



IN THE TRIBAL COURT OF THE NOOKSACK TRIBE OF INDIANS FOR THE  
NOOKSACK INDIAN TRIBE

NOOKSACK INDIAN TRIBE,

Plaintiffs,

v.

NORTHWEST INTERTRIBAL COURTS  
SYSTEM, a Washington non-profit corporation;  
and DAN KAMKOFF, its Executive Director,

Defendants.

Case No. 2016-CI-CL-006

COMPLAINT FOR BREACH OF  
CONTRACT, INJUNCTIVE RELIEF  
AND SPECIFIC PERFORMANCE

COPY

For its complaint, the Nooksack Indian Tribe (the "Tribe"), by and through its  
undersigned counsel, alleges as follows:

**I. NATURE OF THE CASE**

1.1. This is a suit arising under the Nooksack Tribal Code and the terms and  
conditions of a written Appellate Services Agreement (the "Agreement") between the Tribe and  
the Northwest Intertribal Court System ("NICS").

**II. PARTIES**

COMPLAINT FOR BREACH OF CONTRACT,  
INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE  
PAGE 1 OF 11

NOOKSACK INDIAN TRIBE  
OFFICE OF TRIBAL ATTORNEY  
P.O. BOX 63  
5047 MT. BAKER HWY.  
DEMING, WA 98244  
TEL. (360) 592-4158  
FAX (360) 592-2227

2.1. The Tribe is a federally recognized Indian tribe, organized under the Indian Reorganization Act of June 18, 1934 and the Tribe's Constitution and By-Laws.

2.2. Defendant NICS is a Washington non-profit corporation licensed to do business and doing business in the state of Washington. NICS contracted to provide appellate judges to staff the Nooksack Tribal Court of Appeals, pursuant to Tribal Resolutions and the terms and conditions of the Agreement between the Tribe and NICS.

2.3 NICS' Registered Agent, Dan Kamkoff, is located at 20818 44<sup>th</sup> Avenue West, Lynnwood, WA 98036.

2.4. Defendant Dan Kamkoff is the Executive Director of NICS, and the signator to the Agreement on behalf of NICS. Mr. Kamkoff is the chief executive officer of NICS and handles the day-to-day operation of the organization, including all fiscal matters. All NICS employees report to and are under the supervision of Mr. Kamkoff.

### III. JURISDICTION

3.1. The Nooksack Tribal Court has exclusive original jurisdiction over all matters in which the Nooksack Indian Tribe is a party in its official capacity. N.T.C. 10.00.050.

3.2. Defendant NICS is subject to the long-arm jurisdiction of the Nooksack Tribal Court because it has entered into a contract to supply services to the Tribe and has, through its consensual relationship, consented to the jurisdiction of the Tribe's courts. N.T.C. 10.00.060.

3.3. Defendant Kamkoff is an agent of NICS and is subject to the long-arm jurisdiction of the Nooksack Tribal Court because he has, in the course of his employment by

1 and as the agent of NICS, personally supplied services to the Tribe and, through his consensual  
2 relationship, consented to the jurisdiction of the Tribe's courts. N.T.C. 10.00.060.

#### 3 4 IV. FACTS

5 4.1. The Tribe has a Tribal Court, created by the Nooksack Tribal Council pursuant to  
6 the Nooksack Constitution and By-Laws and Title 10 of the Nooksack Tribal Code.

7 4.2. The Tribe also has a Tribal Court of Appeals, an appellate body created by the  
8 Nooksack Tribal Council legislatively through Title 80 of the Nooksack Tribal Code, and  
9 granted subject matter jurisdiction to hear appeals from decisions of the Nooksack Tribal Court.  
10 The Tribal Court of Appeals has no original jurisdiction, and no jurisdiction or authority to act  
11 that has not been granted by the Tribal Council as a matter of Tribal law.

12 4.3. Pursuant to the 2013 Agreement, NICS agreed to provide appellate services for  
13 the Tribe, through the empaneling of qualified judges recommended by NICS and duly appointed  
14 by the Tribe by resolution, to hear appeals as the Nooksack Tribal Court of Appeals.

15 4.4. The Agreement became effective on March 12, 2013 (the date when signed by  
16 both the Tribe and NICS) and expires, unless renewed or terminated, on December 31, 2016.

17 4.5. NICS is required under the Agreement to process notices of appeal received from  
18 the Tribal Court; conduct an initial assessment of the notice of appeal, case file and relevant  
19 codes to determine whether the appeal is timely, meets other procedural requirements, and  
20 presents a valid issue for appeal.

21 4.6. NICS is required under the Agreement to assemble a panel of three judges  
22 approved and selected by the tribe to hear each appeal, from a list of judges appointed by the

1 Tribal Council who are presently under contract with NICS.

2 4.7. Consistent with the terms of the Agreement, the Tribe developed eligibility  
3 requirements and minimum qualifications for appellate judges to be nominated by NICS to the  
4 Court of Appeals, described in Nooksack Tribal Council Resolution #13-24, dated February 14,  
5 2013.

6 4.8. Resolution #13-24 required NICS to submit to the Tribal Council at the time of  
7 their nomination the resume, credentials, examples of relevant work product, and a letter in  
8 support of nomination for each attorney nomination to the Court of Appeals, which nomination  
9 the Tribal Council shall move to approve or deny.

10 4.9. Resolution #13-24 provided that the initial appointment of a Court of Appeals  
11 judge nominated by NICS and approved by the Tribe was for a two-year term. At the end of the  
12 initial term, the Tribal Council could renew recommendations by NICS for subsequent  
13 appointments to successive three-year terms if the recommended nominees were otherwise  
14 qualified pursuant to Resolution #13-24.

15 4.10. Pursuant to Nooksack Tribal Council Resolution #13-82, dated May 30, 2013, the  
16 Tribe approved NICS's choosing a panel of three judges for each appeal to be heard by the Court  
17 of Appeals from a list of seven individuals, including Lisa Atkinson, Randy Doucet, Douglas  
18 Nash, Eric Nielsen, Mark Pouley, Dan Raas, and Gregory Silverman.

19 4.11. Pursuant to Resolution #13-24, the initial appointments of the seven individuals  
20 approved as Court of Appeals judges commenced on May 30, 2013 and terminated on May 30,  
21 2015, subject to re-appointment by the Tribe upon the recommendation of NICS and subject to  
22 the nominee meeting the minimum qualification for re-appointment.

1 4.12. NICS did not recommend the re-appointment of any of the judges initially  
2 nominated by NICS and approved by the Tribe at the end of the initial two-year term. The Tribal  
3 Council took no action to re-appoint any judges to subsequent three-year terms. Nonetheless,  
4 Judges Nash, Nielsen, and Silverman have issued orders in cases assigned after the expiration of  
5 their terms, in the absence of authority to act as Nooksack Tribal Court of Appeals judges.

6 4.13. NICS judges are required under the Agreement to act as appellate judges to hear  
7 cases appealed from the Tribal Court. NICS judges have no authority under the terms of the  
8 Agreement or under Nooksack law to hear matters that are not appeals from decisions by the  
9 Tribal Court.

10 4.14. NICS judges are required under the Agreement to comply with all judicial  
11 standards of conduct, Nooksack Tribal Court and Appellate Court rules, and other provisions of  
12 Nooksack law applicable to the administration and proceedings of the Tribal Court of Appeals.

13 4.15. Compensation under the original terms of the Agreement shall not exceed \$2,000  
14 per year without prior approval of the Tribe. That amount was increased to \$20,000 per year by  
15 Resolution #14-38, dated March 3, 2014 – after NICS realized that it would vastly exceed the  
16 cost cap for the second half of 2013, and what was on the horizon for 2014.

17 4.16. NICS has billed the Tribe the following amounts for appellate court services:

Year	Not to Exceed	Amount Billed
2013	\$2,000.00, increased to \$20,000 retroactively	\$8,796.25
2014	\$20,000.00	\$25,823.93
2015	\$20,000.00	\$250.00

2016 (thus far)	\$20,000.00	\$6,262.50
-----------------	-------------	------------

4.17. Defendant Kamkoff, as the chief executive officer of NICS with responsibility for day-to-day operation of the organization, including all fiscal matters, has responsibility to ensure compliance of NICS with the terms, conditions, and limitations of the Agreement.

## V. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

5.1. The Tribe incorporates each and every allegation contained in Paragraphs 1.1 through 4.17 by this reference, as if restated fully herein.

5.2. The Tribe and NICS agreed that NICS would provide appellate court services, including but not limited to reviewing initial notices of appeal forwarded by the Tribal Court staff to determine whether the notices of appeal meet procedural requirements established under Tribal law, and present a valid issue for appeal. If the notice of appeal satisfies those criteria, NICS is authorized to accept the appeal and assign it to duly-approved and qualified appellate judges. If the notice of appeal fails to satisfy those criteria, NICS is not authorized to accept the appeal.

5.3. In April, 2016, in the course of his responsibility for administering the Agreement, Defendant Kamkoff accepted for filing matters captioned, variously, *Galanda v. Bernard* and *In re Galanda*, which were not appeals and which failed to satisfy the procedural and substantive requirements established under Tribal law. *Galanda v. Bernard* and *In re Galanda* did not present valid issues on appeal that the Court of Appeals had jurisdiction to hear.

5.4. Despite the fact that the filings were not notices of appeal and failed to satisfy the

1 substantive and procedural requirements for appeal under Nooksack law and court rules,  
2 Kamkoff and NICS accepted the *Galanda v. Bernard* and *In re Galanda* matters and assigned  
3 them to Judges Nash, Nielsen, and Silverman. Kamkoff's and NICS's acceptance of the  
4 *Galanda v. Bernard* and *In re Galanda* matters was a breach of the Agreement.

5 5.5. Kamkoff's and NICS's acceptance of the *Galanda v. Bernard* and *In re Galanda*  
6 matters has resulted in significant burdens on the Tribal Court staff and the Tribe, and significant  
7 costs for dealing with unauthorized, excessive, and frivolous filings, as well as void contempt  
8 findings against Tribal employees acting within the scope of their authority.

9 5.5. In accepting assignment of the *Galanda v. Bernard* and *In re Galanda* matters,  
10 and in entering decisions in those matters, Judges Nash, Nielsen, and Silverman have failed to  
11 comply with their obligation to "[a]ct as appellate judges to hear cases appealed from the Tribal  
12 Court" and acted in excess of the authority granted under the Nooksack Tribal Code and the  
13 Agreement. Such conduct was a breach of the Agreement.

14 5.6. The initial two-year appointments for Judges Nash, Nielsen, and Silverman  
15 expired on May 30, 2015. Defendant Kamkoff, in the scope of his duty to administer the  
16 Agreement, failed to make recommendations to the Tribe regarding the reappointment of any  
17 judges to successive three-year terms. Thus, at the time of the assignment by Kamkoff and NICS  
18 of the *Galanda v. Bernard* and *In re Galanda* matters, Judges Nash, Nielsen, and Silverman were  
19 not "a panel of three judges . . . approved and selected by the Tribe to hear each appeal from the  
20 list of judges appointed by the Tribal Council" as required under the Agreement.

21 5.7. Judges Nash, Nielsen, and Silverman were not authorized to act as judges on the  
22 Court of Appeals after the expiration of their initial two-year terms, unless re-appointed by the

1 Tribal Council upon recommendation by Kamkoff and NICS.

2 5.8. Kamkoff's and NICS's failure to recommend judges for re-appointment following  
3 the expiration of their initial terms breached NICS's obligation to provide the Tribe with judges  
4 approved and appointed by the Tribe for rendering services under the Agreement.

5 5.9. Kamkoff's and NICS's assignment of matters after May 30, 2015 to Judges Nash,  
6 Nielsen, and Silverman breached NICS's obligation to provide the Tribe with judges approved  
7 and appointed by the Tribe for rendering services under the Agreement.

8 5.10. In accepting assignment of cases and rendering decisions after the expiration of  
9 their initial two-year terms, Judges Nash, Nielsen, and Silverman have failed to comply with  
10 their obligations under the Agreement to act as appellate judges to hear cases appealed from the  
11 Tribal Court, and to comply with all judicial standards of conduct, court rules, and other  
12 provisions of Tribal law applicable to the administration and proceedings of the Tribal Court of  
13 Appeals. Those acts and omissions constitute a breach of the Agreement.

14 5.11. The Agreement limited contract costs to a maximum of \$2,000 per year without  
15 prior approval of the tribe, later increased to \$20,000 per year. Even with the retroactive  
16 increase, NICS exceeded the contract limit by \$5,823.93 in 2014 without prior approval of the  
17 Tribe. NICS's excess billing, without prior approval, is a breach of the Agreement.

18 5.12. Defendant Kamkoff, in the scope of his responsibility for all fiscal matters,  
19 breached the Agreement by overbilling the Tribe for unauthorized and excess appellate services  
20 under the Agreement in the amount of \$5,823.93 in 2014.

21 5.13. Defendants' acts and omissions have breached the Agreement and caused  
22 damages and injury to the Tribe in an amount to be determined at trial, including but not limited



1 to excess contract costs in the amount of \$5,823.93.

2 **VI. SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF/  
3 SPECIFIC PERFORMANCE**

4 6.1. The Tribe incorporates each and every allegation contained in Paragraphs 1.1  
5 through 5.13 by this reference, as if restated fully herein.

6 6.2. The Nooksack Tribal Court of Appeals has no independent jurisdiction or  
7 authority to act that is not granted by the Nooksack Tribal Council through the Nooksack Tribal  
8 Code or resolutions adopted by the Council. N.T.C. 10.00.030 ("The court shall have subject  
9 matter and personal jurisdiction over civil and criminal matters specifically enumerated in the  
10 Nooksack Code of Laws.").

11 6.3. The Nooksack Constitution authorizes what parties and what subject matter the  
12 Court **may** exercise authority over, but it is still up to the governing body to decide what  
13 parties and what subject matter the Court **will** exercise authority over. See Order on Motion  
14 to Dismiss for Lack of Subject Matter Jurisdiction, *Cline v. Cunanan*, NCO-CIV-02/08-5, at 3.

15 6.4. In accepting the *Galanda v. Bernard* and *In re Galanda* matters for hearing,  
16 Defendants and Judges Nash, Nielsen, and Silverman exceeded the Court of Appeals' authority,  
17 and acted contrary to the rules and procedures established by the Nooksack Tribal Council for  
18 the administration of the Nooksack Tribal Courts.

19 6.5. This Court has jurisdiction to enjoin Defendants' ongoing violations of Title 10  
20 and Title 80.

21 6.6. The Agreement is a valid binding contract, with definite and certain terms. The  
22 Agreement is free from unfairness, fraud, and overreaching.



