

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GALANDA BROADMAN, PLLC, a
Washington professional limited liability
company,

Plaintiff,

v.

KILPATRICK TOWNSEND &
STOCKTON LLP, a foreign limited
liability company; ROB ROY EDWARD
STUART SMITH, an individual; and
RACHEL SAIMONS, an individual,

Defendants.

No. 19-2-16870-6 SEA

**DEFENDANTS' MOTION FOR
PROTECTIVE ORDER AS TO
CERTAIN PRIVILEGED
DOCUMENTS**

I. INTRODUCTION AND RELIEF REQUESTED

Defendants (collectively "KTS"), seek a protective order to prevent Plaintiff Galanda Broadman, PLLC's ("GB") improper use of the privileged documents and communications of GB's former client, the Nisqually Indian Tribe ("the Tribe"). As the Tribe is a former client of GB, its use of privileged documents is particularly disturbing. As the Tribe is a current client of KTS, KTS has an ethical and legal obligation to protect its client's privilege.

GB filed this lawsuit because Gabriel Galanda has a history with and dislikes Mr. Smith and seeks to punish Mr. Smith and KTS for the Tribe's decision to cease using GB's legal services. GB's claims relate to privileged and confidential legal work the

1 Tribe engaged KTS to perform. The Tribe has not waived its attorney-client privilege for
2 the work that GB or KTS performed. Nonetheless, in violation of its ethical obligations to
3 the Tribe and in direct defiance of the Tribe's directive, GB has refused to return the
4 Tribe's privileged documents relating to KTS's work that were leaked by a friend of Mr.
5 Galanda's on the Tribal Council. Worse, GB insists on using those leaked materials in
6 this litigation and soliciting testimony about them.

7 GB's decision is troubling. Indeed, it is a direct violation of its ethical duty to its
8 former client—the Tribe. GB offers two excuses for its conduct, neither of which pass
9 muster. First, it claims the material is not privileged, but that is the client's decision to
10 make. The Tribe has not waived privilege over its communications with KTS. Second,
11 GB claims that the Tribe's privilege was waived by individual Tribal Council members.
12 This excuse fails too. GB knows a unanimous vote of the Tribal Council is required to
13 waive privilege, and there has been no such vote. Indeed, when KTS requested that the
14 parties jointly ask the Tribe for a waiver for documents relevant to the litigation to put
15 both parties on an equal playing field, GB refused.

16 Because of GB's conduct, and in order to protect its client's privilege and its own
17 ability to defend itself, KTS has been forced to bring this motion. KTS does not lightly
18 raise ethical concerns relating to lawyer conduct, but the circumstances here are extreme.
19 Because the Tribe has not waived its attorney-client privilege and it is vital that the same
20 rules apply to both parties with respect to the Tribe's privileged information, KTS
21 respectfully requests that the Court issue a protective order (1) preventing GB from using
22 any of the Tribe's privileged information unless and until there has been a unanimous vote
23 by the Tribal Council waiving privilege; (2) preventing GB from soliciting testimony
24 regarding the Tribe's privileged documents and communications and the work KTS
25 performed for the Tribe; and (3) requiring GB to remove from its production any and all
26

1 privileged material of the Tribe leaked by individual Tribal Council members and return
2 all copies of those materials to the Tribe.¹

3 II. FACTS

4 A. The Tribe Fires its Legal Director and Terminates its Relationship with 5 Outside Counsel, GB

6 In 2015, Leona Colegrove was hired as the Tribe's Legal Director. Because of her
7 long-standing personal relationship with Gabriel Galanda, she began funneling the Tribe's
8 legal work to GB as outside counsel. Over time, the Tribe became concerned about Ms.
9 Colegrove's actions and relationship with Mr. Galanda. **Ex. 1** at 2.² As a result, on
10 March 22, 2018, the Tribal Council (the Tribe's governing body) voted to terminate Ms.
11 Colegrove. Thereafter, as it was permitted to do by the terms of its contract and by law
12 making clear a client always has the right to terminate its counsel, the Tribe decided not to
13 renew its contract with GB. **Ex. 2**; RPC 1.16(a)(3) (client can discharge lawyer); *id.*, cmt.
14 4 ("A client has a right to discharge a lawyer at any time, with or without cause.");
15 *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672, 677–78, 444 P.3d 1185
16 (2019) (RPC 1.16 "robustly protects a client's right to terminate an attorney at any time,
17 for any reason"); *Belli v. Shaw*, 98 Wn.2d 569, 577, 657 P.2d 315 (1983) ("under a
18 contract between an attorney and client, a client may discharge his attorney at any time
19 with or without cause.").

20 B. The Tribe Hires KTS

21 On June 6, 2018, the Tribe issued a Request for Proposal ("RFP") for a Special
22 Prosecutor to conduct an investigation regarding Ms. Colegrove's conduct and to make
23 recommendations to the Tribe based on the results of the investigation. **Ex. 3.** On

24 ¹ KTS does not raise whether GB's counsel can continue to serve as counsel given the
25 improper exposure to and use of GB's former client's privileged materials.

26 ² Exhibits 1–14 cited herein are attached to the Declaration of Leslie E. Barron ("Barron
Decl.").

1 June 29, 2018, KTS submitted a response to the RFP (**Ex. 4**) and the Tribe hired KTS (**Ex.**
2 **5**). The scope of KTS’s work included performing an internal investigation of Ms.
3 Colegrove, recovering the Tribe’s stolen property in Ms. Colegrove’s possession, and
4 making legal recommendations based on the investigation. *Id.*

5 In the following months, KTS performed an investigation, recovered property
6 from Ms. Colegrove, helped her obtain her final paycheck from the Tribe, and made legal
7 recommendations to the Tribe. Declaration of Rob Roy Edward Stuart Smith (“Smith
8 Decl.”) ¶ 2.

9 The work KTS performed, the results of its investigation, and the
10 recommendations to the Tribe are privileged and confidential. *Id.* Indeed, KTS’s report
11 to the Tribe was expressly and prominently labeled “**CONFIDENTIAL ATTORNEY-**
12 **CLIENT PRIVILEGED DOCUMENT.**” *Id.* ¶ 3.

13 After KTS’s investigation, the Tribe decided to file a bar complaint against Ms.
14 Colegrove. **Ex. 1.** In that complaint, it alleged that after her termination, she violated her
15 ethical duties by fraudulently obtaining over \$22,000 in tribal funds as severance without
16 the Tribe’s consent. *Id.* at 1.

17 **C. GB Files a Meritless Lawsuit against KTS and Insists on Using the Tribe’s**
18 **Privileged Documents Without a Privilege Waiver**

19 **1. GB Sues KTS**

20 GB sued KTS on June 26, 2019, alleging intentional interference with contractual
21 relations and violation of the Washington Consumer Protection Act (“CPA”). Dkt. 1. In
22 short, GB claims it was damaged by KTS’s actions in connection with its investigation
23 even though it was the Tribe’s decision and prerogative to terminate GB. **Ex. 6** ¶ 9. KTS
24 denies wrongdoing and has asserted affirmative defenses. Dkt. 5.

25 The Tribe has already taken the position that the lawsuit is meritless. Indeed, in a
26 letter the Tribal attorney wrote to Plaintiff’s counsel in June 2019 he stated: “I am also

1 very concerned about what appears to be a collateral attack by [GB] ... on the Tribe's
2 WSBA grievance against former legal director Leona Colegrove." **Ex. 7.** He continued:

3 I would also like to take this opportunity to correct several fundamental
4 misunderstandings that are apparent from your draft Complaint. First, there is no
5 connection between Kilpatrick Townsend's work for the Nisqually Tribe and the
6 Tribal Council's unanimous decision on December 5, 2018 to terminate its
7 contract with Galanda Broadman due to concerns about the quality of advice and
8 representation provided in both ongoing litigation and prior matters. As you are
9 aware that contract was terminable at will by either party upon 30 days' notice.

10 ...

11 Finally, your Draft Complaint makes reference to an oral presentation by Rob Roy
12 Smith and Rachel Saimons to the Tribal Council in December, 2018 in which you
13 claim defamatory statements were made. Putting aside the question of how you or
14 your clients obtained privileged documents and detailed information regarding a
15 privileged discussion that took place during an Executive Session of the Tribal
16 Council, I fail to see how privileged, non-published statements that were in no way
17 defamatory could be actionable by your client.

18 *Id.* In the same letter, the attorney demanded the return of the Tribe's privileged
19 documents. *Id.* To date, GB has refused to return any documents. Barron Decl. ¶ 2.

20 **2. KTS Makes Repeated Efforts to Obtain a Privilege Waiver from the**
21 **Tribe**

22 When the meritless lawsuit was filed, it was clear the Tribe would need to decide
23 whether to waive privilege over its documents and communications relevant to this case,
24 as the Tribe's decision would impact the scope of discovery and the course of the
25 litigation. Barron Decl. ¶ 3. If the Tribe did not agree to waive privilege, neither party
26 could produce the Tribe's privileged documents. For KTS that included documents
relating to its investigation. For GB that included documents relating to its work for the
Tribe since 2015, including communications between GB lawyers and with Ms.
Colegrove. GB's discovery requests expressly sought the Tribe's privileged
communications in KTS's possession. **Ex. 8** at RFP Nos. 3–7, Interrog. Nos. 1–2, 5–10.
The requests sought all work product, privileged reports KTS prepared for the Tribe in

1 connection with its investigation, and presentations KTS prepared or delivered to the
2 Tribe. *Id.* at RFP Nos. 4, 5.

3 KTS made clear early on that it would not produce any of the Tribe's privileged
4 information, consistent with its ethical obligation, unless and until the Tribe voted to
5 waive privilege. **Ex. 9.** KTS discussed this issue with GB and indicated it wanted to
6 resolve it before taking depositions so the scope of permissible testimony was clear. **Ex.**
7 **10.**

8 Since July 2018, KTS has made repeated efforts to work with opposing counsel
9 and the Tribe to obtain a waiver that would encompass all relevant documents. **Ex. 11.**
10 Despite best efforts, however, the Tribe has not waived privilege. Barron Decl. ¶ 4.

11 **3. The Tribe Never Waived Privilege**

12 Pursuant to Nisqually Indian Tribe Tribal Council Resolution No. 78 entitled
13 "PRESERVING THE NISQUALLY TRIBE'S ATTORNEY-CLIENT AND LEGAL
14 WORK PRODUCT PRIVILEGES," the only way for the Tribe to waive its attorney-client
15 privilege is through a unanimous vote by the Tribal Council. **Ex. 12.** The Resolution
16 provides:

17 NOW, THEREFORE, BE IT RESOLVED that any communications between the
18 Tribe's in-house or outside lawyers and Tribal Council or Tribal staff, and any
19 legal work product prepared for the Tribe and shared with the Tribal Council or
20 Tribal staff by those lawyers, shall be strictly considered and treated as privilege
21 and confidential. *No such Tribal information shall be disclosed by any Tribal*
22 *Council person, Tribal staff person or Tribal in-house or outside lawyer to*
23 *anybody who is not authorized by the Tribal Council to receive such*
24 *information, without a consensus of the Tribal Council obtained in accordance*
25 *with the Nisqually Constitution and Bylaws and Tribal custom.* Any
26 unauthorized disclosure of such Tribal information shall be deemed inadvertent
and shall not constitute any waiver of the Tribe's attorney-client, work product or
any other applicable privilege or confidentiality.

Id. (emphasis added). The Tribe passed this resolution in November 2016 after a Council
Member "deliberately produced and publicized the Tribe's attorney-client privilege and
confidential information and legal work product ... without any permission or consensus

1 of the Tribal Council as required by the Nisqually Constitution and Bylaws and Tribal
2 custom.” *Id.* GB is aware of this Resolution because GB worked for the Tribe when it
3 was passed. *Id.* To KTS’s knowledge, the Council has never passed another resolution
4 altering this one. Smith Decl. ¶ 4.

5 KTS has not seen any documentation showing that the Tribe elected to waive its
6 privilege. Smith Decl. ¶ 5; Barron Decl. ¶ 5. There is no indication the issue has been put
7 up for vote. *Id.* When undersigned counsel contacted the Tribe’s in-house counsel
8 recently, he expressed shock to learn that GB intends to use the Tribe’s privileged
9 documents and confirmed it cannot do so. Barron Decl. ¶ 6. No tribal lawyer has given
10 Mr. Galanda or his counsel permission to speak with Council Members on these issues.
11 Thus, any contact by Mr. Galanda or his counsel runs afoul of RPC 4.2. RPC 4.2 (“In
12 representing a client, a lawyer shall not communicate about the subject of the
13 representation with a person the lawyer knows to be represented by another lawyer ...”).

14 **4. GB is Improperly Using Selectively Leaked, Privileged Documents**

15 GB has been in possession of the Tribe’s privileged documents since before it filed
16 its lawsuit. **Ex. 7.** GB has known the entire time that those documents were improperly
17 leaked from the Tribe. In fact, Mr. Cushman, one of the Tribal attorneys wrote GB a letter
18 on June 7, 2019, informing GB of that fact in no uncertain terms and demanding return of
19 those documents:

20 This office is in receipt of a draft Complaint captioned “Galanda Broadman, PLLC
21 v. Kilpatrick Townsend & Stockton, Et al.” The allegations ... appear to arise
22 from legal work performed for the Nisqually Tribe by [KTS]. Specifically, the
23 draft Complaint makes repeated references to a privileged and confidential
personnel investigation belonging to the Tribe and privileged communications
between the Tribal Council and [KTS].

24 I am writing to demand that you immediately return all documents belonging to
25 the Nisqually Tribe, including but not limited to privileged documents, reports,
26 and communications produced for the Tribe by attorneys from [KTS]. ***The Tribe
has not waived Attorney-Client privilege with respect to any documents
generated by [KTS], and any disclosure of those documents was inadvertent and***

1 *in error.* In accordance with the Washington Rules of Professional Conduct please
2 immediately return any such documents to my attention ... and provide written
assurance that all remaining copies have been deleted or destroyed.

3 *Id.* (emphasis added). GB and its counsel ignored this direct request and have yet to
4 return or destroy the documents. Barron Decl. ¶ 7.

5 Moreover, GB intends to use its former client's privileged materials to advance its
6 own self-interest in this lawsuit. It has refused KTS's offer to jointly approach the Tribe
7 to request a full waiver to allow both sides equal access to relevant documents. **Ex. 13**;
8 Barron Decl. ¶ 8. Likewise, when undersigned counsel questioned why GB believed it
9 was entitled to use the Tribe's privileged documents without permission, GB denied there
10 was privilege (despite the Tribe's clear instruction to the contrary and the express label on
11 the materials) and then claimed the privilege had been waived. **Ex. 13.** And when
12 undersigned counsel raised the unanimous approval requirement, GB had no response
13 other than to say it was going to use the documents regardless of whether it was improper
14 or an ethical violation. *Id.*; Barron Decl. ¶ 9.

15 Even worse, it now appears that GB has been improperly contacting individual
16 Council members, instead of the Tribe itself, and seeking declarations relating to
17 privileged communications between KTS and the Tribe—i.e. information that GB knows
18 council members have no authorization to unilaterally disclose. *Id.* ¶ 10. Notably, in his
19 declaration, William “Willie” Frank III, a current Council member, brags that he leaked
20 the Tribe's privileged documents because he wants to help Mr. Galanda and Ms.
21 Colegrove. *Id.*³ And another Council member states without authorization or support that
22 KTS's report is “not privileged or confidential” because the “public, especially our
23 Nisqually People, deserve to know what happens within our Tribal government.” *Id.*

24
25
26 ³ Given that the declarations contain privileged information, KTS has submitted
supporting declarations explaining their content in lieu of attaching the declarations themselves.
Should the Court wish, KTS will provide those declarations for in camera review.

1 That statement turns the fundamental principle and protections of the privilege on its head,
2 is belied by the language on the report, and conflicts with the Tribe's resolution. *See*
3 *supra* § II.B.; Smith Decl. ¶ 6.

4 Following the parties' meet and confer, undersigned counsel made clear KTS
5 intended on filing the instant motion and offered to confer again so as not to unnecessarily
6 burden the Court. **Ex. 13.** In response, GB's counsel claimed without support that the
7 Council members who leaked the privileged documents "were authorized to do so," and
8 that KTS lacks standing to protect the Tribe's privilege. *Id.* Undersigned counsel asked
9 GB's counsel to provide whatever authorization he had and clarified that under the Rules
10 of Professional Conduct, KTS has standing and an obligation to protect the Tribe's
11 privilege—a duty that GB feels free to ignore in furtherance of its own self-interest. *Id.*

12 Because GB intends on using the improperly obtained privileged documents at
13 depositions and intends on asking about privileged legal work KTS performed, KTS has
14 filed this motion seeking guidance and protection.

15 **III. ISSUE PRESENTED**

16 Should the Court enter a protective order (1) preventing GB from using the Tribe's
17 privileged information unless and until there has been a unanimous vote by the Tribal
18 Council waiving privilege; (2) preventing GB from soliciting testimony regarding the
19 Tribe's privileged documents and communications and the work KTS performed; and (3)
20 requiring GB to remove from its production privileged material of the Tribe leaked by
21 individual Tribal Council members and return all copies of those materials to the Tribe?

22 **IV. EVIDENCE RELIED UPON**

23 KTS relies upon the Declaration of Leslie E. Barron and Exhibits 1–14 attached
24 thereto; the Declaration of Rob Roy Edward Stuart Smith; and the records on file herein.

V. AUTHORITY AND ARGUMENT

A. The Court Has Broad Discretion to Issue a Protective Order

This Court has discretion under CR 26(c) for good cause shown to “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” CR 26(c). Good cause is established “if the moving party shows that any of the harm spoken of in the rule is threatened and can be avoided without impeding the discovery process.” *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 256, 654 P.2d 673 (1982).

Trial courts have “substantial latitude to fashion protective orders,” including to protect privilege. *Kramer v. J.I. Case Mfg. Co.*, 62 Wn. App. 544, 556, 815 P.2d 798 (1991). They likewise have broad discretion to “tailor relief regarding the scope of discovery.” *Dalsing v. Pierce Cnty.*, 190 Wn. App. 251, 262–63, 357 P.3d 80 (2015).

B. The Tribe’s Privilege Must Be Protected Because It Has Not Been Waived

Under CR 26 parties may “obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action.” CR 26(b)(1) (emphasis added). Here, good cause exists for a protective order because GB has already produced privileged documents improperly leaked by one or more Tribal Council members and admits it intends to use those documents and solicit testimony about them and KTS’s work for the Tribe. Those documents fall outside the permissible scope of discovery under the plain language of CR 26(b). If GB is not prevented from taking these actions, KTS will be severely prejudiced because it will not be able to testify about the privileged documents or explain them given its obligation to protect the Tribe’s privilege and KTS will also not have equal access to privileged documents to defend itself. Smith Decl. ¶ 7.

GB’s position here cannot be reconciled with Mr. Galanda’s own prior statements.

Ex. 14. He laid out the key principles here in a motion he filed when he represented the

1 Tribe. Indeed, as he aptly recognized, “the individual actions of Tribal Council members
2 have no legal effect” and one Tribal Council member “alone cannot waive the Tribal
3 Council’s attorney-client privilege—only the Tribal Council through official action can
4 waive this privilege.” *Id.* at 5. Mr. Galanda took that position because “Nisqually Tribal
5 law does not authorize individual Tribal Council officials to take *any* official action
6 outside of a Tribal Council Resolution or other formal action.” *Id.* (citing Bylaws of the
7 Nisqually Indian Tribe of the Nisqually Indian Reservation, Art. VI, § 1(i)). “It is the
8 official action of the Tribe, following the majority vote of the Tribal Council, which
9 carries legal consequence.” *Id.* (internal citations omitted). “The client of the tribal
10 attorney is the entire tribe, not its individual members.” *Id.* at 5–6 (citing William C.
11 Canby, Jr., *American Indian Law in a Nutshell* (5th ed. 2009) at 72). “Since the Tribal
12 Council has not voted to waive its attorney-client privilege, no waiver exists here.” *Id.* at
13 6.

14 Here, the Tribe’s documents and communications regarding the legal services KTS
15 and GB provided are privileged. GB’s attempt to excuse its unethical behavior by
16 claiming the documents are not privileged or that privilege was waived is baseless.
17 Indeed, KTS’s investigation reports are specifically and prominently labeled privileged
18 and confidential. *Supra* § II.B.; Smith Decl. ¶¶ 3, 6. Had those, or any other documents
19 marked privileged and confidential, been inadvertently produced in litigation, GB would
20 have been obligated to raise that issue to opposing counsel under CR 26 and return the
21 documents. CR 26(a)(6). Even if the reports were not prominently labeled, they would
22 still be protected by attorney-client and work product privileges under Washington and
23 Tribal law. *Supra* § II.C.3; RCW 5.60.060(2).

24 The Tribe is the only party who can waive its own privilege and it has not done so.
25 *Dietz v. Doe*, 131 Wn.2d 835, 850, 935 P.2d 611 (1997) (“The attorney-client privilege
26 can ordinarily be waived only by the client, to whom the privilege belongs.”). According

1 to the Tribe's Resolution, all communications between the Tribal Council or Staff with the
2 Tribe's lawyers and any work product prepared for or shared "shall be strictly considered
3 and treated as privilege and confidential." **Ex. 14.** The only way to waive privilege is to
4 obtain a "consensus of the Tribal Council." *Id.* Further, any "unauthorized disclosure" of
5 privileged information is "inadvertent and shall not constitute any waiver of the Tribe's
6 attorney-client, work product or any other applicable privilege or confidentiality." *Id.*
7 Here, waiver has not been raised with the Council much less voted upon unanimously.
8 *See supra* II.C.3. And the Council has certainly not passed a resolution waiving privilege.
9 *Id.* Unless and until the Tribal Council does so, neither party has any right to use
10 privileged materials.

11 **C. KTS Has Standing**

12 Any argument that KTS does not have standing is meritless. Although typically a
13 party may not seek a protective order to protect the rights of another entity, there are two
14 exceptions applicable here. First, under the RPCs, lawyers have an obligation to protect
15 their clients' privilege because it is always the client's decision whether to waive
16 privilege—not their lawyer's. RPC 1.6. Rule 1.6 explicitly states that a "lawyer *shall not*
17 reveal information relating to the representation of a client unless the client gives
18 informed consent, the disclosure is impliedly authorized in order to carry out the
19 representation or the disclosure is permitted by paragraph (b)." RPC 1.6(a) (emphasis
20 added). Paragraph (b) contains eight specific exceptions—none of which even arguably
21 apply here. *Id.* at 1.6(b); *In re Disciplinary Proceeding Against Schafer*, 149 Wn.2d 148,
22 162–63, 66 P.3d 1036 (2003) ("These occasions are extremely limited, however,
23 consistent with the profession's goals of establishing and maintaining trust in the judicial
24 process.").

25 The ethical rules place an additional, affirmative duty on lawyers to protect their
26 client's confidential information: "A lawyer *shall* make reasonable efforts to prevent the

1 inadvertent or unauthorized disclosure of, or unauthorized access to, information relating
2 to the representation of a client.” RPC 1.6(c) (emphasis added). “Erosion of [the
3 attorney-client] privilege through willful breaches of a client’s trust by an attorney is
4 undoubtedly harmful to society because these breaches weaken the public perception that
5 people can seek assistance and rely on an attorney as an expert and counselor ‘free from
6 the consequences or the apprehension of disclosure.’” *Schafer*, 149 Wn.2d at 162
7 (quoting *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888)). “Impairing the attorney-client
8 privilege must be avoided because ‘[t]he attorney-client privilege may well be the pivotal
9 element of the modern American lawyer’s professional functions. It is considered
10 indispensable to the lawyer’s function as an advocate ... [and] confidential counselor in
11 law.” *Id.* (alterations in original; quoting Geoffrey C. Hazard, Jr., An Historical
12 Perspective on the Attorney–Client Privilege, 66 CAL. L.REV. 1061, 1061 (1978)).
13 Indeed, in *Schafer*, the Court held that an attorney’s improper disclosure of client
14 confidences without taking steps to protect the information warranted a suspension. *Id.* at
15 164. Thus, under RPC 1.6(c), KTS had to file this motion to fulfill its obligation.⁵

16 Second, KTS has standing because the Civil Rules create an exception where “the
17 moving party can demonstrate that discovery would jeopardize his or her own interests.”
18 14 Wash. Prac., Civil Procedure § 21:14 (3d ed.) (citing 8A Fed. Prac. & Proc. Civ. §
19 2035 (3d ed.)). As evidenced by the good cause argument above, KTS clearly has
20 standing to seek protection to prevent GB’s improper use of privileged documents. If GB
21 is permitted to violate its ethical obligations by using selectively leaked documents, but
22 KTS is handcuffed and not able to testify about those documents or its work for the Tribe
23 or access privileged documents relating to GB’s work for the Tribe to show what really
24

25
26 ⁵ RPC 1.9 also provides that the duty to safeguard client confidences applies to former
clients. RPC 1.9(c). Thus, GB had and has an obligation to protect its former client’s privilege.

happened, there will be an inherent unfairness. Simply put, KTS needs the Court to set the rules of the road. Those rules should apply equally to both sides.

VI. CONCLUSION

For the foregoing reasons, KTS respectfully requests that the Court grant its Motion for Protective Order.

I certify that this Motion contains 4,188 words in compliance with the Local Civil Rules.

DATED this 15th day of April 2020.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/ Leslie E. Barron

Malaika M. Eaton, WSBA No. 32837

Leslie E. Barron, WSBA No. 50792

600 University Street, Suite 2700

Seattle, Washington 98101

(206) 467-1816

meaton@mcnaul.com

lbarron@mcnaul.com

Attorneys for Defendants

1 With a copy to Attorneys for Plaintiff:

2 Charles P. Rullman

3 Jacob M. Downs

4 Gretchen J. Hoog

5 crullman@corrdowns.com

6 jdowns@corrdowns.com

7 ghoog@corrdowns.com