

FILED

IN THE DISTRICT COURT OF THE CHEROKEE NATION 2017 SEP -5 PM 1:10
CRIMINAL DIVISION

CHEROKEE NATION,)
)
 Plaintiff,)
)
 v.) CM 2016-54
)
 KIMBERLIE A. GILLILAND,)
)
 Defendant.)

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DEFENDANT'S MOTION TO PRODUCE EVIDENCE

COMES NOW the Defendant in the above-styled case, by and through her attorney of record, and moves this Court for an order to compel the Cherokee Nation ("Nation") to produce certain documents and evidence.

Defendant filed her Discovery motion on August 5, 2016 and in response, the Nation produced certain documents by email and several boxes of documents for Defendant to review at the Nation's offices. The following requested documents were not produced, are in the custody of the Nation, and are necessary for the defense of the charges brought by the Nation. The documents requested are:

- 19. *EXPERT RECORDS: Any and all examination reports prepared by any Cherokee Nation agency, including all forensic accounting and/or audits.*

In its September 23, 2016 Objection to Produce, the Nation responded:

Those audits will be provided in the hard copies of discovery being prepared for defense counsel. The only "audit" or report that will not be provided is that investigative report provided to the office of the Cherokee Nation Attorney General in preparation for this action.

The Nation has objected to production of its investigative report. However, the Nation has waived any confidential or protected work privilege of its investigative because it provided the report to Ralph Keen as attorney for Cherokee Nation Foundation ("CNF") in a civil case *CNEC v. Gilliland*, CV

16-397. Keen advised the civil court at a hearing on Gilliland's Motion to Stay Discovery that he has the subject investigative report.

The party in this case is the Nation and it is *its* investigative report that it claims is privileged. Although CNF is the subject of the investigative report, it is not CNF's to claim privilege attorney work product privilege. Since the Nation has shared its investigative report with CNF, the Nation has waived any privilege and the Nation must produce the investigative report to Defendant.

Therefore, Defendant moves the Court to compel the Nation to produce its investigative report to Defendant.

Submitted this 45^h day of September, 2017.

_____/ss/
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Certificate of Delivery

I, Chadwick Smith, do hereby certify that on the 5th day of September, 2017, pursuant to CNDC Rule 7 I emailed a true and complete copy of the foregoing document to the persons listed below:

Diane Hammons
Cherokee Nation
Office of Attorney General
P.O. Box 141
Tahlequah OK 74465
adianehammons@gmail.com

_____/ss/
Chadwick Smith