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7 IN THE SUPREME COURT OF THE NOOKSACK TRIBE OF INDIANS

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9 In re: Orders Entered by Nooksack Tribal  
Court of Appeals After May 30, 2015

No.

10  
11 NOOKSACK INDIAN TRIBE,

12 Petitioner.

PLAINTIFF NOOKSACK  
INDIAN TRIBE'S MOTION FOR  
ACCELERATED REVIEW AND  
VACATION OF VOID ORDERS  
OF THE COURT OF APPEALS

13  
14 I. REQUEST FOR RELIEF

15 Petitioner, the Nooksack Indian Tribe (the "Tribe"), by and through its Tribal attorney,  
16 Rickie W. Armstrong, moves for accelerated review pursuant to N.T.C. Title 80.17.070, and  
17 vacation of the following orders issued by the Court of Appeals, in their entirety:

18

	Case Number	Date of Decision	Nature of Decision
19 20 21 22	1. 2016-CI-APL-002 <i>Belmont v. Kelly</i>  (Judges Nash, Nielsen, and Silverman)	3/22/2016	Order Denying NIT's Permission for Interlocutory Appeal
23 24 25	2. 2016-CI-CL-001 & 002 <i>In re Galanda</i>  (Judges Nash, Nielsen, and	4/25/2016	Order re: Petition for Writ of Mandamus

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	Case Number	Date of Decision	Nature of Decision
	Silverman)		
3.	2016-CI-APL-002 <i>Belmont v. Kelly</i> (Judges Nash, Nielsen, and Silverman)	4/26/2016	Order Dismissing NIT's Appeal
4.	2016-CI-CL-001 & 002 <i>In re Galanda</i> (Judges Nash, Nielsen, and Silverman)	5/24/2016	Order re: Written Responses to April 25, 2016 Order on Petition for Writ of Mandamus
5.	2016-CI-CL-001 & 002 <i>In re Galanda</i> (Judges Nash, Nielsen, and Silverman)	5/27/2016	Order re: Second Petition for Writ of Mandamus
6.	2016-CI-CL-001 & 002 <i>In re Galanda</i> (Judges Nash, Nielsen, and Silverman)	6/28/2016	Order Finding Betty Leathers in Contempt
7.	2016-CI-APL-002 <i>Belmont v. Kelly</i> (Judges Nash, Nielsen, and Silverman)	6/28/2016	Order Re: the Petition for Writ of Mandamus
8.	2016-CI-CL-001 & 002 <i>In re Galanda</i> (Judges Nash, Nielsen, and Silverman)	7/25/2016	Order on Motion to Enforce Contempt Order
9.	2016-CI-CL-002 <i>In re Galanda</i> (Judges Nash, Silverman, and Neilsen)	8/15/2016	Order on Motion to Enforce Contempt Order
10.	2016-CI-APL-002 <i>Belmont v. Kelly</i> (Judges Nash, Nielsen, and Silverman)	8/29/2016	Order Denying Motion to Expand Jurisdiction
11.	2016-CI-CL-007 <i>Belmont v. Kelly</i>	9/21/2016	Order Granting Requests to Join April 15, 2016 Motion

	Case Number	Date of Decision	Nature of Decision
	(Judges Nash, Nielsen, and Silverman)		and be Subject to June 28, 2016 Order
12.	2016-CI-CL-001 & 002 <i>In re Galanda</i>  (Judges Nash, Nielsen, and Silverman)	9/21/2016	Order Re: Plaintiffs' Second Motion for Show Cause Order Re: PSJ, Contempt, Mandamus
13.	2016-CI-CL-001 & 002 <i>In re Galanda</i>  (Judges Nash, Nielsen, and Silverman)	9/21/2016	Order and Judgment Awarding Costs
14.	2014-CI-CL-007 <i>Belmont v. Kelly</i>  (Judges Nash, Nielsen, and Silverman)	9/28/2016	Second Order Granting Requests to Join April 15, 2016, Motion and Be Subject to June 28, 2016, Order

Each of these orders was entered by a judge or judges of the Nooksack Court of Appeals whose initial two-year appointment was expired at the time the order was entered. A judge without authority to act cannot issue a valid order and therefore each order is void *ab initio*.

The Tribe seeks to vacate in full each of the orders described above, entered after May 30, 2015 (the date of the expiration of the initial two-year terms of the judges), because through its issuance of orders by judges who do not have current appointments to serve and therefore have no authority to act, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of revisory jurisdiction by the Supreme Court. N.T.C. 80.13.020(2).

The Tribe moves for review on an accelerated basis pursuant to N.T.C. 80.17.070. The Orders and copies of the relevant Resolutions supporting the Tribe's motion, and necessary for

1 the Court's disposition of the accelerated review, are submitted with this Petition.

2 The Tribe also asks that the Court stay the underlying orders of the Court of Appeals  
3 pursuant to N.T.C. 80.15.010 pending its decision on the Petition, without the necessity of a  
4 bond.

## 5 II. MATERIAL FACTS

6 Under the terms of a March 12, 2013 Agreement for Appellate Services, the Northwest  
7 Intertribal Court System (NICS) agreed to provide appellate services for the Tribe, and to  
8 identify and recommend individuals who meet the eligibility requirements identified by the Tribe  
9 and were under contract with NICS and therefore available to be appointed as appellate judges.

10 Tribal Council Resolution #13-24 (adopted February 14, 2013) provided that the initial  
11 appointment of a Court of Appeals judge nominated by NICS and approved by the Tribe was for  
12 a two-year term. At the end of the initial term, the Tribal Council could renew recommendations  
13 by NICS for subsequent appointments to successive three-year terms if the recommended  
14 nominees were otherwise qualified pursuant to Resolution #13-24.

15  
16 Resolution #13-24 required NICS to submit to the Tribal Council at the time  
17 of nomination the resume, credentials, examples of relevant work product, and a letter in  
18 support of nomination for each attorney nomination to the Court of Appeals. The Tribal Council  
19 is authorized to approve or deny NICS's recommendations.

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

24 Pursuant to Resolution #13-24, the initial appointments of the seven individuals approved  
25

1 as Court of Appeals judges commenced on May 30, 2013 and terminated on May 30, 2015,  
2 subject to re-appointment by the Tribe upon the recommendation of NICS and subject to the  
3 nominee meeting the minimum qualification for re-appointment.

4 NICS did not recommend the re-appointment of any of the judges initially nominated by  
5 NICS and approved by the Tribe prior to or after the end of the initial two-year terms on May 30,  
6 2015 as required under the Agreement. The Tribal Council has taken no action to re-appoint any  
7 judges to subsequent three-year terms. There are presently no judges qualified and appointed to  
8 act as judges in the Nooksack Tribal Court of Appeals.

9 Judges Nash, Nielsen, and Silverman have nonetheless issued orders in cases  
10 assigned after the expiration of their terms, without a current appointment by the Tribal Council  
11 and thus in the absence of authority to act as Nooksack Tribal Court of Appeals judges.  
12

#### 13 IV. AUTHORITY AND ARGUMENT

##### 14 A. The Supreme Court May Resolve the Tribe's Petition by Motion, and on 15 Accelerated Review.

16 The Nooksack Tribal Supreme Court was created pursuant to N.T.C. 80.11.010, enacted  
17 by Resolution #16-147 (October 6, 2016). The Court has appellate jurisdiction "in all actions  
18 and proceedings involving matters (1) concerning the establishment and functions of the  
19 tribal government, . . . [and] . . . (4) the legislative intent of Nooksack Tribal Law.  
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21 A party may seek discretionary review by the Supreme Court of a final decision of the  
22 Court of Appeals, or review of an interlocutory decision by the Court of Appeals where, among  
23 other reasons, "the Court of Appeals has so far departed from the accepted and usual course of  
24 judicial proceedings . . . as to call for the exercise of revisory jurisdiction by the Supreme  
25 Court." N.T.C. 80.13.020(3).

1 Here, accepting discretionary review of the fourteen (14) Court of Appeals decisions  
2 described above is warranted, because by permitting the issuance of orders by judges who are not  
3 presently appointed as appellate judges for the Nooksack Tribe, and therefore have no authority  
4 to act, "the Court of Appeals has so far departed from the accepted and usual course of  
5 judicial proceedings . . . as to call for the exercise of revisory jurisdiction" by this Court.

6 Pursuant to N.T.C. 80.17.070 "[t]he Supreme Court on its own motion or on motion by a  
7 party for good cause shown may set any review proceeding for accelerated disposition. The  
8 accelerated review shall be done by motion. The motion must include (a) the name of the party  
9 filing the motion; (b) the decision being reviewed; (c) a statement of the disposition urged by the  
10 moving party; (d) copies of the record from the court or agency below that are material to the  
11 motion; (e) an argument for the relief the party seeks; and (f) a statement of any other issues to  
12 be decided in the review proceeding."

13 In addition, "[t]he Court may, on its own initiative or on motion of a party, waive or alter  
14 the provisions of any of these rules and enlarge or shorten the time within which an act must be  
15 done in a particular case in order to serve the ends of justice." N.T.C. 80.17.060.

16 "A party seeking review must file a Petition for Review no later than the later of (1)  
17 fourteen (14) days after the Court enters the decision for which the party seeks review, or (2)  
18 thirty (30) days after the date of enactment of these amendments creating the Supreme Court."  
19 N.T.C. 80.13.030. Although most of the orders the Tribe seeks to vacate were entered more than  
20 14 days before the date of filing this Petition and Motion, it has been fewer than thirty days since  
21 the enactment of the amendments to Title 80 creating the Supreme Court. The Tribe's Petition  
22 is timely.  
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24 Disposition of the Tribe's Petition on an accelerated schedule is warranted, because there  
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1 is little record to review, and there is but one issue – were the judges who issued the orders of the  
2 Court of Appeals after May 30, 2015 then-appointed and authorized judges of the Nooksack  
3 Supreme Court? If the Court concludes that they were not, then as a matter of law the orders are  
4 void and must be vacated.

5 **B. The Court Must Vacate the Orders Because they are Void.**

6 A party may attack an order directly on appeal, or in a collateral proceeding if it is  
7 absolutely void, not merely erroneous. *Bresolin v. Morris*, 86 Wn.2d 241, 245, 543 P.2d 325  
8 (1975), citing *State ex rel. Ewing v. Morris*, 120 Wn. 146, 207 P. 18 (1922); *State v. Lew*, 25  
9 Wn.2d 854, 172 P.2d 289 (1946); *State ex rel. Superior Court v. Sperry*, 79 Wn.2d 69, 483 P.2d  
10 608 (1971). Here, the orders are void, not merely erroneous.

11 All actions taken by a judge without authority to act are null and void. *See National Bank*  
12 *of Washington v. McCrillis*, 15 Wn.2d 345, 359, 130 P.2d 901 (1942) (“As the basis of Mr.  
13 Sieler’s [pro tem] appointment is the consent of the parties, if there has been no consent, either in  
14 writing or orally in open court, he is without jurisdiction to hear the case, and the entire  
15 proceedings before him are void.”); *see, also, Lackey v. State*, 364 S.W.3d 837, 841 (Tex. Crim.  
16 App. 2012) (if a judge has no authority to act, his putative actions are a nullity which may be  
17 attacked for the first time on appeal); *Smith v. Gallagher*, 408 Pa. 551, 600, 185 A.2d 135, 159  
18 (1962) (an order signed by a judge without authority is null and void), overruled on other  
19 grounds by *In re Application of Biester*, 487 Pa. 438, 409 A.2d 848 (1979).

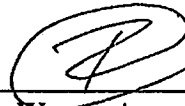
21 A judgment is void where the court lacks jurisdiction of the parties or the subject matter  
22 or lacks the inherent power to enter the particular order involved. *Dike v. Dike*, 75 Wn.2d 1, 448  
23 P.2d 490 (1968); *see State v. Alter*, 67 Wn.2d 111, 406 P.2d 765 (1965); *cf. Bergren v. Adams*  
24 *County*, 8 Wn. App. 853, 509 P.2d 661 (1973); *see, also, In re Damian V.*, 197 Cal. App. 3d 933,  
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1 938, 243 Cal. Rptr. 185, 188 (1988) (a trial before an attorney, acting as a judge under no  
2 authority other than the consent of the parties, is a nullity).

3 Here, the authority to act as a judge for the Nooksack Tribal Court of Appeals is  
4 bestowed, according to Resolutions #13-24 and 13-82, by an appointment by the Tribal Council.  
5 The three judges who have issued the orders the Tribe seeks to vacate were appointed to initial  
6 two-year terms which expired on May 30, 2015. None of these judges is presently appointed.  
7 Without the appointment by the Tribal Council, the judges have no authority to act. Without  
8 authority to act, they do not constitute the Court of Appeals, and their orders are null and void.

9  
10 RESPECTFULLY MOVED THIS 6<sup>th</sup> DAY OF OCTOBER 2016.  
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14 NOOKSACK INDIAN TRIBE  
15 OFFICE OF TRIBAL ATTORNEY

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