

FILED

2017 OCT 11 PM 2:22

CHEROKEE NATION DISTRICT COURT

CHEROKEE NATION, )  
Plaintiff, )  
v. )  
KIMBERLIE A. GILLILAND, )  
D.O.B. 08/13/1969, )  
Defendant. )

CRM-2016-54

CLERK  
CHEROKEE NATION DISTRICT COURT  
CHEROKEE, OKLAHOMA

**DISCOVERY ORDER**

NOW before the court are: *Defendant's Combined Motion for Discovery and Production of Exculpatory Evidence and Materials and Brief in Support* (filed on August 5, 2016); Nation's Response to Defendant's Combined Motion for Discovery and Production of Exculpatory Evidence and Materials and Nation's Motion for Discovery and Production (filed September 2, 2016); Defendant's Motion to Compel Discovery and Stay Production of Discovery Requested by the Cherokee Nation (filed September 9, 2016); Nation's Response to Defendant's "Motion to Compel Discovery and Stay Production of Discovery Requested by the Cherokee Nation" (filed September 26, 2016); Nation's Motion to Compel Discovery (filed August 10, 2017); Defendant's Motion to Produce Evidence (filed September 5, 2017); Defendant's *Objection to Cherokee Nation's Motion to Compel Discovery* (filed September 5, 2017); and *Nation's Response to Defendant's Motion to Produce and Nation's Renewed Motion for Discovery and Production* (filed September 20, 2017).

Cherokee Nation is represented by Special Prosecutor, Diane Hammonds, appointed on June 1, 2016. Defendant is represented by Attorney, Chad Smith.

After reviewing the pleadings, motions, briefs, cases, and statutes presented by the parties, and being fully advised in the premise of the issues at hand the Court Finds and Orders as follows:

1. All parties have had sufficient time to file responses, replies, and or briefs pertaining to the preliminary issues currently before the court, and neither party has requested additional time and or verbal argument to be held.
2. The parties have relied on various Cherokee Nation, State of Oklahoma, and Federal laws, cases, and court rules.
3. Defendant issued discovery requests and received answers to same. Cherokee Nation has a continuing duty to supplement said answers.
4. Regarding the "investigative report" prepared by Cherokee Nation Special Prosecutor and Ms. Combs:
  - A. The "Ms. Combs" referenced in the party's motions is the same person as the "Sherri Combs" who is also listed as a trial witness in Cherokee Nation's *Nation's Response to Defendant's Combined Motion for Discovery and Production of Exculpatory Evidence and Materials and Nation's Motion for Discovery and Production.*
  - B. The court finds that the "investigative report" falls under the Work Product Doctrine, but the confidentiality of Ms. Combs' opinion therein created pursuant to the doctrine was severed once she was listed as a trial witness. Plaintiff should not be able to hide an expert trial witness' opinion from the Defendant up until her testimony at trial on the merits. As a listed witness Ms. Combs and her opinion are open to discovery.

- C. Under the Work Product Doctrine, in contrast to attorney-client privilege, disclosing work product to a "friendly" third party (even those who do not qualify as agents of the attorney or client) does not waive the protection. Although the "investigative report" was apparently provided to a third party/attorney in a related civil matter that alone or coupled with interaction between the Special Prosecutor and Ms. Combs as a witness does not break the confidentiality of the Special Prosecutor's work product.
  - D. If not done so already the Cherokee Nation shall provide the underlying documents relied upon to create the "investigative report" to the Defendant so that she can reach her own conclusions.
  - E. Since Ms. Combs' opinion is intertwined in the "investigative report" and she is expected to also testify. The Cherokee Nation, if it has not already done so by providing other reports prepared by Ms. Combs, if any, shall also provide Defendant with a more detailed statement of Ms. Combs expected testimony than that listed in it's discovery responses in order to provide the defendant with a fair opportunity to test the merit of the expert's testimony through focused cross-examination.
5. Although the Cherokee Nation Code and or Rules do not specifically allow the prosecution to automatically issue discovery requests to a defendant. The court has discretion to regulate discovery issues in the interest of justice. Although not binding, but found to be persuasive, the State of Oklahoma and the Federal Rules of Criminal Procedure allow for the prosecution to request discovery from a defendant. Cherokee Nation's requests are narrowly tailored to information to be presented by

the Defendant at the trial on the merits. In the interest of justice, of judicial economy, and to minimize surprise at trial the Defendant shall answer said discovery requests. Defendant shall have thirty days from the filing date of this order to answer *Cherokee Nation's Motion for Discovery and Production of Documents*. Defendant has a continuing duty to supplement said answers.

IT IS ORDERED that the Court's findings set out above be incorporated herein as Orders of the District Court of Cherokee Nation as if fully set out hereafter.

IT IS ORDERED.

A handwritten signature in black ink, consisting of a large, stylized 'L' and 'B' intertwined, enclosed within a circular scribble.

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Luke Barteaux, District Judge  
Cherokee Nation

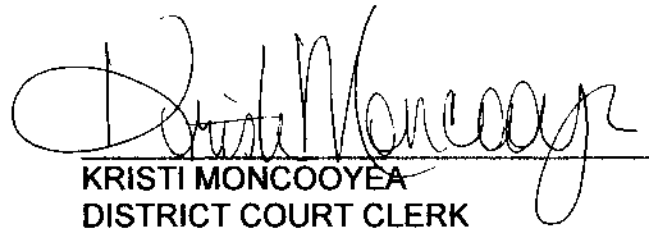
Copies to be furnished to:  
All parties of record.

**CERTIFICATE OF DELIVERY**

I certify that on this 11<sup>th</sup> day of October, 2017, I emailed a true and complete copy of the foregoing Discovery Order entered this date in CRM-2016-54, and mailed same by U.S. first class mail, to the following:

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ATTORNEY FOR DEFENDANT

  
KRISTI MONCOOYEA  
DISTRICT COURT CLERK