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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WHATCOM

MARGRETTY RABANG, and ROBERT RABANG,

Plaintiffs,

v.

RORY GILLILAND, MICHAEL ASHBY, ANDY GARCIA, RAYMOND DODGE, and JOHN DOES 1-10,

Defendants.

NO. 17-2-00163-1

**DECLARATION OF GABRIEL S. GALANDA IN SUPPORT OF PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RENEWED MOTIONS TO DISMISS**

I, GABRIEL S. GALANDA, say:

1. I am now and at all times herein mentioned, a legal, permanent resident of the United States, over the age of eighteen years, and competent to testify.

2. Attached hereto as **Exhibit A** is true and correct copy of a letter from Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs, U.S. Department of the Interior, to Robert Kelly, Chairman, Nooksack Indian Tribe, dated December 23, 2016.

3. Attached hereto as **Exhibit B** is a true and correct copy of a letter from John Tahsuda, Acting Principal Deputy Assistant Secretary – Indian Affairs, U.S. Department of the Interior, to Robert Kelly, Chairman, Nooksack Indian Tribe, dated January 16, 2018.

4. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff's Notice of Appeal, *Rabang, et al. v. Kelly, et al.*, No. 2:17-cv-00088 (W.D. Wash. Aug. 24, 2018).

DECLARATION OF GABRIEL S. GALANDA IN SUPPORT OF PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RENEWED MOTIONS TO DISMISS - 1

GALANDA BROADMAN, PLLC  
8606 35th Avenue, NE, Ste. L1  
Mailing: P.O. Box 15146  
Seattle, Washington 98115  
(206) 557-7509

GR-17  
ORIGINAL



# **EXHIBIT A**



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

DEC 23 2016

The Honorable Robert Kelly  
Chairman, Nooksack Tribe  
P.O. Box 157  
Deming, Washington 98244

Dear Chairman Kelly:

On October 17, 2016, and November 14, 2016, I sent letters to you regarding the status of the Nooksack Tribal Council (Tribal Council). The letters explained that, pursuant to Nooksack Tribe's (Tribe) constitution and laws, as of April 2016, the Tribal Council is no longer operating with a quorum and therefore lacks authority to conduct business on behalf of the Tribe. The letter stated further that the Department of the Interior (Department) will recognize only those actions taken by the Tribal Council prior to March 24, 2016, when a quorum existed, and would not recognize any subsequent actions by the Tribal Council until a valid election, consistent with the Tribe's constitution and the decisions of the Tribe's Court of Appeals, the Northwest Intertribal Court System, is held and a quorum of council members is achieved. This lack of a quorum and inability to take official action puts all Federal funding to the Tribe at risk, as we can only contract Federal services with a duly authorized tribal council pursuant to Federal law and a Tribe's constitution.

As we previously notified you, the actions by you and two members who have exceeded their term of office on Tribal Council to anoint yourselves as the Tribe's Supreme Court were taken without a quorum and without holding a valid election consistent with the Tribe's constitution. Accordingly, the Department will continue to recognize, for purposes of our government-to-government relationship, only court decisions made by the Northwest Intertribal Court System. Pursuant to the plain language of the Tribe's constitution, the Tribal Council did not have authority to remove the Northwest Intertribal Court System or to establish an alternative Court. Any actions taken by the Tribal Council after March 2016, including so-called tribal court actions and orders, are not valid for purposes of Federal services and funding.

It has come to the Department's attention that orders of eviction may have been recently issued to be served by the Nooksack Chief of Police or could be issued and served in the near future. It appears that such orders are based on actions taken by the Tribal Council after March 24, 2016. Therefore, as explained above and in the previous letters to you, those orders are invalid and the Department does not recognize them as lawful pursuant to our government-to-government relationship.

As you are aware, the Tribe is engaged in a Self-Determination, or "638," contract with the Bureau of Indian Affairs (BIA), which authorizes the Tribe to provide Federal law enforcement services on the reservation. Tribal law enforcement officers must act within the bounds of

Federal law. Only those actions determined to be within the scope of officers' professional duties are protected by the Federal Tort Claims Act (FTCA). Enforcement of invalid or unlawful orders is outside the scope of a law enforcement officer's duties, and, therefore, would not fall within the FTCA's protections.

In addition, such unlawful action would constitute a basis for the BIA Office of Justice Services to reassume the Tribe's law enforcement program. If the Tribe continues to pursue eviction actions stemming from actions taken by Tribal Council without a valid quorum, BIA is prepared to reassume jurisdiction.

We continue to urge the Tribe to hold elections for the vacant Tribal Council seats in accordance with the Tribe's Court of Appeals ruling in *Belmont v. Kelly*, issued on March 22, 2016. We do not view the recent primary election or the general election purportedly scheduled for January 21, 2017 as legitimate and we will not accept the results pursuant to our Nation-to-Nation relationship given that the primary election did not allow for votes by those allowed to vote under the Court of Appeals decision in *Belmont v. Kelly*. As the Tribe's Court of Appeals order clearly stated:

The trial court found that to date the Respondents are enrolled members of the Tribe. Order Denying Defendants' Motion for Reconsideration at 16. Under the Nooksack Constitution, an enrolled member of the Tribe is eligible to vote in elections. Const. Art. IV, Sec. 1. Although Respondents may eventually face disenrollment proceedings—they are currently enrolled members. Neither the Constitution nor the Nooksack election code prohibits an enrolled member from voting even where the member is the target of disenrollment proceedings.

Order of March 22, 2016 in *Belmont v. Kelly*. Elections or actions inconsistent with the Tribe's Court of Appeals March 22, 2016 Order in *Belmont v. Kelly*, the trial court's decisions of January 26, 2016, and February 29, 2016, and Nooksack law will not be recognized by the Department.

BIA Director Loudermilk and Regional Director Speaks stand ready to assist the Tribe in electing a constitutional tribal council so that Federal services and funding are not interrupted. If the Tribe does not hold such elections by March 31, 2017, the Department will have no choice but to reassume the provision of Federal services.

Sincerely,



Lawrence S. Roberts  
Principal Deputy Assistant Secretary –  
Indian Affairs

cc: Regional Director Speaks  
Northwest Intertribal Court System  
Nooksack Tribal Council members  
Heidi Frechette

---

# **EXHIBIT B**



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JAN 16 2018

The Honorable Robert Kelly  
Chairman, Nooksack Tribal Council  
P.O. Box 157  
Deming, Washington 98244

Dear Chairman Kelly:

On August 25, 2017, Acting Assistant Secretary – Indian Affairs Mike Black endorsed a Memorandum of Agreement (MOA) which you counter-endorsed on or about July 20, 2017. Pursuant to the MOA, the Department of the Interior (Department) would recognize you as a person of authority within the Nooksack Tribe (Tribe) for purposes of receiving Indian Self-Determination and Education Assistance Act (ISDEAA) funding and for conducting a Special Council Election to fill four seats on the Nooksack Tribal Council.

The Tribe conducted such election and, consistent with the terms of the MOA, the Bureau of Indian Affairs (BIA) Regional Director, Northwest Region, is presently reviewing the Election Board's report. The Acting Regional Director will submit recommendations regarding the Tribal election, after which I will render a final agency decision as to whether the Tribe has elected a valid Tribal Council.

It is important to maintain the status quo pending the Department's review of the Special Council Election. Tribal members, BIA, and other Federal agencies have grounded their relationship with the Tribal Government in reliance on the conditions set out in the MOA. Termination or alteration of those conditions in advance of recognition of a valid Tribal government would cause a reversion to the circumstances that existed prior to the endorsement of the MOA, namely withdrawal of the recognition of the Tribal Council as the valid government of the Tribe and your authority to accept ISDEAA funding on behalf of the Tribe.

I hereby extend the Department's recognition of Robert Kelly as a person of authority within the Tribe, through whom the Department will maintain government-to-government relations for the limited purposes of receiving ISDEAA funding and conducting the Nooksack Tribal Council Election scheduled for March 17, 2018. In such election, all eligible Nooksack voters as of March 2018 shall be eligible to vote, regardless of county residency. Also, as outlined in Section E of the MOA, all those purportedly disenrolled members since March 24, 2016, are entitled to vote in Tribal elections. This interim recognition shall remain in effect until the Department renders a final agency determination on the validity of the Tribe's December 2017 election, or until March 30, 2018, whichever occurs first.

The commitments endorsed in Section E of the MOA are valid expressions of tribal law as determined by the Nooksack Tribal Court, and Federal law as described in the due process guarantees articulated in the Indian Civil Rights Act. Failure to abide by Section E of the MOA may result in the Department's repudiation of the currently constituted Tribal Government, consistent with the three letters issued by Principal Deputy Assistant Secretary Roberts in 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "John Tahsuda". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John Tahsuda

Principal Deputy Assistant Secretary – Indian Affairs  
Exercising the Authority of the Assistant Secretary –  
Indian Affairs

Enclosure: MOA



## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA or MEMORANDUM) is entered into by and between: the ACTING ASSISTANT SECRETARY - INDIAN AFFAIRS, on Behalf of THE UNITED STATES DEPARTMENT OF THE INTERIOR, and the HON. ROBERT KELLY, CHAIRMAN OF THE NOOKSACK INDIAN TRIBAL COUNCIL, on this \_\_\_\_ day of JULY, 2017.

A. Purpose. The purpose of this MEMORANDUM is to provide and to outline a procedure whereby the ASSISTANT SECRETARY-INDIAN AFFAIRS (ASSISTANT SECRETARY) recognizes a NOOKSACK INDIAN TRIBAL COUNCIL as governing body of the NOOKSACK INDIAN TRIBE, a federally recognized Indian Tribe located in Whatcom County, State of Washington.

B. Special Council Election. CHAIRMAN ROBERT KELLY hereby agrees and stipulates that he shall as expeditiously as possible, and in any event no later than 120 days after the MOA is executed, conduct a Nooksack Indian Tribal Council election in accordance with the NOOKSACK CONSTITUTION, BYLAWS, AND TRIBAL LAWS and ORDINANCES except as otherwise provided herein. As set forth in previous letters from the PRINCIPAL DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS to CHAIRMAN ROBERT KELLY dated October 17, 2016, November 14, 2016, and December 23, 2016, the ASSISTANT SECRETARY only recognizes actions taken by the NOOKSACK INDIAN TRIBAL COUNCIL prior to March 24, 2016 when a quorum existed. The ASSISTANT SECRETARY does not recognize NOOKSACK INDIAN TRIBAL COUNCIL actions taken without a quorum. This includes the purported recall of Councilmember Carmen Tageant in April 2016. All eligible Nooksack voters as of March 2016 shall be eligible to vote in the resulting election, regardless of county residency. This election shall be seen as a special election to replace the regular election that was to be held in March 2016. The Nooksack Election Board shall certify and submit all results of the special election to the BIA Regional Director of the Pacific Northwest Region, including a report demonstrating the above mentioned conditions were satisfied. Additionally, upon request from any party, THE ASSISTANT SECRETARY may have an observer present at any time ballots are being handled, processed or counted. The observer shall immediately report in

writing any irregularities observed to both parties to this MEMORANDUM and to the BIA Regional Director.

C. Interim Recognition. Immediately upon execution of this Memorandum, the ASSISTANT SECRETARY shall recognize Robert Kelly as a person of authority within the Nooksack Tribe, through whom the ASSISTANT SECRETARY will maintain government-to-government relations with the Tribe for such time as this MOA is in effect, for the purpose of the Nooksack Tribe holding a special election and receiving funding under the Indian Self-Determination and Education Assistance Act. The ASSISTANT SECRETARY's interim recognition shall remain in effect until one of the following three events occurs: the Tribe fills four seats on the Tribal Council via special election, including resolution of any and all challenges to said election; or the ASSISTANT SECRETARY (or other person exercising the authorities of the Assistant Secretary) notifies the Tribe that the MEMORANDUM is being terminated for cause, as provided for in Section H of this MEMORANDUM; or 120 days have passed since execution of this MEMORANDUM. Nothing in this agreement shall be construed to recognize or confer any legal status on unelected councilmembers to act in the place of legally elected councilmembers or to count towards a quorum for conducting tribal business or other affairs.

D. Final Tribal Council Recognition. Upon certification of the special election results as set forth in NOOKSACK TRIBAL LAWS AND ORDINANCES, the final resolution of any challenges to those results, and the submission of the Election Board's report to the Regional Director, the Regional Director shall forward to the ASSISTANT SECRETARY the Tribe's report along with the Regional Director's endorsement thereof, or an explanation for withholding such endorsement. Upon receipt of the Regional Director's endorsement, the ASSISTANT SECRETARY shall issue a letter granting full recognition of the NOOKSACK INDIAN TRIBAL COUNCIL as the valid governing body of the NOOKSACK INDIAN TRIBE in a form substantially similar to EXHIBIT A to this MEMORANDUM.

E. Purported Disenrollees. ROBERT KELLY and the NOOKSACK INDIAN TRIBE accept as a condition of the ASSISTANT SECRETARY's execution of this MEMORANDUM that the TRIBE is bound by the decision of the Nooksack Tribal Court of Appeals in *Belmont v. Kelly*, March 22, 2016, affirming the Tribal Court's finding that the Plaintiffs/Respondents "are currently enrolled members." Unless and until they are disenrolled via a Tribal mechanism that

accords due process and is otherwise in accordance with Nooksack Tribal law, all tribal members purportedly disenrolled since March 24, 2016 are members of the Nooksack Indian Tribe, entitled to vote in Tribal Elections, to run for Tribal office, and to receive the benefits of Tribal membership equally with all other Tribal members.

F. Funding. Immediately upon execution of this MEMORANDUM, the ASSISTANT SECRETARY shall resume funding Indian Self-Determination and Education Assistance Act Contracts with the Tribe. Pursuant to 25 U.S.C. § 5324(b) and 25 U.S.C. § 5329(c), model agreement section 1(b)(7), for contracts awarded to the Tribe pursuant to the Indian Self-Determination and Education Assistance Act, the parties agree that, until the ASSISTANT SECRETARY recognizes a Tribal Council for the Tribe pursuant to paragraph D, above:

- Each month, for each contract, the Tribe will provide to BIA a monthly certified SF-425, Financial Status Report to support contract expenditures.
- BIA will make payments of all contract funds, including contract support cost funds, to the Tribe by way of monthly advance installments, contingent on BIA's determination each month that:
  - the previous month's expenditures under the contracts have been reasonable, allowable and allocable to the contracts and that;
  - the contracts are being performed adequately for the benefit of the Indian people being served.
- If, in any month, BIA determines that the above two conditions have not been met, BIA will continue to make monthly payments by way of reimbursement, contingent on BIA's determination each month that:
  - previous expenditures under the contracts have been reasonable, allowable and allocable to the contracts and that;
  - the contracts are being performed adequately for the benefit of the Indian people being served.
- If, after BIA initiates monthly payments by way of reimbursement, BIA determines that the above two conditions have not been met, BIA will withhold contract payments, including payment of contract support cost funds, until the ASSISTANT SECRETARY recognizes a Tribal Council for the Tribe.

- Other payment methods will resume when the ASSISTANT SECRETARY recognizes a Tribal Council for the Tribe.

Disbursement of funds pursuant to this section shall cease upon termination of this MOA as provided in Paragraph C.

G. Dissemination of Agreement. The parties to this MEMORANDUM agree that this MEMORANDUM may be disseminated to other departments, agencies, and offices of the government of the UNITED STATES OF AMERICA.


H. Revocation of Interim Recognition. In the event that ROBERT KELLY fails to schedule and hold a special election as described in Paragraph A, above, or otherwise fails to fulfill any condition or obligation of this agreement, the ASSISTANT SECRETARY shall immediately contact him and attempt to cure any defects to the mutual satisfaction of both parties. In the event that the parties are unable to cure defects to their mutual satisfaction within 14 days of the ASSISTANT SECRETARY's notice to ROBERT KELLY, the ASSISTANT SECRETARY shall have the right to cancel this MEMORANDUM upon written notification to ROBERT KELLY.

I. Complete Agreement. This MEMORANDUM OF AGREEMENT is the complete agreement between the ASSISTANT SECRETARY - INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR, and the HON. ROBERT KELLY, CHAIRMAN of the NOOKSACK INDIAN TRIBAL COUNCIL, and may be amended only by written agreement signed by both parties.

J. Enforceability. This MEMORANDUM is not intended by the parties to be either binding or enforceable upon either party, nor enforceable through an administrative process or in a court of law.

K. Signatures. This MEMORANDUM must be signed by both parties. Signatories attest that they are authorized to sign on behalf of their principal. Signatures must include the signatory's title and the principal's name.

For the Department of the Interior:

Authorized Official's signature:   
Authorized Official's Printed Name: Michael S. Black  
Authorized Official's Title: Acting Assistant Secretary - Indian Affairs  
Address: \_\_\_\_\_  
Telephone(s): \_\_\_\_\_ ; \_\_\_\_\_  
E-Mail: \_\_\_\_\_

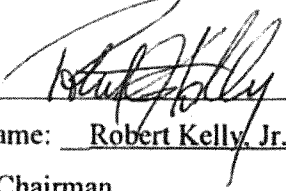
For Robert Kelly:  
Authorized signature:   
Signatory's Printed Name: Robert Kelly, Jr.  
Signatory's Title: Chairman  
Address: 5016 Deming Road, #157, Deming, WA 98244  
Telephone(s): 360-592-5176 ; \_\_\_\_\_  
E-Mail: bkelly@nooksack-nsn.gov

Exhibit A: Form of letter from AS-IA recognizing Tribal Council pursuant to September 2017 election

# **EXHIBIT C**

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THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

MARGRETTY RABANG, *et al.*,

Plaintiffs,

v.

ROBERT KELLY, JR., *et al.*,

Defendants.

Case No. 2:17-cv-00088-JCC

**PLAINTIFFS' NOTICE OF APPEAL**

Notice is hereby given that all Plaintiffs in the above named case hereby appeal of right pursuant to 28 U.S.C. § 1291 to the United States Court of Appeals for the Ninth Circuit from the Order dismissing their claims without leave to amend for lack of subject matter jurisdiction, which was entered in this action on July 31, 2018 (Dkt. No. 166).

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DATED this 24th day of August 2018.

GALANDA BROADMAN PLLC

/s/ Gabriel S. Galanda

Gabriel S. Galanda, WSBA #30331  
Anthony S. Broadman, WSBA #39508  
Ryan D. Dreveskracht, WSBA #42593  
Bree R. Black Horse, WSBA #47803  
P.O. Box 15416  
8606 35th Avenue NE, Suite L1  
Seattle, WA 98115  
PH: 206-557-7509  
FX: 206-299-7690  
gabe@galandabroadman.com  
anthony@galandabroadman.com  
ryan@galandabroadman.com  
bree@galandabroadman.com

Attorneys for Plaintiffs



**CERTIFICATE OF SERVICE**

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35<sup>th</sup> Avenue NE, Ste. L1, Seattle, WA 98115.

3. Today, I served the foregoing document via the CM/ECF System which will send notification of such filing on the following:

Connie Sue Martin, WSBA #26525  
Christopher H. Howard, WSBA #11074  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101  
Tel: (206) 662-1711

Attorneys for Defendants Robert Kelly, Jr., Rick D. George, Agripina Smith, Bob Solomon, Lona Johnson, Katherine Canete, Elizabeth K. George, Katrice Romero, Donia Edwards, and Rickie Armstrong

And to,

Rob Roy Smith, WSBA #33798  
Rachel B. Saimons, WSBA #46553  
Kilpatrick Townsend & Stockton, LLP  
1420 5th Ave Ste 3700  
Seattle, WA 98101

Attorneys for Defendant Raymond Dodge

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

Signed at Seattle, Washington, this 24th day of August 2018.

s/ Wendy Foster  
Wendy Foster

# **EXHIBIT D**



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JUL 27 2018

The Honorable Thomas A. Blaser  
Chief Administrative Judge  
Office of Hearings and Appeal  
Interior Board of Indian Appeals  
801 North Quincy Street, Suite 300  
Arlington, Virginia 22203

Dear Chief Judge Blaser:

This letter is in response to your order in the matter of *Eleanor J. Belmont, Et Al. v Acting Northwest Regional Director, Bureau of Indian Affairs*, 65 IBIA 283 (June 21, 2018). Your order docketed but dismissed the appeal for lack of jurisdiction and referred the matter to the Assistant Secretary – Indian Affairs for consideration.

Please be advised that the Office of the Assistant Secretary – Indian Affairs declines to consider this matter. Upon review, we determined that the May 21, 2018 letter from Acting Northwest Regional Director to Mr. Roswell Cline, Sr., is not an appealable agency decision over which the Assistant Secretary – Indian Affairs would have jurisdiction pursuant to 25 C.F.R. Part 2.

The Department of the Interior now considers this matter to be closed.

Sincerely,

John Tahsuda  
Principal Deputy Assistant Secretary – Indian Affairs  
Exercising the Authority of the Assistant Secretary –  
Indian Affairs

cc: Northwest Regional Director  
Pacific Northwest Regional Solicitor  
Chairman, Nooksack Tribe

# **EXHIBIT E**

## GALANDA BROADMAN

An Indian Country Law Firm

August 2, 2018

### VIA FAX & U.S. MAIL

The Honorable Thomas A. Blaser  
Chief Administrative Judge  
Office of Hearings and Appeal  
801 North Quincy Street, Suite 300  
Arlington, Virginia 22203  
Fax: (703) 235-3199

Re: *Belmont, et al., v. Acting Northwest Regional Director, Bureau of Indian Affairs*, 65 IBIA 283 (June 21, 2018).

Dear Chief Judge Blaser:

It has come to our attention that an *ex parte* communication dated July 27, 2018, was transmitted by Principal Deputy Assistant Secretary of Indian Affairs, John Tahsuda, to Your Honor in the above-referenced matter. We understand the Nooksack Indian Tribe, as an Interested Party, was copied on the correspondence, but Appellants were not. Appellants, therefore, ask that you please advise them of the status or disposition of the matter given PDAS Tahsuda's *ex parte* communication.

In doing so, please reconsider your determination that Appellant's appeal is an enrollment dispute. This appeal is not an enrollment dispute; it is instead an election dispute.<sup>1</sup> The IBIA has assumed jurisdiction, without discussing 43 CFR § 4.330(b), in election appeals in which enrollment issues were also present. See *United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director*, 22 IBIA 75 (1992) (affirming a BIA decision declining to recognize in part the results of a tribal election tainted by enrollment-related ICRA violations). As this tribunal has observed, Interior "has both the authority and responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe." *Id.* at 80. The crux of this appeal is Interior's sudden and unexplained departure from *its own determinations* interpreting tribal constitutional and election law—and, critically, not any Nooksack membership law—to ensure that the Department carried out the government-to-government relationship with a validly elected Nooksack Tribal Council.

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<sup>1</sup> See e.g. Appellant's Notice of Appeal and Initial Statement of Reasons, *Belmont v. Acting Northwest Regional Director*, IBIA 18-061 (Bd. of Indian App. June 21, 2018), at 7-8 ("**Given PDAS Roberts and Tahsuda's various determinations that Appellants were entitled to vote in the General Election, and that '[e]lections or actions inconsistent with . . . Nooksack law will not be recognized by the Department,'**" the Acting Northwest Regional Director's Decision to recognize Mr. Cline was a sudden and unexplained departure from Interior's established policy of interpreting Tribal constitutional, statutory, and common law to determine the legality of Tribal Council elections to ensure that the Federal Government only participates in the government-to-government relationship with the validly seated Tribal governing body.") (emphasis added).

Contrary to PDAS Tahsuda's July 27, 2018, conclusion, the Acting Northwest Regional Director's May 21, 2018, decision to acknowledge Roswell "Ross" Cline, Sr., as the legally elected Nooksack Tribal Council Chairman on May 5, 2018, was a final agency action. That decision marked the consummation of the federal government's decision-making process regarding the legality of the Nooksack Tribal regular election that culminated on May 5, 2018, as evidenced by PDAS Tahsuda's January 16, 2018 and March 9, 2018, directives regarding that election; and the definitive nature of that decision is of direct and appreciable legal consequence to Appellants. *See Bennett v. Spear*, 520 U.S. 154, 178 (1997).

Thank you for your further consideration. We hope for your advisement as to the status of this matter.

Very truly yours,



Gabriel S. Galanda  
206.300.7801  
gabe@galandabroadman.com

Cc via Email:        John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs  
                          Tammie Poitra, Acting Northwest Regional Director, Bureau of Indian Affairs  
                          Charles Hurt, Jr., Senior Tribal Attorney, Nooksack Indian Tribe  
                          John Hay, Assistant Solicitor, Office of the Solicitor – Department of Interior

# **EXHIBIT F**



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
email: scottb@wsba.org

April 10, 2018

Gabriel S. Galanda  
Galanda Broadman, PLLC  
8606 35th Ave NE Apt Lw1  
Seattle, WA 98115-3677

Re: Grievance of Gabriel S. Galanda against Connie Sue M. Martin  
ODC File No. 17-01776

Dear Mr. Galanda:

This letter is to advise you that we have completed our investigation of your grievance against lawyer Connie Sue M. Martin and to advise you of our decision. The purpose of our review has been to determine whether sufficient evidence exists on which to base a disciplinary proceeding. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only on a showing by a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct (RPC). This standard of proof is more stringent than the standard applied in civil cases.

Based on the information we have received, insufficient evidence exists to prove by a clear preponderance of the evidence that Ms. Martin violated the RPC in this matter. Therefore, we are dismissing the grievance. Our decision to dismiss the grievance is based on a review of your original grievance received on November 1, 2017, Ms. Martin's November 20, 2017 response, the additional materials we received from you on December 5, 2017, and the additional materials we received from Ms. Martin on December 11, 2017.

Beginning in late 2012, the Nooksack Tribal Council undertook efforts to disenroll about 300 members of the Nooksack Tribe. You and other lawyers in your firm represented members of the Tribe seeking to prevent disenrollment in proceedings before the Nooksack Tribal Court.

In February 2016, the Tribal Council enacted Resolution #16-27, which amended the Nooksack Tribal Code to allow the Tribal Council to bar an advocate from practice before the Nooksack Tribal Court if the Tribal Council determined that the advocate's conduct "reflect[ed] . . . poorly



upon the proper administration of justice.”<sup>1</sup> On the same day that Resolution #16-27 was enacted, the Tribal Council also enacted Resolution #16-28, which barred you and other lawyers in your firm from practicing before the Nooksack Tribal Court and engaging in any business activities within Nooksack tribal land.

Subsequently, you attempted to file *pro se* pleadings in the Nooksack Tribal Court challenging the Tribal Council’s actions. The Court Clerk refused to accept your pleadings on the grounds that filing such pleadings was contrary to Resolution #16-28. The Court Clerk continued to reject your pleadings even after the Nooksack Tribal Court of Appeals ordered her to accept them. The Nooksack Tribal Court of Appeals found the Court Clerk in contempt, ordered the Police Chief to arrest her, and then found the Police Chief in contempt when he refused to carry out the order.<sup>2</sup> The Nooksack Tribal Court of Appeals observed that “the rule of law on the reservation, at least within the scope of this case, has completely broken down.”<sup>3</sup> Shortly thereafter, the Nooksack Tribal Council created a new Nooksack Tribal Supreme Court (with the Nooksack Tribal Council Chairman as Chief Justice) which promptly vacated all the orders of the Nooksack Tribal Court of Appeals on the grounds that its judges had not been reappointed by the Nooksack Tribal Council after their terms expired.<sup>4</sup>

In January 2017, you brought suit in the United States District Court for the Western District of Washington on behalf of six enrolled members of the Nooksack Tribe who were purportedly disenrolled by the Nooksack Tribal Council. Rabang et al. v. Kelly et al., Case No. 2:17-cv-00088-JCC. The complaint alleges, *inter alia*, that Nooksack Tribal Council members and others violated the federal Racketeer Influenced and Corrupt Organizations (RICO) Act<sup>5</sup> and the False Claims Act<sup>6</sup> by advancing a scheme to defraud the plaintiffs and the United States Government

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<sup>1</sup> The resolution added the following language to Nooksack Tribal Code (NTC) § 10.02.070:

Whenever the Tribal Council becomes aware that any advocate's behavior and/or practices reflect so poorly upon the proper administration of justice before the Nooksack Tribal Court of the Nooksack Indian Tribe, the Tribal Council may revoke any privileges provided to such person(s) and bar them from further practice in any administrative tribunal before the Nooksack Indian Tribe or proceeding before the Nooksack Tribal Court. Council may hold such hearings as necessary to ensure that such behavior and/or practices are proven; or, as may be necessary to correct such past behavior and/or practices.

<sup>2</sup> Galanda v. Nooksack Tribal Court, 2016-CI-CL-002, Order re Plaintiffs’ Second Motion for Show Cause Order (Nooksack Tribal Ct. App., Sep. 21, 2016).

<sup>3</sup> Id.

<sup>4</sup> In re Orders Entered by Nooksack Tribal Court of Appeals, 2016-CI-SC-002, Order Vacating Tribal Court of Appeals Orders as Void (Nooksack Supreme Court, Oct. 17, 2016).

<sup>5</sup> 18 U.S.C. § 1964.

<sup>6</sup> 31 U.S.C. § 3729.

of money and property.<sup>7</sup> Ms. Martin represents the defendants in Rabang v. Kelly. Litigation is ongoing.

In your grievance, you allege that Ms. Martin violated the RPC by advising and assisting her client, the Nooksack Tribe, with respect to the actions it took in barring you from practicing before the Nooksack Tribal Court and in refusing to accept your pleadings. More broadly, you allege that Ms. Martin “subverted justice” by assisting her client in a project that has undermined the basic fairness of the Nooksack Tribe’s judicial system.

Some commentators have opined that lawyers should be held morally responsible for the projects they voluntarily assist and for the means used to pursue them:

Lawyers have the right to decline to represent or withdraw from representing clients with whose projects they morally disagree. If they make a decision to represent a client nonetheless, why should we not hold them responsible for the project which they voluntarily assist? And why not also hold them responsible for the means used to pursue that project? . . . Lawyers also have the right (shall we say duty?) to advise their clients not only legally but also morally. If the lawyers have done so and failed to convince their clients, or have failed even to try to convince them, and still continue to represent those clients, why not hold the lawyers morally responsible?

Andrews, Aronson, Fucile & Lachman, The Law of Lawyering in Washington 4-20 (Wash. State Bar Assoc. 2012). But as a general rule, a lawyer is not legally responsible for the conduct of her client. RPC 1.2(b). One exception to the general rule is as follows:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

RPC 1.2(d).

The evidence suggests that Ms. Martin assisted her client, the Nooksack Tribe, in structuring a “justice system” that is probably not worthy of that description. Such is not a project that any lawyer should be proud of, no matter how much revenue it may generate. During oral argument in Rabang v. Kelly, Judge Richard R. Clifton of the Ninth Circuit Court of Appeals described the Tribal Council’s actions with respect to its court system as “a record a tin-pot dictator of a banana republic might be proud of.”<sup>8</sup> But thus far we have not seen evidence from which it could be proven by a clear

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<sup>7</sup> Complaint for Damages and Injunctive Relief for Violations of the Federal Racketeer Influenced and Corrupt Organizations Act and False Claims Act, Rabang v. Kelly, No. 2:17-cv-00088-JCC (W.D. Wash. Jan. 23, 2017).

<sup>8</sup> Oral Argument, Rabang v. Kelly, No. 17-35427 (9<sup>th</sup> Cir. Mar. 9, 2018), [https://www.ca9.uscourts.gov/media/view\\_video.php?pk\\_vid=0000013260](https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000013260).

preponderance of the evidence that Ms. Martin counseled or assisted the Nooksack Tribe in conduct she knew to be “criminal or fraudulent,” RPC 1.2(a), as opposed to unfair and unjust. We note that your clients have made allegations of fraudulent conduct by Nooksack Tribal Council members and others who are employees and constituents of Ms. Martin’s client.<sup>9</sup> See RPC 1.13(a). If there is a judicial determination that Ms. Martin’s client or its constituents have engaged in criminal or fraudulent conduct, then we may reopen your grievance to examine whether Ms. Martin counseled or assisted her client in such conduct.

For the reasons stated above, we are dismissing this matter under ELC 5.7(a). If you do not mail or deliver a written request for review of this dismissal to us within **forty-five (45) days** of the date of this letter, the decision to dismiss your grievance will be final. Dismissal of a grievance constitutes neither approval nor disapproval of the conduct involved and should not be taken as the position of the Office of Disciplinary Counsel with respect to any other matter.

Sincerely,



Scott G. Busby  
Senior Disciplinary Counsel

cc: Mark J. Fucile

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<sup>9</sup> Complaint for Damages and Injunctive Relief for Violations of the Federal Racketeer Influenced and Corrupt Organizations Act and False Claims Act, Rabang v. Kelly, No. 2:17-cv-00088-JCC (W.D. Wash. Jan. 23, 2017).

# **EXHIBIT G**

RECEIVED

AUG 09 2018

**Appendix B**  
Notice of Rejected Filing

Galanda Broadman PLLC

Court Clerk  
Nooksack Tribal Court  
5016 Deming Rd.  
Deming, WA 98244  
(360) 592-9065

8-7-18  
Date

Gladstone / Kelly  
Case Name

2018-CI-CL-004  
Case Number (if applicable)

**NOTICE OF REJECTED FILING**

Pursuant to NTC 10.05.050(h), your document has been rejected for the following reason(s) and was not filed:

- Filing fee was not paid.
- Incorrect Case Name.
- Incorrect Case Number.
- Not Admitted to Practice Law in this Jurisdiction  
Does not have a Nooksack Indian Tribe  
Business License

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**NOOKSACK TRIBAL COURT  
NOOKSACK INDIAN TRIBE**  
  
AUG 7 2018  
  
**REJECTED**  
CODE: \_\_\_\_\_ CLERK: RS

IN THE NOOKSACK TRIBAL COURT OF APPEALS

DEBORAH EILEEN GLADSTONE  
ALEXANDER; et al.,

NO. 2016-CI-CL-004

NOTICE OF APPEARANCE

Plaintiffs,

v.

ROBERT KELLY, et al.,

Defendants.

- TO: RAYMOND DODGE;
- TO: CLERK OF THE COURT; and
- TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

Please take notice that Gabriel S. Galanda, Anthony S. Broadman and Ryan D. Dreveskracht of Galanda Broadman, PLLC hereby enter their appearance as legal counsel of record for the Plaintiff in the above-captioned case.

Kindly serve all further pleadings, notice, documents or other papers herein upon said party by serving the undersigned attorneys at the business address or email stated below.

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///  
///

NOTICE OF APPEARANCE - 1

**Galanda Broadman PLLC**  
8606 35th Avenue NE, Ste. L1  
Mailing: P.O. Box 15146  
Seattle, WA 98115  
(206) 557-7509

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DATED this 2nd day of August, 2018.



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Gabriel S. Galanda, WSBA #30331  
Anthony S. Broadman, WSBA #39508  
Ryan D. Dreveskracht, WSBA #42593  
GALANDA BROADMAN, PLLC  
8606 35th Ave. NE, Suite L1  
P.O. Box 15146  
Seattle, WA 98115  
Phone: (206) 557-7509  
Fax: (206) 299-7690  
Email: gabe@galandabroadman.com  
Email: anthony@galandabroadman.com  
Email: ryan@galandabroadman.com  
Attorneys for Plaintiffs<sup>1</sup>

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<sup>1</sup> Pursuant to the Nooksack Tribal Court of Appeals Order Regarding Plaintiffs' Second Motion for Show Cause Order Re: Partial Summary Judgment, Contempt, or Mandamus, *In re Gabriel S. Galanda, et al. v. Nooksack Tribal Court*, No. 2016-CI-CL-001 & 002 (Sept. 21, 2016), above-signed counsel were reinstated to practice law and transact business at Nooksack.

NOTICE OF APPEARANCE - 2

**Galanda Broadman PLLC**  
8606 35th Avenue NE, Ste. L1  
Mailing: P.O. Box 15146  
Seattle, WA 98115  
(206) 557-7509

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CERTIFICATE OF SERVICE

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35<sup>th</sup> Avenue NE Suite L1, Seattle, WA 98115

3. Today I served the foregoing document via US Mail on the following parties:

Charles Hurt  
Rickie Armstrong  
Tribal Attorney  
Office of Tribal Attorney  
Nooksack Indian Tribe  
5047 Mt. Baker Hwy  
P.O. Box 157  
Deming, WA 98244

Thomas Schlosser  
Morisset, Schlosser, Jozwiak & Somerville  
1115 Norton Building  
801 Second Avenue  
Seattle, WA 98104-1509

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 2<sup>nd</sup> day of August, 2018.



WENDY FOSTER



# EXHIBIT H



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
fax: (206) 727-8325  
email: scottb@wsba.org

August 16, 2018

Michelle Roberts  
4732 False Creek Lane  
Deming, WA 98244

Re: Your grievance against Raymond G. Dodge Jr.  
ODC File No. 16-00465

Dear Ms. Roberts:

On February 13, 2017, we dismissed your grievance against Raymond G. Dodge Jr. We have reviewed the additional information you provided on November 2, 2017 and August 10, 2018, as well as the pleadings on file in *Rabang et al. v. Kelly et al*, Case No. 2:17-cv-00088-JCC. We do not believe there is sufficient evidence on which to base a disciplinary proceeding, and we decline to reopen the grievance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott G. Busby".

Scott G. Busby  
Senior Disciplinary Counsel

Superior Court ----- Whatcom County ----- Washington State

Margretty Rabang, and Robert Rabang,

vs.

Rory Gilliland, Michael Ashby, Andy  
Garcia, Raymond Dodge, and John Does  
1-10

17-2-00163-1

GR-17 Declaration

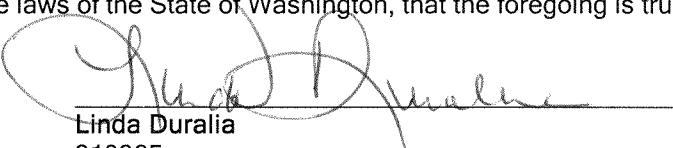
I DECLARE THAT:

1. I am over the age of 18 years, competent to be a witness, and not a party to this action.
2. I received, by electronic means, a document for filing in the above captioned case.
3. I have examined said document, found it clear and discernible, and attached this Declaration thereto.
4. I received said document on: 08/31/2018
5. The name of said document was: Declaration Of Gabriel S. Galanda In Support Of Plaintiff's Response In Opposition To Defendants' Renewed Motions To Dismiss
6. The number of pages in said document, including this Declaration, was: 35

I declare under the penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

Signed on 08/31/2018

4th Corner Network, Inc.  
110 Prospect St.  
Bellingham, WA 98225  
360-671-2455

  
Linda Duralia  
310365

ORIGINAL