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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELILE ADAMS

No. C19-1263 JCC-MLP

Petitioner,

v.

RESPONSE TO PETITIONER'S
SECOND MOTION FOR
RECONSIDERATION

ELFO, et. al.,

Respondent.

Respondents Leathers, Francis, the Nooksack Tribal Court, and the Nooksack Indian Tribe submit the following Response to Petitioner's Second Motion for Reconsideration pursuant to the Minute Order dated October 21, 2020¹.

Petitioner's claim² that this Court need not wait for the tribal court to act on her *habeas* petition because of bad faith is not grounded in fact or law. The United States Supreme Court has hinted that a federal court need not wait until tribal remedies have been exhausted to consider a

¹ Respondents note that this Court previously dispensed with Petitioner's original complaints of bad faith and will not rehash here.

² By order dated April 21, 2020, this Court declined Petitioner's first claim of bad faith. Much like the Petitioner's earlier attempt to ply the Court with inconsequential documents paraded as new "evidence" of bad faith, this renewed attempt suffers from the same defect; viz., Petitioner "evidence" does not demonstrate bad faith. Dkt. #43 at 3-5.

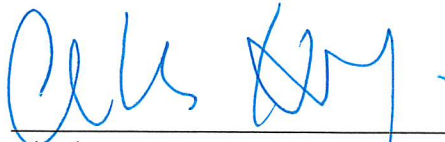
1 case if “an assertion of tribal jurisdiction is motivated by ... bad faith.” *Nat'l Farmers*, 471 U.S. at
2 856 n. 21 (internal citation omitted), but it has never excused the failure to exhaust tribal court
3 remedies. Further, the Ninth Circuit commands that the determination of bad faith is made
4 following review of the underlying proceeding and the tribal court’s conduct as opposed to the
5 conduct of the parties. *Grand Canyon Skywalk Development, LLC v. ‘Sa’ Nyu Wa Inc.*, 715 F.3d
6 1196, 1201 (2013). As Petitioner aptly states, however: “no court has ever found that the bad faith
7 exception applies.” *Acres v. Blue Lake Rancheria*, 2017 WL 733114 at 3 (2017).

8 Petitioner’s complaint of bad faith consists of three allegations. First, she claims bad faith
9 based upon the tribal court clerk’s “refus[al] to indicate whether [Petitioner’s Application was]
10 accepted by the Tribal Court” following Petitioner’s physical filing of her application. Dkt #47 at
11 2; Dkt #47-1 at 1. Petitioner’s argument is nonsensical. Petitioner fails to identify any relevant
12 statute, tribal law, court rule, or precedent that requires such affirmation. As was the case at the
13 time of filing, the Petitioner knows the answer to her query. Petitioner’s application was accepted
14 for filing and bore a stamp indicating such and a conformed copy was returned to her for service.
15 Dkt #47 at 2; Dkt #47-1 at 1; Decl. of D. Francis at 3.

17 Petitioner’s second piece of new “evidence” similarly fails to demonstrate bad faith.
18 Petitioner claims she did not receive a favorable order after she filed her application even though
19 she failed to serve her petition on respondents, failed to note it for hearing, and failed to present it
20 to a judicial official. Decl. of D. Francis at 4. To date, the Petitioner still has not requested a
21 hearing, requested an ex parte order, filed any additional pleadings (Motions; Note for Hearings;
22 Proposed Orders), or served any of the filings. *Id.* An initial filing without more is insufficient
23 to obtain an order. *Id.* at Exh. 3. This evidence demonstrates not bad faith but Petitioner’s failure
24 to prosecute her own case.

1 Petitioner’s third piece of new “evidence” alleging a conspiracy also fails. She claims a
2 “conspiracy” of Tribal staff mandating compliance with Tribal law and seeking legal advice to
3 ensure compliance. The Petitioner’s support for the contention of “bad faith” consists of an email
4 from the Clerk seeking legal advice regarding a pro se litigant’s unrelenting telephonic and email
5 inquiries. Tribal Courts, as an instrumentality of the Tribe, have a right to employ legal counsel
6 and seek advice from such counsel. See, e.g. 25 U.S.C. § 5124(e); *Blue Lake Rancheria Econ.*
7 *Devlpmnt. Corp. v. Commissioner of Internal Revenue*, 152 T.C. No. 5 (2019). Petitioner’s attempt
8 to vilify the Tribal Court for seeking legal advice should fail. Because of Petitioner’s refusal to
9 comply with tribal law,³ this Court should decline to intervene simply because Petitioner is
10 unhappy with the results.

11 NOOKSACK INDIAN TRIBE

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23
24 ³ Because Petitioner is represented by legal counsel in the underlying criminal case in tribal court, Decl. of D.
25 Francis at 2, one can only conclude that her failure to prosecute the *habeas* petition is intentional. In short, she is trying to excuse her failure to exhaust tribal court remedies without actually seeking them.