IN THE NOOKSACK TRIBAL COURT OF APPEALS

Gabriel S. Galanda, pro se, Anthony S. Broadman, pro se, and Ryan D. Dreveskracht, Petitioners, v. Nooksack Tribal Court, Respondent.	Trial Court No. 2016-CI-CL-002 **RESPONSE RE: ORDER TO SHOW CAUSE AND REQUEST FOR WRIT OF PROHIBITION**

I. RESPONSE RE: ORDER TO SHOW CAUSE

On April 6, 2016, Gabriel S. Galanda, *pro se*, Anthony S. Broadman, *pro se*, and Ryan D. Dreveskracht, *pro se* ("Petitioners"),[1] sought a peremptory Writ of Mandamus, reversing the Nooksack Tribal Court or Court Clerk's rejection of Petitioners' May 23 and May 25, 2016, pleadings. On April 25, 2016, this Court granted Petitioners' motion, in part, ordering "that the Court Clerk of the Nooksack Tribal Court shall either accept and file Petitioners' complaints and related motions or file an answer to the Petition for Writ of Mandamus with this Court on or before May 16, 2016."

As of May 17, 2016, the Court Clerk had not accepted and filed Petitioners' complaints and related motions and had not filed an answer to the Petition for Writ of Mandamus with this Court. Petitioners therefore filed a Motion for Show Cause Order Re: Contempt with this Court. On May 24, 2016, this Court ruled on Petitioner's contempt motion, ordering "Petitioners and the Court Clerk to each respond in writing on

or before June 3, 2016, on whether Petitioners' complaints and related motions have been accepted for filing."

On May 23 and 25, 2016, Petitioners again attempted to file pleadings in the Nooksack Tribal Court, Petitioners were again rejected by the Court Clerk, and Petitioners again sought a writ of mandamus from this Court. On May 27, 2016, this Court ordered that (1) the Court Clerk either accept all of Petitioners' filings or show cause by affidavit why she should not be held in contempt, and (2) the Tribal Court schedule a hearing on the Petitioners' injunction motion before June 9, 2016. Order Re Second Writ of Mandamus ("Order"), at 2-3.

In sum, by June 3, 2016, the Court Clerk was supposed to have (1) accepted all of Petitioners' filings or shown cause why she should not be held in contempt, and (2) scheduled a hearing on Petitioners' injunction motion to occur before June 9, 2016.

June 3 has now come and gone, and the Respondent has not complied with any of this Court's orders. Consider the declaration testimony of Petitioner Gabriel S. Galanda:

> On May 29, 2016, I emailed the Nooksack Court Clerks Betty Leathers and Deanna Francis, copying Tribal defense counsel:
>
> > Please reply to us by close of business on Tuesday, May 31, to confirm that our Complaint, First Amended Complaint, Motion for Injunction, and my pro se Declaration (four pleadings in all) have been filed in the Court record. . . . Please also reply to us by close of business on Tuesday to confirm when our Motion for Injunction has been set for a hearing before Thursday, June 9. Please be advised that I will be out of town on Wednesday, June 8, so the hearing will need to take place before that date. The injunction motion hearing of course relates to an administrative banishment hearing that has been scheduled against me for Thursday, June 9, so time is of the essence as to the motion.
>
> Having heard nothing in reply to my May 29th email, on June 2, 2016, I emailed Ms. Leathers and Ms. Francis again:

[1] This filing is offered by each Petitioner on his own behalf, *pro se*; it is not intended to be and should not be construed as the practice of law or transaction of business within the jurisdiction of the Nooksack Tribe.

> We await your response, having heard nothing from you since the Court's Order on May 27 or my email in May 29. Your continued obstruction of justice especially prejudices me given an administrative banishment hearing against me that the former Tribal Council has scheduled for one week from today. Our pending Motion for Injunction relates to that hearing and must be heard at once. I remain unavailable Wednesday but otherwise can make time for a hearing in coming days.

> Neither Ms. Leathers or Ms. Francis ever responded to either of my inquiries. As of today, we have not received any indication that the Nooksack Court Clerks have accepted our Complaint, First Amended Complaint or Motion for Injunction papers for filing; or set a hearing on that Motion before June 9, 2016.

Third Declaration of Gabriel S. Galanda in Support of Appellate Writ Petitions ("Third Galanda Decl."), ¶¶ 2-3. Respondent must now be held in contempt.

Meanwhile, Petitioner Galanda is headed toward a June 9, 2016, banishment hearing, having already "been deprived of [his] fundamental due process rights to, *inter alia*, know the charges against [him] and the anticipated penalty, and be represented by civil counsel of [his] choosing now and on June 9, 2016." *Id*., ¶ 9; *see also id*., Exhibit F.

II. REQUEST FOR WRIT OF PROHIBITION

Having exhausted every other avenue of relief, Appellants are left with the only option available: a writ prohibiting the holdout Tribal Council from conducting the June 9, 2016, hearing until Petitioners' due process, equal protection, and related Constitutional claims are heard in the Nooksack Tribal Court. *See, e.g., Mother Goose Nursery Sch., Inc. v. Sendak*, 770 F.2d 668, 674 (7th Cir. 1985) ("[C]ourts of this state clearly have the power to issue writs of prohibition and mandamus to administrative agencies in appropriate cases, such as where constitutional due process rights are being denied.") (quotation omitted); *In re Perry*, 859 F.2d 1043, 1046 (1st Cir. 1988) ("[I]n spite of the unusual circumstance that we are entertaining a petition for a writ directly

against the ALJ, . . . it is clear that we have jurisdiction to entertain the mandamus petition and to grant relief if appropriate."); *State ex rel. Miss. Lime Co. v. Mo. Air Conservation Comm'n*, 159 S.W.3d 376, 381 (Mo. App. 2005) ("An important exception . . . to the constitutional and statutory constraints placed on judicial review of administrative action is the power of the courts to issue and determine original remedial writs against administrative officers and bodies.").

Appellate courts typically analyze five factors in determining the propriety of a writ of mandamus or prohibition:

> (1) Whether the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires;
>
> (2) Whether the petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first);
>
> (3) Whether the lower court's order is clearly erroneous as a matter of law;
>
> (4) Whether the lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
>
> (5) Whether the district court's order raises new and important problems, or issues of law of first impression.

Bauman v. United States Dist. Court, 557 F.2d 650, 654-55 (9th Cir. 1977) (citations omitted); *see also Jones v. Costanzo*, 393 S.W.3d 1, 3 (Ky. 2012) ("The standards for granting petitions for writs of prohibition and mandamus are the same."); *United States v. Gross*, 73 M.J. 864, 866 (A. Ct. Crim. App. 2014) ("We apply the same test for a writ of prohibition as for a writ of mandamus.").

These factors are only guidelines and raise questions of degree, including how clearly erroneous the Tribal Clerk's rejection is as a matter of law and how severe the damage to the Petitioners will be without relief. *Bauman*, 557 F.2d at 655. Furthermore, these factors need not all point the same way or even all be applicable in cases where

relief is warranted. *Id.* The existence of clear error as a matter of law, however, is dispositive. *Calderon v. United States Dist. Court,* 98 F.3d 1102, 1105 (9th Cir. 1996).

Here, the *Bauman* factors favor immediate issuance of the writ of prohibition.

As to factors (1) and (2), Petitioners have no other adequate means to obtain relief, and cannot obtain review by direct appeal from a judgment after trial. If the rejection stands, there will be no trial. The harm—permanent, unreviewable disqualification from the practice of law before the Nooksack Tribal Court without any process, and the concomitant harm to Petitioners and hundreds of their tribal member clients—has already occurred and is otherwise not reviewable. By design, the Tribal Court/Clerk's action deprives Petitioners of a final reviewable judgment in this case.[2]

Factor (3), clear legal error, is satisfied and dispositive. The Clerk's refusal to file Petitioners' papers is clearly legally wrong. Her inaction directly contradicts: (a) the Tribal Court's Order of March 21, 2016. *Belmont v. Kelly*, No. 2014-CI-CL-007, 5 n.3 (Nooksack Tribal Ct. Mar. 21, 2016) ("the [Petitioners] have not lost their right to self representation in the matter."); (b) this Court's May 24, 2016, Order; **and** (c) this Court's May 27, 2016, Order.

The Clerk was also supposed to produce, *inter alia*, Resolution No. 16-28, "BARRING" Petitioners from Nooksack on March 21, 2016, but she has flouted that judicial directive too. *Belmont v. Kelly*, No. 2014-CI-CL-007, 14 n.4 (Nooksack Tribal Ct. Mar. 21, 2016).

[2] For the obvious reasons cited in Petitioners' rejected injunction motion, administrative tribunals—here, the holdout Tribal Council—generally "lack[] jurisdiction to consider constitutional issues." *Commc'ns Workers of Am., Local 3170 v. City of Gainesville*, 697 So. 2d 167, 172 (Fla. Dist. Ct. App. 1997) (citation omitted); *see also Foe Aerie 0760 Kokosing v. Liquor Control Comm'n*, No. 96-CA-000020, 1996 WL 752556, at *1 (Ohio Ct. App. Nov. 6, 1996) ("[C]onstitutional issues are not proper matters for review by administrative agencies.").

Petitioners understand the political pressure the Clerk finds herself in—not to mention her quandary of being unethically instructed by in-house Tribal counsel[3]—but those are not excuses for a judicial officer to dishonor clear judicial instructions. The fact remains the Clerk has "REJECTED" everything that Petitioners have attempted to file. Because there is a clear error of law and no adequate procedural remedy, the Court need not look further. There remains clear error of law, and it is dispositive.

Bauman factor (4) is also satisfied, as the Court Clerk demonstrates a patent disregard of the rule of law at Nooksack. Indeed, her "willful failure to comply with a Nooksack Tribal Court's order is contemptuous, mocks the Nooksack Tribe's judiciary, obstructs official judicial proceedings, and undermines the Tribe's self-governance." Order, at 2. Her behavior, again, is completely—and increasingly—inconsistent with the Tribal Court's and this Court's clear instructions.

Bauman factor (5) is also satisfied. The problem for Petitioners is immeasurable; but the more profound harm is to Petitioners' clients,[4] who remain the real targets of this strategic disqualification and banishment of Petitioners. *U.S. for Use & Benefit of Lord Elec. Co. v. Titan Pac. Const. Corp.*, 637 F. Supp. 1556, 1562 (W.D. Wash. 1986) (quoting Freeman v. Chicago Musical Instrument Co., 689 F.2d 715, 722 (7th Cir. 1982) (efforts to disqualify opposing counsel are viewed "'with extreme caution for they can be used as a technique of harassment'" to deprive an opponent of counsel of its choice).

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[3] Last Friday, this Court queried whether "the clerk is acting on the advice of counsel" for the Tribe. Order, at 2 (quoting Washington RPC 8.4(d)). Exhibit G to the Third Galanda Decl. eliminates any doubt: "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,' [sic] prohibited by Resolution #16-28." The various unsigned, legalese-laden letters from "the Clerk" indicate somebody is hiding—namely the Tribal Attorney(s). *See also* Ex. F to Declaration of Ryan Dreveskracht In Support of Petitioners' Motion for Show Cause re: Contempt (May 17, 2016) ("Under Washington's Rules of Professional Conduct, a lawyer who is pro se is 'representing a client.'"). Tribal counsel's own wrongdoings will be dealt with in other legal proceedings.

[4] While Petitioners do not currently represent anyone before the Nooksack Tribal Court, and once again, make this appearance *pro se*, Petitioners remain counsel of record everywhere but the Nooksack Tribal

Indeed, the disqualification and banishment of Petitioners is part of a rather transparent scheme to deprive the Nooksack 306 and their allies[5] of legal counsel so that the holdout Tribal Council can forgo the election that was Constitutionally required for March 19, 2016—until they can jettison the Nooksack 306—and, now, their allies[6]—from the rolls and, thus, the polls. *Belmont v. Kelly*, No. 2014-CI-CL-007, 16 (Nooksack Tribal Ct. Jan 26, 2016) ("It appears to the Court that the real harm Defendants fear is the outcome of the 2016 elections."). It is well understood by everyone involved at Nooksack that, without legal counsel, no Nooksack can avail themself of Tribal judicial process—let alone due process at law. *See Roberts v. Kelly*, 12 NICS App. 33, 41 (Nooksack Ct. App. Mar. 18, 2014) (citing *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970)).

Tragically, the Tribal Courthouse has been overthrown by the holdover Council, and the Clerk is now complicit. Order must be restored.

IV. CONCLUSION

Petitioners now request that this Court issue a Writ of Prohibition disallowing the holdout Tribal Council from conducting the June 9, 2016, banishment hearing against Petitioner Galanda until Petitioners' various Constitutional claims are finally heard by the Nooksack Tribal Court. The Court should also mete out whatever form of contempt it sees fit given the Nooksack Tribal Clerk's refusal to administer justice at Nooksack.

Court and within the jurisdiction of the Nooksack Tribe, for hundreds of enrolled Nooksacks that the Kelly Faction continues to disenfranchise and to target for disenrollment.

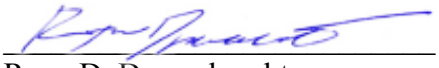
[5] Petitioners also represent(ed) over 50 non-306 tribal members in *Kelly v. Kelly*, No. 2016-CI-CL-001. Those Plaintiffs simply want an election. *Id*., First Amended Complaint (Jan. 21, 2016).

[6] *See Gladstone v. Kelly*, No. 2016-CI-CL-001, Complaint, at 2-3 (April 29, 2016) (four non-306 *pro se* plaintiffs alleging that each "received a Notice of Dual Enrollment and Request for Relinquishment . . . dated March 4, 2016," despite the fact that "Defendants are currently barred from proceeding with disenrollment under Title 63 by a Tribal Court order issued *Belmont v. Kelly*, No. 2014-CI-CL-007 . . . ").

Respectfully submitted this 3rd day of June, 2016.

Gabriel S. Galanda, *pro se*

Anthony S. Broadman, *pro se*



Ryan D. Dreveskracht, *pro se*

DECLARATION OF SERVICE

I, Molly Jones, say:

1. I am over eighteen years of age and am competent to testify, and have personal knowledge of the facts set forth herein.

2. Today, I caused this Response re: Order to Show Cause and Request for Writ of Prohibition, to be filed or served via U.S. mail, upon:

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NICS
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The foregoing statement is made under penalty of perjury under the laws of the Nooksack Tribe and the State of Washington and is true and correct.

DATED this 3rd day of June, 2016.

Molly A. Jones

MOLLY A. JONES