

Jeffrey S. Rasmussen, *Pro Hac Vice Admission*
Alvina Earnhart, *Pro Hac Vice Admission*
FREDERICKS PEEBLES & MORGAN, LLP
1900 Plaza Drive
Louisville, CO 80027
Phone: 303-673-9600
Facsimile: 303-673-955
E-Mail: jrasmussen@ndnlaw.com
E-Mail: aearnhart@ndnlaw.com

J. Preston Stieff
J. PRESTON STIEFF LAW OFFICES
110 South Regent Street, Suite 200
Salt Lake City, UT 84111
Phone: 801-366-6002
E-Mail: jps@stiefflaw.com

Counsel for Plaintiff and Third-Party Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

VERONICA M. WOPSOCK,

Plaintiff,

v.

DEREK DALTON, in his individual and official
capacity; TRAVIS MITCHELL, in his individual
capacity and as the Duchesne County Sheriff, and
DUCHESNE COUNTY, UTAH,

Defendants.

Civil No. 2:12-cv-0570-RJS

Judge Robert J. Shelby
Magistrate Judge Evelyn J. Furse

DEREK DALTON,

Counterclaim and Third-Party
Plaintiff,

v.

VERONICA M. WOPSOCK,

Counterclaim Defendant

**PLAINTIFF AND SUBPOENAED DEPONENTS' MOTION TO QUASH
DEPOSITION NOTICES AND SUBPOENAS**

Pursuant to Federal Rules of Civil Procedure 26, 30, and 45; and local rules DUCiv26-2(b)
and DUCiv37; the Ute Indian Tribe (the Tribe), Ron Wopsock, Stuart Pike, Irene Cuch, and

Veronica Wopsock move to quash the subpoenas issued to the Tribe, Ron Wopsock, and Stuart Pike, Exs. 1-3; and for a protective order barring the depositions of the Tribe, Ron Wopsock, Cuch, and Pike.

Under DUCiv37, this motion is currently limited to 500 words. This motion, which only sets out the issues, is 499 words, and providing the legal analysis which would benefit the Court will require substantially more space. Movants therefore request that the Court set a briefing schedule in this matter, beginning with a supplemental brief by movants and then a response and reply. Movants have conferred with Defendants' attorney, and Defendants will oppose the substance of the motion but are in agreement with the request for additional unexpedited briefing beyond the 500 word limit contained in DUCiv37.

The legal grounds for this motion are:

1. Under binding Tenth Circuit law, the Tribe's sovereign immunity bars the deposition of the Tribe and tribal officers. *E.g., Bonnet v. Harvest (U.S.) Holdings, Inc.*, 741 F.3d 1155 (10th Cir. 2014). Defendants appear to be attempting to evade the Tribe's sovereign immunity by incorrectly labelling the Tribe as a Plaintiff. Ex. 1.
2. The subpoenas were not served in the manner required by federal law. FRCP 30, 45. The person purporting to serve the documents was not licensed to serve process on the Reservation, and attempted service while unlawfully trespassing. For the subpoena to the Tribe, service was not in the method required by law, which requires service on all members of the Tribe's Business Committee.
3. Defendants are solely seeking discovery of privileged material. Defendants seek to depose the Tribe and its officers regarding on-Reservation communications between tribal legislative/executive officers and a member. Tribal civil law therefore applies, and under

that law the communications are privileged. Under Ute law, communications between a tribal member and a Council member to discuss possible Council action are privileged and therefore not subject to discovery in a civil case.

4. The depositions are unduly burdensome. Defendants already know that, contrary to Defendants' false narrative, Ms. Wopsock began preparing to file her suit by at least early October 2012. All other discovery sought is immaterial and irrelevant, and is being sought for purposes outside of the current litigation. The current request for discovery is also designed to intimidate, harass or annoy all movants, because Defendants are redundantly seeking discovery of the same exact information which Defendants have repeatedly requested, and for which movants objected. *E.g.*, Exs. 4-8. Instead of moving to compel on any of those multiple prior requests, Defendants keep submitting new and redundant requests.
5. Neither the deposition subpoenas nor the deposition notices are in proper form. They do not list the method of recording the deposition, and do not contain copies of court rules required by law.

Respectfully submitted April 19, 2017.

FREDERICKS PEEBLES & MORGAN LLP

/s/ Jeffrey S. Rasmussen

Jeffrey S. Rasmussen, *Pro Hac Vice*

Alvin Earnhart, *Pro Hac Vice*

1900 Plaza Drive

Louisville, Colorado 80027

Telephone: (303) 673-9600

Facsimile: (303) 673-9155

Email: jasmussen@ndnlaw.com

Email: aearnhart@ndnlaw.com

J. PRESTON STIEFF LAW OFFICES

/s/ J. Preston Stieff

J. Preston Stieff
110 South Regent Street, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 366-6002
Email: jps@stiefflaw.com

Attorneys for Plaintiff

**CERTIFICATION OF COMPLIANCE WITH FEDERAL RULE OF CIVIL
PROCEDURE 37 AND LOCAL RULE DUCIV 37.**

The undersigned attorney certifies that prior to filing this motion, he conferred with counsel for the Defendants who are seeking to conduct the depositions at issue. The conferral was by letter dated April 18, 2017, and then by a phone call between Jeffrey Rasmussen and Jesse Trentadue at approximately 1:15 p.m. on April 18. In that conferral, the attorneys agreed that the parties could not resolve the issues presented in this motion, and that court review and decision was required.

/s/ Jeffrey S. Rasmussen

Jeffrey S. Rasmussen

CERTIFICATE OF SERVICE

I hereby certify that on the 19th of April, 2017, I filed the foregoing **PLAINTIFF AND SUBPOENAED DEPONENTS' MOTION TO QUASH DEPOSITION NOTICES AND SUBPOENAS** and served it on all parties of record via the Court's ECF system:

/s/ Ashley Klinglesmith

Ashley Klinglesmith
Legal Secretary/Paralegal