court *may*  
5 exercise authority over. It is still up to the governing body to decide what parties and . . . what  
6 subject matter the Court *will* exercise authority over.” Order on Motion to Dismiss for Lack of  
7 Subject Matter Jurisdiction, *Cline v. Cunanan*, NCO-CIV-02/08-5, at 3.

8 Other tribal court opinions are consistent. *See, e.g., In the Matter of S.T.*, 8 NICS App. 81  
9 (Squaxin Island, October 2008) (like the Nooksack Constitution, under the Squaxin Island  
10 constitution, the trial court only has subject matter jurisdiction where such jurisdiction is  
11 conferred by ordinance, and no ordinance confers jurisdiction to hear actions of the nature of this  
12 proceeding); *In re the Election of 2000*, 6 NICS App. 45 (Sauk Suiattle, May 2001) (since tribal  
13 code did not grant appellate court authority to hear appeals from the trial court’s decision  
14 regarding election protests, court lacked jurisdiction to act).

15 The Nooksack Court of Appeals has subject matter jurisdiction only as an appellate body,  
16 to hear appeals from final orders of the trial court. *May v. NIHA*, 5 NICS App. 137 (November  
17 1999). The scope of appellate review is limited to the record of the proceedings before the trial  
18 court. *Id.* Clearly, this is not an appeal of a final order of the trial court, it is a matter that would  
19 require the Court to have original jurisdiction – which it lacks.

20 The Court erroneously relied, by analogy, on decisions from other courts which  
21 recognized the jurisdiction of an appellate court to order an inferior court to act. That original  
22 jurisdiction in those courts arises from a constitutional grant of authority, which this legislative  
23 Court lacks. *See, e.g., Winsor v. Bridges*, 24 Wash. 540, 64 P. 780 (1901) (Original jurisdiction  
24 of supreme court is fixed by constitutional limitations, and is derived from constitution, and not  
25

1 in pursuance of any legislative enactment); *State v. Savidge*, 132 Wash. 631, 233 P. 946 (1925)  
2 (supreme court has original jurisdiction, under Const. Art. 4, § 4, to issue writ of mandamus to  
3 state officer); *State ex rel. Hollenbeck v. Carr*, 43 Wn.2d 632, 262 P.2d 966 (1953) (original  
4 jurisdiction of supreme court in mandamus is limited to writs directed to state officers).

5 The Court lacks jurisdiction to entertain any action that is not an appeal. There is no writ  
6 of mandamus available under Nooksack law. For those reasons, the Court's Orders of April 25,  
7 2016 and May 26, 2016 are void and the Court has no discretion but to vacate them.

8 **B. The Tribe Has Not Waived its Sovereign Immunity**

9 The Court also lacks jurisdiction because the Tribe, and by extension the Tribal Court  
10 Clerk acting within the scope of her employment, are immune from suit. Tribal sovereign  
11 immunity is a jurisdictional issue and, therefore, must be resolved before any substantive issues  
12 are resolved. *Id.* (citing *Puyallup Tribe, Inc. v. Department of Game*, 433 U.S. 165, 173, 97 S.  
13 Ct. 2616, 2621, 53 l. Ed.2d 667, 4 Indian L. Rep. 88 (1977)). When tribal officials act in their  
14 official capacity and within the scope of their authority, they are immune. *Imperial Granite Co.*  
15 *v. Pala Band of Indians*, 940 F.2d 1269, 1271 (9<sup>th</sup> Cir. 1991).

17 Indian tribes are "domestic dependent nations," which exercise inherent sovereign  
18 authority over their members and territories. *Cherokee Nation v. Georgia*, 5 Pet. 1, 17, 8 l. Ed. 25  
19 (1831). The purpose of sovereign immunity is to preserve the autonomous political existence of  
20 the tribes and tribal assets. *Colorado River Indian Tribes v. Town of Parker*, 14 Indian L. Rep.  
21 3009 (D. Ariz., 1986) (citing *Chemehuevi Indian Tribe v. Cal. State Bd. of Equalization*, 757  
22 F.2d 1047, 1051, 12 Indian L. Rep. 2057 (9<sup>th</sup> Cir. 1985), *rev'd on other grounds*, 474 U.S. 9, 106  
23 S. Ct. 289, 88 L. Ed.2d 9, 12 Indian L. Rep. 1077 (1985); *reh'g denied*, 474 U.S. 1077, 106 S. Ct.  
24 839, 88 l. Ed.2d 810 (1986).



1 Indian tribes and their governing bodies possess common-law immunity from suit. They  
2 may not be sued absent an express and unequivocal waiver of immunity by the tribe or  
3 abrogation of tribal immunity by Congress. *Burlington Northern v. Blackfeet Tribe*, 924 F.2d  
4 899, 901 (9th Cir. 1991), *cert. denied*, 60 U.S.L.W. 3859 (June 22, 1992) (*citing Santa Clara*  
5 *Pueblo v. Martinez*, 436 U.S. 49, 58-59, 98 S. Ct. 1670, 1676-77, 56 l. Ed.2d 106 (1978)).

6 The Nooksack Tribe has not waived its sovereign immunity, and this Court has  
7 no jurisdiction over any suit brought against the Nooksack Indian Tribe, its officials, its entities,  
8 or employees without the consent of the Tribe. NTC 10.00.100; NTC 80.01.010. The sovereign  
9 immunity of the Nooksack Tribe is to be enforced to its fullest extent. NTC 10.00.100.

10 In addition to the sovereign immunity of the tribe that protects the Tribal Court Clerk  
11 acting within the scope of her employment, the Court Clerk is also protected by absolute quasi-  
12 judicial immunity from damages for civil rights violations in her performance of tasks that are an  
13 integral part of the judicial process. *Mullis v. United States Bankruptcy Court*, 828 F.2d 1385,  
14 1390 (9th Cir. 1987), *citing Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir. 1979) (§ 1983 case),  
15 *cert. denied*, 445 U.S. 962, 64 L. Ed. 2d 237, 100 S. Ct. 1648 (1980); *Shipp v. Todd*, 568 F.2d  
16 133, 134 (9th Cir. 1978) (same); *Stewart v. Minnick*, 409 F.2d 826 (9th Cir. 1969) (same). *Cf.*  
17 *Sharma v. Stevas*, 790 F.2d 1486 (9th Cir. 1986) (Clerk of United States Supreme Court had  
18 absolute quasi-judicial immunity under Federal Tort Claims Act because his acts were an  
19 integral part of the judicial process).

20  
21 Judicial immunity, on which the clerk's immunity is based, arises even where "the action  
22 he took was in error, was done maliciously, or was in excess of his authority; rather, he will be  
23 subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Stump v.*  
24 *Sparkman*, 435 U.S. 349, 356-57, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978) (*citing Bradley v.*  
25

1 *Fisher*, 80 U.S. (13 Wall.) 335, 351, 20 L. Ed. 646 (1872)).

2 Here, the Court Clerk was carrying out her role as the gatekeeper deciding whether or not  
3 a matter is accepted for filing, as authorized and directed under Tribal law. NTC 10.04.030  
4 (“The clerk is responsible for determining whether a document shall be accepted for filing.  
5 A document that fails to comply with the requirements of this Title **shall be rejected and**  
6 **returned to the filing party** along with a Notice of Rejection stating the basis for the  
7 rejection.”); NTC 10.05.050(h) [emphasis added]. This is not unlike state and federal  
8 court systems, where documents are screened by court clerks prior to being accepted for  
9 filing and entered into the docket, and documents are routinely rejected for failing to comply  
10 with payment, filing, noting, or formatting requirements, long before they are ever seen by  
11 a judge. *See e.g.; Duaran v. St. Luke’s Hosp.*, 114 Cal.App.4<sup>th</sup> 457 (1<sup>st</sup> Dist. 2003)(citing long  
12 history of cases where filing fee demanded prior to pleadings being filed); *see also* 28 U.S.C. §  
13 1914.

14  
15 The Court’s conclusion in the April 25, 2016 Order that “[t]here is nothing in  
16 the Nooksack Tribal Code that purports to confer on the Court Clerk the authority or power to  
17 refuse to accept a complaint for filing” is contrary to Nooksack law. The Court Clerk is immune.

18 This Court has no jurisdiction to entertain a suit seeking to compel the Nooksack Tribe or  
19 the Nooksack Tribal Court Clerk to act, nor would the Nooksack Tribal Court have jurisdiction.  
20 The Court’s orders are void and unenforceable. Even if a writ of mandamus were available  
21 under Nooksack law (which there is not, as explained below), sovereign immunity defeats  
22 mandamus. *See, e.g., Villegas v. United States*, 926 F. Supp. 2d 1185, 1201 (E.D. Wash. 2013)  
23 (“[T]he Ninth Circuit has unequivocally held that the Mandamus Act does not waive sovereign  
24 immunity.”), *citing White v. Adm’r of Gen. Serv. Admin.*, 343 F.2d 444, 447 (9<sup>th</sup> Cir. 1965); *see*  
25



1 *also Smith v. Grimm*, 534 F.2d 1346, 1353 n.9 (9<sup>th</sup> Cir. 1976).

2 **C. There is no Writ of Mandamus Cause of Action Cognizable under Nooksack Law**

3 The Court erroneously concluded in its April 25, 2016 Order that it had the authority to  
4 compel the Tribal Clerk to act based on a writ of mandamus it previously had recognized in  
5 *Lomeli v. Kelly*, No. 2013-CI-APL-002. *Lomeli* has been overruled in part by amendments to  
6 NTC Title 10, and this Court is obligated to apply the law as amended. *Plaut v. Spendthrift*  
7 *Farm*, 514 U.S. 211, 226 (U.S. 1995) (“Congress can always revise the judgments of Article III  
8 courts in one sense: When a new law makes clear that it is retroactive, an appellate court must  
9 apply that law in reviewing judgments still on appeal that were rendered before the law was  
10 enacted, and must alter the outcome accordingly.”); *see, also, United States v. Schooner Peggy*, 5  
11 U.S. 103, 1 Cranch 103, 2 L. Ed. 49 (1801); *Landgraf v. USI Film Products*, 511 U.S. 244, 273-  
12 280, 128 L. Ed. 2d 229, 114 S. Ct. 1483 (1994).

13  
14 Subsequent legislation declaring the intent of the earlier statute is entitled to great weight.  
15 *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 380-81, n. 6 (1969). The construction of a  
16 law by those charged with its execution should be followed unless there are compelling  
17 indications that such construction is wrong. *N.L.R.B. v. Hendricks County*, 454 U.S. 170, 177  
18 (1981); *Ayers v. Allain*, 893 F.2d 732, 755 (5<sup>th</sup> Cir. 1990).

19 Resolution #16-47 (April 18, 2016), which adopted the amendments to Title 10, provides,  
20 in pertinent part, as follows:

21 . . . WHEREAS, since 2013 numerous lawsuits have been filed in the Tribal Court  
22 against Tribal officials and staff, including the Chairman, the Council, the Chief  
23 of Staff, and the Court Clerk. These lawsuits have overwhelmed the Tribal Court,  
24 burdened Tribal staff, distracted the Tribal Council from the business of  
25 governance, and highlighted errors, deficiencies, and limitations in the policies  
and procedures of the Tribal Court; and

1 WHEREAS, one of those lawsuits was *Lomeli v. Kelly*, No. 2013-CI-APL-002,  
2 and in a January 15, 2014 Opinion the Nooksack Tribal Court of Appeals  
3 concluded that the Constitutional grant of authority to the Tribal Court of  
4 jurisdiction over all matters concerning the establishment and functions of the  
5 tribal government, provided that the constitutional grant of jurisdiction shall be  
6 not be construed as a waiver of sovereign immunity, means that where the  
7 allegations in a lawsuit concern the establishment and functions of the tribal  
8 government, the Court has no subject matter jurisdiction unless the Tribe has  
9 expressly waived its sovereign immunity; and

10 WHEREAS, the Nooksack Tribal Court of Appeals also concluded in *Lomeli* that  
11 the Constitutional grant of authority to the Tribal Court of jurisdiction over all  
12 civil matters concerning members of the Nooksack Indian Tribe, together with  
13 language from Nooksack Tribal Code 10.00.100(b), means that Tribal Council  
14 members may be compelled to perform non-discretionary duties under the laws of  
15 the Nooksack Tribe, even when the Nooksack Tribe has not waived its sovereign  
16 immunity; and

17 WHEREAS, the Nooksack Tribal Court of Appeals interpreted Title 10 as a  
18 codification of the Tribal Court's constitutional grant of jurisdiction to authorize  
19 the issuance of a writ of mandamus to compel Tribal Council officers to perform  
20 constitutionally required non-discretionary duties; and

21 WHEREAS, Title 10 requires the Tribal Court to interpret tribal ordinances  
22 resolutions, regulations, and policies in order that the substantive intent of the  
23 Tribal Council is ensured; and

24 WHEREAS, the Tribal Court's interpretation of Title 10 in the *Lomeli* decision is  
25 inconsistent with the Tribal Council's substantive intent because it concluded that  
26 suits against Tribal Council members acting in their official capacity were civil  
27 matters concerning members of the Nooksack Indian Tribe, rather than suits  
28 involving the establishment and functions of the tribal government, and therefore  
29 did not require a waiver of sovereign immunity in order to proceed; and

30 WHEREAS, legislative action is necessary to restore the prior and long-standing  
31 interpretations of the Constitution and Title 10 by the previous Tribal Courts and  
32 the Tribal Council, consistent with the Tribal Council's substantive intent; and

33 WHEREAS, Amendments to Title 10 are required in response to the *Lomeli*  
34 decision, to reaffirm and clarify the Tribal Council's substantive intent in carrying  
35 out its constitutional powers to promulgate ordinances for the purpose of  
36 safeguarding the peace and safety of the members of the Nooksack Indian Tribe  
37 and establishing courts for the adjudication of claims or disputes arising among  
38 the members of the Tribe; . . .



1 NOW THEREFORE BE IT RESOLVED, THAT pursuant to Article III, Section I  
2 of the Constitution and By-Laws and Title 10 of the Nooksack Tribal Code, and  
3 for the reasons described herein, the Tribal Council hereby approves the attached  
4 amended Title 10 document as the official version of Title 10 for publication; and

5 ...  
6 BE IT FURTHER RESOLVED, THAT the amended Title 10 and the amended  
7 Advocates Code of Conduct shall apply to and be binding on all matters pending  
8 before the Nooksack Tribal Court and the Nooksack Tribal Court of Appeals,  
9 where a final judgment has not been entered; and to all parties and advocates  
10 appearing before the Tribal Court and the Court of Appeals.

11 Resolution #16-47.

12 There is no right to a writ of mandamus under Nooksack law. There has been no waiver  
13 of the Tribe's sovereign immunity, or of the Tribal Court Clerk's quasi-judicial immunity. This  
14 Court has no authority to entertain Galanda's claims, and no authority to order the Tribe or its  
15 subordinate divisions or employees to entertain such claims, either. The Court's attempt to  
16 bootstrap its authority, based on Federal Rule of Civil Procedure 21, was impermissible, and  
17 contrary to Nooksack law.<sup>1</sup>

18 **D. The Tribe Has Properly Excluded Galanda, et al from the Reservation and Tribal  
19 Courts and this Court has No Authority to Review That Decision**

20 It is unquestionable that tribes possess the inherent sovereign powers to exclude non-  
21 members from tribal lands. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983).  
22 The authority to exclude necessarily includes the lesser authority to set conditions on their entry  
23 and continued presence through regulations. *See Merrion v. Jicarilla Apache Tribe*, 455 U.S.  
24 130, 144-45 (1982) (the power to exclude "necessarily includes the lesser power to place  
25 conditions on entry, on continued presence, or on reservation conduct."). Galanda et al are non-

<sup>1</sup> The federal rules of civil procedure do not apply in the Nooksack Tribal Courts, unless both parties have agreed and the Court has so ordered. Although the Order asserts that it "does not apply but draws inspiration from Rule 21," it applies the substantive and procedural aspects of Rule 21.

1 members. The Tribe has the absolute inherent sovereign power to exclude them from the  
2 reservation and Tribal courts, and it has exercised that power.

3 Indeed, Judge Alexander recognized that the Tribe had exercised its inherent power to  
4 exclude, and that the Court was prohibited under Resolution #16-28 from filing documents  
5 signed by “Galanda or other attorneys at Galanda Broadman or respond to their communications  
6 pertaining to their representation of plaintiffs.” March 7, 2016 Case Management Order re:  
7 Motion for Judicial Notice Filed by Pro Se Plaintiff Michelle Joan Roberts, *Belmont v. Kelly*,  
8 Case No. 2014-CI-CL-007, at 2. Judge Alexander held that “[t]he Court has not filed and will  
9 not consider the Declaration of Gabriel S. Galanda, with Exhibits 1 and 2 attached, or any other  
10 documents signed by Mr. Galanda.” *Id.*

11 Galanda has failed to articulate a basis under which he and his colleagues should be  
12 permitted to thwart the Tribe’s authority to exclude him from the Tribe’s lands and from its  
13 courts. Galanda’s repeated efforts to evade the Tribe’s authority and its sovereignty, and his  
14 continued harassment of Tribal Court staff, cannot and will not be countenanced.

15 The grant of permission to appear in Tribal Courts, now withdrawn, was a privilege  
16 afforded Galanda, et al – not a right. Galanda’s clients do not have a constitutionally protected  
17 right to counsel in Nooksack civil courts. And, even if they did, that right does not mean an  
18 absolute right to the lawyer of one’s choice. *Kentucky West Virginia Gas Co. v. Pennsylvania*  
19 *Public Utility Com.*, 837 F.2d 600 (3<sup>rd</sup> Cir. 1988)

20 It is worth noting that after alleging that he and his colleagues had been denied due  
21 process under the Indian Civil Rights Act because they had not been provided notice and an  
22 opportunity to be heard regarding their exclusion from the reservation and the Nooksack Tribal  
23  
24  
25



1 Courts, Galanda et al now ask this Court – and even more remarkably, this Court purports to  
2 command – that the very process Galanda alleges he is due, be prevented.<sup>2</sup>

3 The Tribe has, without waiver of its assertion that Galanda is not entitled to due process  
4 prior to his exclusion, provided him notice of the basis for the Tribe’s determination and an  
5 opportunity to present evidence and argument – and yet he seeks to enjoin that hearing, set for  
6 June 9, 2016.

7 There is “no single model of procedural fairness, let alone a particular form of procedure,  
8 . . . dictated by the Due Process Clause.” *Kremer v. Chemical Construction Corp.*, 456 U.S. 461,  
9 483, 72 L. Ed. 2d 262, 102 S. Ct. 1883 (1982). “Due process is flexible and calls for such  
10 procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319,  
11 334, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976) (citation omitted). Courts have concluded that a post-  
12 deprivation hearing is sufficient in licensing cases. *Dixon v. Love*, 431 U.S. 105, 113 (U.S.  
13 1977), *citing Mathews v. Eldridge*, 424 U.S. 319, 343 (1976); *Arnett v. Kennedy*, 416 U.S. 134  
14 (1974).

15 By attempting to avoid the process the Tribe has offered, Galanda has barred his own due  
16 process claim. Federal courts, evaluating due process claims under federal law, have universally  
17 concluded that “[i]f there is a process on the books that appears to provide due process, the  
18 plaintiff cannot skip that process and use the federal courts as a means to get back what he  
19 wants.” *Alvin v. Suzuki*, 227 F.3d 107, 116 (3<sup>rd</sup> Cir. 2000); *see, also, Zinerman v. Burch*, 494  
20 U.S. 113, 126, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990) (a due process violation “is not complete

21 \_\_\_\_\_  
22 <sup>2</sup> The Tribe’s and the Court Clerk’s immunity prevent this Court from ordering them to schedule and hold a hearing  
23 for Galanda et al in Nooksack Tribal Court by a date certain, because such action would require the expenditure of  
24 Tribal funds to pay for the Judge pro tempore. In addition, Nooksack law permits the Clerk to prioritize the time for  
25 trials and other hearings on the court’s calendar, with civil cases without a statutory precedence such as Minor in  
Need of Care hearings receiving the lowest priority. NTC 10.05.030(e). In managing the limited availability of the  
Tribal Court’s pro tempore judge, this matter, if it even presented cognizable claims – which it does not – would  
receive the lowest priority. In addition, there are specified calendar days for particular hearings, and civil motions  
are heard on the second and fourth Wednesday of every month. NTC 10.05.030(b)(ii).

1 when the deprivation occurs; it is not complete unless and until the State fails to provide due  
2 process”); *Miller v. Williams*, 590 F.2d 317, 321 (9<sup>th</sup> Cir. 1979) (plaintiff was accorded  
3 considerable due process rights of which she did not avail herself, thus due process claim is  
4 without merit); *Bohn v. County of Dakota*, 772 F.2d 1433, 1441 (8<sup>th</sup> Cir. 1985); *Dusanek v.*  
5 *Hannon*, 677 F.2d 538, 543 (7<sup>th</sup> Cir. 1982) (“[A] state cannot be held to have violated due  
6 process requirements when it has made procedural protection available and the plaintiff has  
7 simply refused to avail himself of them”); *McDaniels v. Flick*, 59 F.3d 446, 460 (3<sup>rd</sup> Cir. 1995);  
8 *Dwyer v. Regan*, 777 F.2d 825, 834-35 (2<sup>nd</sup> Cir. 1985), *modified on other grounds*, 793 F.2d 457  
9 (2<sup>nd</sup> Cir. 1986).

10 **E. Galanda et al Are Barred from Transacting Business on Nooksack Tribal Lands  
11 and Practicing in the Tribal Court**

12 Nooksack Tribal Council Resolution #16-28 bars Galanda et al, and their law firm,  
13 Galanda Broadman, from transacting business on Nooksack Tribal Lands and practicing in the  
14 tribal court. See NTC 10.02.070 (“... [t]he tribal council may revoke any privileges to such  
15 person(s) and bar them from further practice in any administrative tribunal before the Nooksack  
16 Indian Tribe or proceeding before the Nooksack Tribal Court.”). The Nooksack Tribal Court of  
17 Appeals is a division of the Nooksack Tribal Court, and therefore Galanda is prohibited from  
18 practicing before it. NTC 10.05.010(b).

19 It is irrelevant that Galanda is representing himself pro se. Under Washington’s Rules  
20 of Professional Conduct governing attorneys, which apply to attorneys appearing in Nooksack  
21 Tribal Courts, an attorney acting pro se is representing a client, and thus is practicing in tribal  
22 court. NTC 10.02.020(b); *In re Discipline of Haley*, 156 Wn.2d 324, 338, 126 P.3d 1262 (2006).  
23 *See, also*, WSBA Advisory Opinion 2131 (2006) (“All attorneys need to follow the Washington  
24 Rules of Professional Conduct (WRPC) when representing clients, *even when the client is the*  
25 *attorney*. The rules neither specify any additional or reduced ethical standards attorneys should



1 follow when representing themselves.”) [emphasis added]. And should there be any doubt that  
2 Galanda knows he is representing a client when he attempts to appear pro se in Nooksack Courts,  
3 the Court need only look for his request for relief in his Complaint, which seeks, among other  
4 things, “pro se fees and costs.” First Amended Complaint, at 11.

5 This Court has a mandatory obligation to interpret Tribal ordinances, resolutions, and  
6 policies in order that the substantive intent of the Tribal Council is ensured, and by ignoring  
7 resolution #16-28 and accepting a matter brought by Galanda, et. al., the Court has failed to  
8 ensure the substantive intent of the Tribal Council, and violated Tribal law. NTC 10.01.020.

9 **F. Non-Compliance with Procedural Rules of Nooksack Tribal Courts Bars**  
10 **Consideration of this Matter**

11 In addition to the numerous substantive bases for vacating the orders and dismissing  
12 Galanda et al’s claims, there are, in addition, numerous procedural bases requiring rejection of  
13 the pleadings. NTC 10.05.050(h) (“A document that fails to comply with the requirements of  
14 this Title *shall be rejected* and returned to the filing party along with a Notice of Rejection  
15 stating the basis for the rejection.”) [emphasis added].

16 **1. Galanda Failed to Pay the Statutorily Required Filing Fees.**

17 The Tribe, much like nearly every other tribal, state, and federal court in the United  
18 States, requires payment of a filing fee. NTC 10.05.050(g), 10.05.090(e). Galanda et al have  
19 failed to pay any of the requisite filing fees for the original petition or subsequent motions.

20 **2. E-Filing and Service are Not Permitted.**

21 Galanda et al have repeatedly “filed” and “served” pleadings by e-mail. E-filing is  
22 expressly prohibited. NTC 10.05.040(h). E-service is only permitted if the parties have an  
23 agreement, in advance, to accept such service. NTC 10.05.040(d)(ii). These pleadings have  
24 properly been rejected by the Court Clerk. NTC 10.05.050(h).

1                   **3.       The Tribe and the Clerk Have Never Been Properly Served**

2                   For cases involving the Nooksack Indian Tribe or its officers, agents, or employees as a  
3 named party defendant, the service of initial process must be by certified mail, return receipt  
4 requested, upon the Chairman and the office of Tribal Attorney. NTC 10.05.040(e). This is not  
5 unusual. Indeed, other governments have specific service requirements for actions against  
6 government agencies. *See, e.g.*, RCW 4.28.080. Galanda et al have never complied with the  
7 Tribal service requirement, and have never achieved effective service of process. Therefore, this  
8 Court does not have personal jurisdiction over the defendants.

9                   **4.       E-Mail Communications with the Court are Per Se Ex Parte Contacts.**

10                   Galanda et al's communications with the Court have been ex parte communications in  
11 violation of Title 10 and the Advocate's Code of Conduct, and have prejudiced the Tribe. NTC  
12 10.03.050 prohibits ex parte communications, and provides as follows:  
13

14                   No party, whether or not that party is represented by an advocate, shall have any  
15 ex parte communications with the judge. "Ex parte" means by, for, or on behalf of  
16 one party. In addition to in-person contacts, this rule covers communication by  
17 telephone, letter, e-mail and any other modes. Copying the other party or the  
18 other party's advocate on the communication at the time it is sent does not remove  
19 the contact from the prohibitions of this section. An advocate who counsels a  
20 party to engage in ex parte contacts with the judge, or engages in ex parte contacts  
21 himself or herself, has committed a per se violation of this section and Advocates  
22 Code of Conduct Rule 22.

23                   **II.       CONCLUSION**


24                   The Court lacks jurisdiction to entertain Galanda et al's petition and motions, and  
25 therefore its orders are void and unenforceable. The Court's actions are procedurally flawed, as  
well, and the failure of Galanda and the Court to abide by Title 10 requires that the matter be  
dismissed. A contrary decision is an affront to the Tribe's sovereignty. The orders must be



1 vacated, and the unlawful action dismissed.

2 The Tribe should be awarded its fees and costs incurred in responding to the frivolous  
3 and baseless Galanda filings.

4  
5 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of June, 2016.  
6

7  
8   
9 \_\_\_\_\_  
10 Rickie W. Armstrong, WSBA #34099  
11 Office of Tribal Attorney  
12 Nooksack Indian Tribe  
13 P.O. Box 63  
14 Deming, WA 98244  
15 (360) 592-4158  
16 (360) 592-2227  
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IN THE COURT OF APPEALS  
FOR THE NOOKSACK TRIBE OF INDIANS

GALANDA, *et al.*,

Plaintiffs,

Case No. [2016-CI-CL-002]

v.

BERNARD, *et al.*,

Defendants.

DECLARATION OF SERVICE

I Declare:

That I am over the age of 18 years and competent to be a witness.

On June 3, 2016, I duly mailed by first class mail, a copy of:

1. Response of the Nooksack Indian Tribe and the Nooksack Tribal Court Clerk to the Orders of the Court of Appeals;
2. This Declaration of Service

to the following parties:

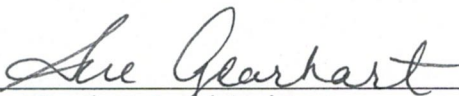
**Northwest Indian Court System**  
**Attn: Katie Nicora, Court Administrator**  
**20818 – 44<sup>th</sup> Avenue West, Suite 120**  
**Lynnwood, WA 98036-7709**

**Galanda Broadman PLLC**  
**Attn: Gabriel Galanda**  
**P.O. Box 15146**  
**Seattle, WA 98115**

Also on June 3, 2016, I duly emailed a courtesy copy of said documents to katie@nics.ws.

I declare under the penalty of perjury, under the laws of Nooksack Indian Tribe, that the foregoing is true and correct.

Signed at Deming, Washington on June 3, 2016.



Sue Gearhart, Legal Assistant  
Office of Tribal Attorney

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