

IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

FILED

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CHEROKEE NATION
DISTRICT COURT
KRISTEN MONCONEY
COURT CLERK

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

CRM-2016-54

NATION’S RESPONSE TO DEFENDANT’S
“MOTION TO COMPEL DISCOVERY AND STAY PRODUCTION
OF DISCOVERY REQUESTED BY THE CHEROKEE NATION”

COMES NOW the Cherokee Nation in the above-styled case, by and through its attorney of record, and in response to the Motion to Compel filed by the Defendant, hereby respectfully submits the following:

The Defendant’s Motion seeks a copy of the investigative audit report provided to the office of the Cherokee Nation Attorney General in preparation for this action. The report was prepared by undersigned counsel and Ms. Combs, a certified fraud examiner. It is both a summary of the findings rendered after an examination of Cherokee Nation Foundation’s documents, and recommendations to the Attorney General made under the direction of the Attorney General’s office. All of the underlying documents have either already been provided to counsel electronically, or are in the process of being copied for counsel.

ARGUMENT AND AUTHORITY

Under the State of Oklahoma’s criminal discovery code, “The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney’s legal staff.” 22 Okla.Stat. 2002. And, the Federal Rules of Criminal Procedure provide that “this rule does not authorize the

discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case.” Rule 16 (a)(G)(2).

The investigative audit report is the work product of the Cherokee Nation Attorney General’s office, and was prepared, in part by undersigned counsel¹. It is clearly work product to which the defense is not entitled.

Additionally, the defendant has, or will have, all of the underlying data upon which the report is based. The audit report is merely a summary of documents which defense counsel has, or will have, pursuant to discovery.

Therefore, the Cherokee Nation respectfully requests that this Court deny the motion to compel, and order the defendant to comply with the discovery requests made by the Nation.

Respectfully submitted,



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¹ The report was prepared by Ms. Combs and undersigned counsel while both were working under contract with the Cherokee Nation Attorney General’s office. Title 19, C.N.A. §41 includes “agents and contractors” under the definition of “Cherokee Nation Government.”