

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' REPLY IN  
SUPPORT OF MOTION FOR  
PROTECTIVE ORDER AS TO  
CERTAIN PRIVILEGED  
DOCUMENTS & REQUEST TO  
STRIKE EXHIBITS A-C IN  
SUPPORT OF PLAINTIFF'S  
RESPONSE

GB's Response is most notable for what it does not say. GB failed to mention the RPCs, let alone attempt to explain why its use of its former client's information to advance its own self-interest and its direct contact with Tribal Council members it knows are represented does not violate the RPC in numerous respects. This silence speaks volumes. GB ignores the facts and law making clear the work KTS performed for the Tribe is protected by the attorney-client privilege, such as the prominent "privileged and confidential" label on the findings KTS presented. GB fails to explain how its position can be reconciled with its own prior recognition that individual Tribal Council Members do not have authority to waive the Tribe's privilege. GB fails to present any evidence that the Tribal Council voted to waive privilege; indeed, it concedes no vote has occurred. GB

1 ignores the law KTS cites supporting KTS's standing to bring this motion. And GB fails  
2 to acknowledge this Court's broad discretion to issue a protective order or the protective  
3 order standard at all.

4 What GB does say is no better. Its arguments are not supported by fact or law.  
5 Even worse, GB doubles down by including more privileged information in its response  
6 and providing the Court with confirmation that it continues to violate RPC 4.2 by  
7 contacting individual Council members when the Tribe is represented by in-house  
8 counsel. Rullman Decl., Ex F. Because the work KTS performed for the Tribe is  
9 privileged and confidential and GB has failed to undermine KTS's good cause for a  
10 protective order, KTS requests that the Court (1) grant its motion in full and (2) strike the  
11 Tribe's privileged and confidential information GB improperly filed in the public record.

12 **A. The Tribe Intended KTS's Work to be Privileged and Confidential**

13 GB first argues that documents relating to KTS's investigation are not privileged.  
14 Resp. at 10. That position is belied by overwhelming law and evidence to the contrary.  
15 Not only was KTS's report labeled "**CONFIDENTIAL ATTORNEY-CLIENT**  
16 **PRIVILEGED DOCUMENT**" (Smith Decl. ¶ 3), KTS presented its findings to the  
17 Tribal Council during Executive Session, not in open session (*id.*, ¶ 6). These facts alone  
18 establish privilege. RCW 5.60.060(2).

19 But even if they were not, the Tribe has specifically told GB about its claim of  
20 privilege in the letter the Tribal attorney sent to GB last June. Ex. 7. Notwithstanding  
21 GB's efforts to belatedly argue the Tribe did not authorize that letter, it is clear Mr.  
22 Cushman had both actual and apparent authority to speak for the Tribal Council. *King v.*  
23 *Riveland*, 125 Wn.2d 500, 507–08, 886 P.2d 160 (1994).<sup>1</sup>

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25 <sup>1</sup> Notably, the only declaration to address the letter is from a person who admits to joining  
26 the Council shortly before the letter and does not indicate that she participated in the Executive  
Committee or any personal knowledge of what the Council authorized before her election.  
Rullman Decl., Ex. C. Her statements, even if credited, are not sufficient.

Further, it is no coincidence that GB ignores the following language in the Tribe's own Resolution which makes clear KTS's report is privileged: "[A]ny communications between the Tribe's in-house or outside lawyers and Tribal Council or Tribal Staff, and any legal work product prepared for the Tribe and shared with the Tribal Council or Tribal staff by those lawyers, *shall be strictly considered and treated as privileged and confidential.*" Ex. 12 (emphasis added). GB's argument that a minority of current Council Members (one of whom was not even on the Council at the time) can now declare those documents not privileged is untenable. Council Member Squally's bald statement that she has "seen no indication that the Tribal Council intended for [KTS's] investigation or the Special Prosecution Report to be privileged or confidential" does not mean this Court can ignore clear evidence to the contrary. Resp. at 2, 10. That statement flies in the face of clear evidence and ignores the vast body of law upholding the sanctity of the privilege.

Finally, GB's position that the Tribal Council must now affirmatively speak "in favor of the Motion" to establish privilege is wrong. The Tribe is not obligated to take further action to protect its privilege and GB has not cited to any law demonstrating otherwise. (Indeed, it would be perverse to allow a lawyer to take and use privileged materials of a former client after that client demanded their return on the theory that the former client should have incurred more expense and burden to intervene in a case in which it is not a party.)

**B. The Tribe Has Not Waived Privilege**

GB's argument on waiver likewise fails. The Tribe's Resolution is clear that the only way to waive privilege is through a unanimous vote by the Tribal Council. Ex. 12. GB has not argued that this Resolution does not apply, only that a "consensus" is required and that is different than unanimity. Resp. at 4, n.1. This argument, even if accurate, does not help GB. GB failed to provide any evidence that the Tribe has ever considered

1     waiving privilege much less voted on it. To the contrary, the improper declarations GB  
2     filed make clear the Tribal Council has not discussed or voted on this issue. That fact is  
3     dispositive. Whether the Resolution requires unanimity or something less (such as a super  
4     majority), none of those things have happened.

5             The clear language of the Resolution also disposes of GB's argument that there  
6     was a "voluntary waiver" by an individual Council Member. Individual members do not  
7     have authority to act on behalf of the Tribe. Exs. 12, 14. Because individual members  
8     have no ability to speak on behalf of the Tribe, no "party" has disclosed privileged  
9     documents here, which GB recognizes is a necessary element of waiver. Resp. at 11.  
10    Further, the Resolution makes clear one Council Member cannot unilaterally waive  
11    privilege by disclosing privileged materials: "Any unauthorized disclosure shall be  
12    deemed inadvertent and shall not constitute waiver of the Tribe's attorney-client privilege,  
13    work product or any other applicable privilege or confidentiality." Ex. 12.

14            In addition, notably absent from GB's response is any attempt to reconcile its  
15    current position with its prior recognition that "the individual actions of Tribal Council  
16    members have no legal effect" and one Tribal Council member "alone cannot waive the  
17    Tribal Council's attorney-client privilege—only the Tribal Council through official action  
18    can waive this privilege." Ex. 14 at 5. GB's silence speaks volumes.

19            GB is likewise incorrect that KTS asks this Court to "disregard[]" common law  
20    principles of waiver and instead "delve into the legal interpretation of Tribal law and  
21    resolutions." Resp. at 12. Tribal law is relevant for the purpose of determining who the  
22    client is (the Tribe) and who can act on its behalf and how. But the core principles on  
23    which KTS relies are common law waiver principles. Just like a corporation can only act  
24    through its lawful agents, only the Tribal Council acting as such can act for the Tribe.

25            GB's last waiver argument is also unpersuasive. GB argues that a waiver has  
26    occurred because the Tribe demanded that GB return or destroy documents a year ago and

1 GB refused to do so. GB has not cited any law that a waiver occurs if a party demands the  
2 return of privileged documents from former counsel and the party in wrongful possession  
3 simply refuses to return them. That position turns the attorney-client privilege on its head.

4 **C. There is No Basis to Delay Resolution**

5 There is no justification to delay resolution of this issue as GB requests. First,  
6 there is no guarantee that the Tribe will address this issue any time soon. Rullman Decl.,  
7 Ex. F. Council Member Frank stated that he does “not know when Tribal Council will  
8 have a [sic] actual meeting again. It may be a month or two ....” *Id.* If the minority of  
9 the Council members who have provided declarations actually had the support of even a  
10 majority of the Tribal Council on these issues, at any point in the last year they could have  
11 obtained a proper vote in favor of waiving privilege. They have not been able to do so,  
12 which likewise speaks volumes. Barron Decl., ¶ 4, Ex. 11.

13 Moreover, GB’s request to wait is not a viable option. If the Tribe votes on  
14 waiver, that does not mean that the privilege does not exist now (whatever the outcome).  
15 Further, any decision on the narrow issue GB has raised will not resolve KTS’s related  
16 concern that both parties must be on equal footing regarding their use of the Tribe’s  
17 privileged material in this litigation.

18 GB is seeking a narrow waiver so it can use privileged information about KTS’s  
19 representation while simultaneously working to prevent KTS from having access to  
20 documents concerning the work GB did for the Tribe and GB’s relationship with Ms.  
21 Colegrove. Rullman Decl., Ex. 7. GB has already refused to cooperate with KTS to  
22 obtain a full waiver of all relevant information and communicated in violation of RPC 4.2  
23 with individual Council Members on this issue. Resp. at 8. If the Tribe votes to waive  
24 privilege over KTS’s documents only, this Court’s guidance is still necessary. It is critical  
25 that the same rules govern both sides’ use of the Tribe’s privileged information in this  
26 litigation. GB should not be allowed to use the Tribe’s information for self-serving

1 purposes obtained in violation of RPC 4.2 and the Resolution while KTS is left to defend  
2 itself without access to information about GB's representation. (Indeed, without a ruling  
3 from this Court, it appears that GB will continue to violate RPC 4.2 by communicating  
4 with individual Members instead of the Tribal attorney to discuss this litigation. Rullman  
5 Decl., Ex. 7.)

6 **D. KTS Moves to Strike All Improperly Filed Privileged and Confidential**  
7 **Information**

8 KTS respectfully requests that, under CR 26(c) and GR 15, this Court strike and  
9 seal all privileged information GB willfully and improperly included with its response,  
10 including portions of the Council Member Declarations and Response itself that reference  
11 the contents of KTS's report or presentation regarding the investigation.<sup>2</sup> KTS requests  
12 that GB be ordered to re-file a redacted version of those documents, and re-file the un-  
13 redacted versions under seal. Sealing is proper because the factors for sealing confidential  
14 information are met when privileged information of a non-party is publically filed. *Seattle*  
15 *Times Co. v. Ishikawa*, 97 Wn.2d 30, 36–39, 640 P.2d 716 (1982).

16 I certify that this Reply contains 1,743 words in compliance with the Local Civil  
17 Rules.

DATED this 28<sup>th</sup> day of April 2020.

18 McNAUL EBEL NAWROT & HELGREN PLLC

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26 <sup>2</sup> Proposed required redactions are attached to KTS's updated proposed order.

# **Proposed Order**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

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KILPATRICK TOWNSEND &  
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STUART SMITH, an individual; and  
RACHEL SAIMONS, an individual,

Defendants.

No. 19-2-16870-6 SEA

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

[PROPOSED]

Pending before the Court is Defendants' Motion for Protective Order as to Certain Privileged Documents. In connection with Defendants' Motion, the Court reviewed and considered the following:

- (1) Defendants' Motion for Protective Order as to Certain Privileged Documents;
- (2) Declaration of Leslie E. Barron in Support of Defendants' Motion for Protective Order as to Certain Privileged Documents and Exhibits 1-14 attached thereto;
- (3) Declaration of Rob Roy Edward Stuart Smith in Support of Defendants' Motion for Protective Order as to Certain Privileged Documents;
- (4) Plaintiff's Opposition to Defendants' Motion for Protective Order;
- (5) Declaration of Charles P. Rullman in Support of Plaintiff's Opposition to Defendants' Motion for Protective Order as to Certain Privileged Documents and Exhibits [A-C and] D-F attached thereto;



- 1  
2 (6) Defendants' Reply in Support of Motion for Protective Order as to Certain  
3 Privileged Documents and Request to Strike Exhibits A–C in Support of  
4 Plaintiff's Response.

5 The Court has also reviewed the records on file herein. And being otherwise fully  
6 advised, now, therefore,

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HEREBY ORDERS, ADJUDGES, AND DECREES that Defendants' Motion for  
Protective Order as to Certain Privileged Documents is GRANTED. Plaintiff Galanda  
Broadman ("GB") is:

(1) Prevented from using any of the Nisqually Indian Tribe's ("Tribe")  
privileged information unless and until there has been a vote by the Tribal Council  
waiving privilege;

(2) Prevented from soliciting testimony regarding the Tribe's privileged  
documents and communications and the work Defendants performed for the Tribe or  
communicating with Tribal Council members in violation of RPC 4.2; and

(3) Directed to remove from its production any and all privileged material of  
the Tribe leaked by individual Tribal Council members and return all copies of those  
materials to the Tribe within 5 days of entry of this Order.

Additionally, the Court finds that the requisite factors have been met pursuant to  
*Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36–39, 640 P.2d 716 (1982), to support  
Defendants' request to strike certain portions of Exhibits A, B, and C, attached to the  
Declaration of Charles P. Rullman in Support of Plaintiff's Opposition to Defendants'  
Motion ("Rullman Declaration") and portions of Plaintiff's Opposition to Defendants'  
Motion ("Response") containing privileged and confidential information. In addition, the  
Court finds as follows:

- (1) There is a compelling needs for sealing the privileged and confidential  
portions of the Rullman Declaration and Response;
- (2) The privileged and confidential portions of the Rullman Declaration and  
Response contain nonpublic information exempt from public disclosure;

- 1 (3) Sealing the privileged and confidential portions of the Rullman Declaration  
2 and Response is the least restrictive means of protecting the confidentiality  
3 of the information;  
4 (4) The parties have a clear and compelling interest in maintaining the  
5 confidentiality of the privileged and confidential information in the  
6 Rullman Declaration and Response. The public can fully understand the  
7 nature of the issues in this case without knowing details of the nonpublic  
8 information; and  
9 (5) The minimal redacting and sealing requested by Defendants will  
10 adequately protect the information and is no broader than necessary.

11 Now, therefore,

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants'  
13 request to strike portions of the Rullman Declaration and portions of the Response  
14 containing privileged and confidential information is GRANTED. Plaintiff is directed to  
15 re-file a redacted version of the Response and Rullman Declaration redacting the  
16 references to privileged and confidential information, highlighted in Appendix A and B to  
17 this Proposed Order, and re-file unredacted versions of the Response and Rullman  
18 Declaration under seal in accordance with GR 15.

19 IT IS SO ORDERED.

20 DATED this \_\_\_\_ day of April/May, 2020.

21 \_\_\_\_\_  
22 Honorable Brian McDonald  
23 King County Superior Court

24 Presented by:

25 McNAUL EBEL NAWROT & HELGREN PLLC

26 By: s/Leslie E. Barron

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# **APPENDIX A**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

v.

KILPATRICK TOWNSEND & STOCKTON  
LLP, a foreign limited liability company; ROB  
ROY EDWARD STUART SMITH, an  
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Defendants.

No. 19-2-16870-6 SEA

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

**I. INTRODUCTION / RELIEF REQUESTED**

This dispute arises from Defendants' (collectively "KTS") intentional interference with Plaintiff Galanda Broadman's engagement as outside counsel for the Nisqually Indian Tribe (the "Tribe," which is governed by its "Tribal Council"). Under the guise of a Special Prosecutor investigating the actions of Tribal Attorney Leona Colegrove, KTS conveyed a false and misleading report to the Tribal Council that Galanda Broadman had engaged in unethical and unprofessional conduct. KTS did not interview Galanda Broadman as part of their "investigation," nor did KTS share with the Tribal Council that, at the same time they were disparaging Galanda Broadman, they were battling with Galanda Broadman in separate, highly

1 contentious litigation. In response to KTS's report, the Tribe terminated its Services Agreement  
2 with Galanda Broadman on December 7, 2018.

3 Several members of the Tribal Council disapproved of KTS's investigation and report.  
4 Shortly after KTS presented its findings to the Tribal Council, Councilmember William Frank  
5 III voluntarily sent a copy of the Special Prosecution Report (the "SPR") to attorney Gabe  
6 Galanda. According to Mr. Frank, "what [Defendant Rob Roy Smith] said about Gabe, in  
7 particular, was intended to harm him and to interfere with his firm's business and his  
8 relationship with the Tribe." Similarly, Councilmember Brian McCloud condemned KTS's  
9 actions: "In late 2018, Kilpatrick Townsend served as a special prosecutor for the Tribal  
10 Council. I disagreed with that investigation process then and I disagree with it now."

11 On June 3, 2019, counsel for Galanda Broadman notified KTS of their grievance  
12 regarding the interference and invited a discussion. Several days later, Tribal Attorney Nate  
13 Cushman, purporting to write on behalf of the Tribe, demanded the return of the SPR. KTS  
14 was copied on the message. It turns out, however, that Mr. Cushman was not acting at the  
15 direction of the Tribe. The Tribal Council's Vice Chairperson, Antonette Squally, has clarified:  
16 "[Mr. Cushman's letter] was not presented to the full Tribal Council before it was sent out, and  
17 Nate did not have authority to issue the letter or take those legal positions without getting input  
18 and authorization from the full Tribal Council. I do not agree with those positions, which have  
19 yet to be brought before the full Tribal Council for consideration and adoption." She continued:  
20 "I have seen no indication that the Tribal Council intended for Kilpatrick Townsend's  
21 investigation or the Special Prosecution Report to be privileged or confidential. To the contrary,  
22 my expectation is that an investigation of this type should have been conducted with  
23 transparency." Councilmember McCloud echoed this sentiment: "That special prosecutor's  
24 report is not privileged or confidential. The public, especially our Nisqually People, deserve to  
25 know what happens within our Tribal government and to see what we are spending our Tribe's  
26 money on."

1 Based on the lack of privilege, Galanda Broadman did not respond to Mr. Cushman's  
2 letter and filed this lawsuit. Ten months have passed since Mr. Cushman purported to assert the  
3 attorney-client privilege and the Tribe has taken no further action on the subject.

4 This is the context for the KTS's motion for protective order. KTS has refused to  
5 produce relevant documents or make its witnesses available to testify unless and until the Court  
6 rules on the privilege. Their rationale is that (a) the SPR is privileged because—and only  
7 because—they included the words "CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED  
8 DOCUMENT"; and (b) there has been no "unanimous" vote of the Tribal Council to relinquish  
9 the attorney-client privilege. Here is why the Court should deny the Motion:

10 1. **KTS has not established that the Tribe has at any point invoked the**  
11 **attorney-client privilege with regard to the SPR.** The Tribal Council has not spoken in favor  
12 of the Motion. KTS does not currently represent the Tribe and they make no claim to be acting  
13 at the Tribe's direction. Their motion rests on the premise that only the Tribal Council, not any  
14 individual Councilmember or Tribal Attorney, can act on behalf of the Tribe—which extends  
15 to invoking privilege. Aside from Mr. Cushman's June 9, 2019 letter, which the Tribal Vice  
16 Chairperson has disavowed for lack of consensus by the Tribal Council, the Tribe has not  
17 asserted privilege over the SPR or KTS's work related thereto. To the contrary, several current  
18 Councilmembers have attested that the SPR and KTS's work related thereto was never intended  
19 to be privileged in the first instance. KTS has not established any invocation of the attorney-  
20 client privilege and the Motion should be denied.

21 2. **Privilege, if it was invoked, was waived.** If the Court determines the Tribe  
22 invoked the attorney-client privilege, the Court should find that any such privilege has been  
23 waived. The Tribe and KTS have known since June 2019 that (a) Councilmember Frank  
24 voluntarily disclosed the SPR and the details of KTS's work thereto; (b) Galanda Broadman  
25 disputed the privilege claim and declined to return its copy of the SPR; and (c) Galanda  
26 Broadman incorporated the findings of the SPR in its lawsuit. Despite this, the Tribe has taken  
27 no further action to protect privilege. Instead, three Councilmembers have acknowledged the

1 voluntary disclosure of the SPR and confirmed their beliefs that KTS's investigation was not  
2 intended to be privileged. If the Court makes a finding of privilege, these circumstances support  
3 a finding of waiver.

4       **3. The Court should decline to make a legal interpretation of Tribal law.** The  
5 Court should also refrain from making legal interpretations of Tribal law. KTS claims that  
6 common law principles of waiver, which would otherwise apply in this case, cannot be applied  
7 due to a Tribal Resolution limiting when the privilege can be waived. Disputed issues over the  
8 waiver of privilege in connection with Tribal law are not appropriate for resolution in state court  
9 proceedings, particularly when the Tribe is not participating in this action.

10       **4. The Tribal Council intends to address the alleged privilege of the SPR.**  
11 After KTS filed this motion, counsel for Galanda Broadman reached out to Councilmember  
12 Frank to inquire whether the Tribal Council would take up the privilege issue. Mr. Frank, in a  
13 message copied to Vice Chairperson Squally, confirmed that: (a) he does "not support what was  
14 done to Mr. Galanda by any means," (b) due to the global health pandemic, the Tribal Council  
15 will not have a scheduled meeting for the next one or two months; but (c) he will "bring the  
16 question to the tribal council in regards to the [privilege] issue."<sup>1</sup> Based on the Tribal Council's  
17 intention to take up the privilege issue when it next convenes, it would be premature for the  
18 Court to resolve the privilege issue at this time.<sup>2</sup>

19       For all of these reasons, the Court should deny the Motion for Protective Order based  
20 on lack of standing and/or waiver, or, alternatively, delay ruling on the Motion until the Tribal  
21 Council has resolved the privilege issue in the coming weeks.

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24 <sup>1</sup> KTS wrongly claims the Tribal Council can only waive privilege by a unanimous vote. Tribal Council Resolution  
25 No. 78 states that a waiver of privilege can be approved based on "a consensus of the Tribal Council."

26 <sup>2</sup> The Court should pause before interpreting Nisqually law on issues of privilege, as KTS urges, or public  
27 disclosure. *Cf. Stock W. Corp. v. Taylor*, 964 F.2d 912, 920 (9th Cir. 1992) ("Because a determination of this issue  
will require a careful study of the application of tribal laws, and tribal court decisions, the district court should  
have stayed its hand until after the Colville Tribal Courts have the opportunity to resolve the question"); CR  
82.5(c). The Tribal Council should instead be allowed that opportunity in the first instance. *Id.*



1 **II. EVIDENCE RELIED UPON**

2 This Opposition is supported by the Declaration of Charles P. Rullman (“Rullman  
3 Decl.”), as well as all exhibits attached thereto, and all documents on file in this action.

4 **III. STATEMENT OF FACTS**

5 **A. Galanda Broadman Represented the Tribe Under a Professional Service**  
6 **Agreement and a Contingency-Fee Agreement.**

7 Galanda Broadman is an American Indian-owned boutique law firm specializing in  
8 tribal legal rights and Indian business interests. (Complaint, Dkt. 1, ¶ 8.) Founded in 2010 by  
9 Gabe Galanda and Anthony Broadman, the firm currently employs approximately eight  
10 attorneys. (*Id.*) On June 25, 2015, Galanda Broadman entered into a written Contract for  
11 Professional Services with the Tribe. (Complaint, ¶ 12.) The parties renewed the Services  
12 Agreement on January 1, 2017 with a clause stating that it would automatically renew annually  
13 unless terminated in accordance with its terms. (*Id.*) Leona Colegrove, the Tribe’s Legal  
14 Director, oversaw the Services Agreement.<sup>3</sup> (*Id.*)

15 On March 1, 2018, the Tribe entered into a contingency fee-based Representation  
16 Agreement with a Minneapolis law firm, Robins Kaplan LLP, and Galanda Broadman, to  
17 represent the Tribe in Multi-District Litigation in the Northern District of Ohio against certain  
18 manufacturers and distributors of opioids (the “MDL Action”). (Complaint, ¶ 13.) Under the  
19 Representation Agreement, Galanda Broadman would receive five percent (5%) of Robin  
20 Kaplan LLP’s twenty percent (20%) gross recovery, if any. (*Id.*)

21 **B. KTS Intentionally Interfered with Galanda Broadman’s Contracts with the Tribe.**

22 In May 2018, Ms. Colegrove separated her employment from the Tribe. (Complaint,  
23 ¶ 14.) Galanda Broadman continued to provide legal services under the Services Agreement  
24 under the direction of two successors to Ms. Colegrove. (*Id.*)

25 \_\_\_\_\_  
26 <sup>3</sup> KTS suggests that there is something untoward about Ms. Colegrove’s work with Galanda Broadman as outside  
27 counsel for the Tribe given that Ms. Colegrove and Mr. Galanda worked together at the Williams Kastner firm and  
have remained professionally affiliated. The notion that a pre-existing professional relationship, without more,  
renders subsequent professional affiliations “questionable” is baseless.

1 On June 6, 2018, the Tribe posted a Request for Proposal (the “RFP”) for a Special  
2 Prosecutor to investigate the circumstances surrounding Ms. Colegrove’s departure from the  
3 Tribe. (Complaint, ¶ 15.) KTS submitted a response to the RFP, but made no disclosure  
4 regarding their participation in a lawsuit involving the Nooksack Indian Tribe in a federal  
5 lawsuit, *Margretty Rabang, et al. v. Robert Kelly, Jr., et al.*, Case No. 2:17-CV-00088-JCC (the  
6 “*Rabang Action*”). (*Id.*, ¶¶ 11, 15.) Galanda Broadman and KTS represent adverse parties in  
7 the *Rabang Action*, which has become highly contentious between the parties and their counsel.  
8 (*Id.*) The Tribe awarded the Special Prosecutor contract to KTS. (*Id.*)

9 On November 13, 2018, KTS completed its investigation of Ms. Colegrove without  
10 interviewing Ms. Colegrove, Mr. Galanda or anyone at Galanda Broadman. (Complaint, ¶ 17.)  
11 KTS issued a report to the Tribe that included irrelevant, false and misleading claims that  
12 Galanda Broadman had engaged in unethical conduct in connection with the departure of Ms.  
13 Colegrove. (*Id.*) In addition, KTS gave a presentation to the Tribal Council where it continued  
14 to defame Galanda Broadman and recommended that the Tribe file an ethics complaint against  
15 Galanda Broadman to the Washington State Bar Association (“WSBA”). (*Id.*)

16 On December 7, 2018, the Tribe terminated its Services Agreement with Galanda  
17 Broadman. (Complaint, ¶ 18.) Galanda Broadman was forced to withdraw its representation of  
18 the Tribe in actions pending in the U.S. District Court for the Western District of Washington  
19 and the MDL Action in the Northern District of Ohio. (*Id.*)

20 On December 19, 2018, the Tribe filed an ethics complaint with the WSBA against Ms.  
21 Colegrove, which KTS prepared for the Tribal Chairman’s signature. (Complaint, ¶ 19.) In  
22 footnote 3, KTS made further false and misleading allegations against Galanda Broadman,  
23 including that Galanda Broadman had drafted Ms. Colegrove’s severance agreement and failed  
24 to review the agreement with the Tribal Council. (*Id.*) Both statements are demonstrably false,  
25 as KTS either knew or would have known had they conducted a proper investigation rather than  
26 use their role as a Special Prosecutor to malign Galanda Broadman. (*Id.*)  
27

1 **C. Councilmember William Frank III Voluntarily Disclosed the SPR to Galanda**  
2 **Broadman and Reported the False and Disparaging Comments Made by KTS.**

3 In mid-2018, Gabe Galanda of Galanda Broadman contacted Councilmember William  
4 Frank to inquire about the Tribe's support for legislation that Galanda Broadman was helping  
5 to introduce in Olympia regarding the religious rights of Native prisoners. (Rullman Decl., Ex.  
6 A.) The Tribe had previously supported Mr. Galanda's work on behalf of Native prisoners.  
7 (*Id.*) Mr. Frank responded by discouraging Mr. Galanda from seeking the Tribe's support  
8 because his Service Agreement had been jeopardized by the false and misleading information  
9 KTS had delivered in connection with their investigation. (*Id.*) Mr. Frank volunteered to send  
10 a copy of the SPR to Mr. Galanda, which he did, and encouraged Mr. Galanda to share the  
11 report with Ms. Colegrove. (*Id.*)

12 **D. Galanda Broadman Disclosed That it Had Received the SPR.**

13 On June 3, 2019, counsel for Galanda Broadman sent a letter to KTS regarding their  
14 intentional interference and other unlawful acts. (Rullman Decl., Ex. D.) The letter included a  
15 draft complaint that made explicit reference to the SPR and its contents, as well as the other  
16 false and defamatory communications made by KTS in connection with its investigation. (*Id.*)

17 On June 7, 2019, Nate Cushman, as Tribal Attorney for the Tribe, wrote to counsel for  
18 Galanda Broadman, with a copy also sent to KTS. (Rullman Decl., Ex. E.) Mr. Cushman  
19 claimed not to have known "how or why" Galanda Broadman had received the SPR, reflecting  
20 the fact that he had not queried the Tribal Councilmembers on their prior disclosures of the  
21 Report. (*Id.*) Mr. Cushman's letter was more focused on defending KTS's interference than  
22 conveying the full Tribal Council's position on the issue of privilege surrounding the SPR. (*Id.*)

23 Based on the prior, voluntary waiver of privilege relating to the SPR, neither Galanda  
24 Broadman nor its counsel responded to Mr. Cushman's letter. (Rullman Decl. ¶ 6.) Galanda  
25 Broadman filed this lawsuit on June 26, 2020. (*Id.* ¶ 7) Neither Mr. Cushman nor the Tribal  
26 Council has made any further efforts to claim privilege relating to the SPR or KTS's actions in  
27 connection thereto. (*Id.*)

1 **E. Members of the Tribal Council Have Condemned the SPR and Refuted Its**  
2 **Confidentiality.**

3 Antonette “Maui” Squally is a Tribal Councilmember and the current Vice Chairperson  
4 for the Tribal Council. (Rullman Decl., Ex. C.) She served on the Tribal Council from 2013  
5 to 2016 and again from May 2019 to the present. (*Id.*) Regarding the SPR, she has attested:

6 I sought out Kilpatrick Townsend’s “Special Prosecution Report,” which is a  
7 public record for all of our Nisqually People to see. I have seen no indication  
8 that the Tribal Council intended for Kilpatrick Townsend’s investigation or the  
9 Special Prosecution Report to be privileged or confidential. To the contrary,  
10 my expectation is that an investigation of this type should have been conducted  
11 with transparency.

12 I have also learned that our Tribe’s new in-house Tribal Attorney, Nate  
13 Cushman, sent a letter on June 7, 2019 to the attorneys representing Galanda  
14 Broadman PLLC. [...] The letter asserted various legal positions about  
15 Kilpatrick Townsend’s investigation and the Special Prosecution Report. This  
16 letter was not presented to the full Tribal Council before it was sent out, and  
17 Nate did not have authority to issue the letter or take those legal positions  
18 without getting input and authorization from the full Tribal Council. I do not  
19 agree with those positions, which have yet to be brought before the full Tribal  
20 Council for consideration or adoption.

21 (*Id.*, Ex. C; emphasis added.) Brian McCloud is also a Tribal Councilmember and he has served  
22 in that position for the last 15 years. (Rullman Decl., Ex. B.) Mr. McCloud has registered his  
23 disagreement with KTS’s investigation and the claim that the SPR is privileged:

24 In late 2018, Kilpatrick Townsend served as a special prosecutor for the Tribal  
25 Council. I disagreed with that investigation process then and I disagree with it  
26 now. [REDACTED]

27 I recall that Kilpatrick Townsend issued a “Special Prosecution Report” to the  
Tribal Council regarding Leona and Gabe. That special prosecutor’s report is  
not privileged or confidential. The public, especially our Nisqually People,  
deserve to know what happens within our Tribal government and to see what  
we are spending our Tribe’s money on.

(*Id.*, Ex. B; emphasis added.)

25 **F. The Tribal Council Intends to Address the Privilege Issues Raised by this Motion.**

26 Counsel for the parties have conferred at length on how to deal with the disputed issues  
27 of privilege in this case. (Rullman Decl. ¶ 8.) Rather than take the issue to the Tribal Council

1 for guidance (as the holder of the purported privilege), KTS has conditioned such a request on  
2 the Tribe waiving privilege both to the SPR and all work performed by Galanda Broadman for  
3 the Tribe. (*Id.*) However, Galanda Broadman's unrelated work for the Tribe has no bearing on  
4 the defamatory claims made by KTS in the SPR, which made no reference to the competency  
5 or quality of Galanda Broadman's legal services. Moreover, there is no evidence that the  
6 Tribe's termination of Galanda Broadman's Services Agreement was motivated by any failure  
7 of performance. This is why Galanda Broadman refused to request a blanket waiver of all  
8 privileged communications in relation to its work for the Tribe.

9 On April 17, 2020, counsel for Galanda Broadman approached Councilmember Frank  
10 with a request:

11 While these are hectic and uncertain times, I am hopeful you can help us resolve  
12 this issue. If you are willing, we are asking that the Tribal Council consider a  
13 resolution confirming that Mr. Smith's work as special counsel was not  
privileged. We would never presume to influence the vote and we will, of  
course, abide by the Tribal Council's decision.

14 (Rullman Decl., Ex. F; emphasis added.)

15 On April 22, 2020, Mr. Frank sent two responses:

16 (4:38 PM) Thank you for reaching out. Yes we are in some crazy times right  
17 now. I do not know when Tribal Council will have a actual meeting again. It  
may be a month or two before the next scheduled meeting. We have been busy  
protecting our Nisqually Community. I do not support what was done to Mr  
18 Galanda by any means. It is unfortunate that politics comes into play in regards  
19 to decisions that were made. Thank you!

20 (4:47 PM) I can bring the question to the tribal council in regards to the issue.  
It may be a month out or so.

21 (Rullman Decl., Ex. F; emphasis added.)

#### 22 **IV. STATEMENT OF ISSUES**

23 1. Has KTS established that the Tribe invoked the attorney-client privilege over  
24 the SPR and KTS's work related thereto? No.

25 2. If the Court determines that the SPR and KTS's actions related thereto were  
26 privileged, do the circumstances support a finding of waiver. Yes.

3. Should the Court decline to make legal interpretations of Tribal law concerning the invocation and waiver of the attorney-client privilege? Yes.

4. Should the Court defer to the Tribal Council to determine whether it has invoked the attorney-client privilege over the SPR and KTS' work related thereto? Yes.

## V. ARGUMENT

**A. KTS Has Not Established That the Tribe Invoked the Attorney-Client Privilege Over the SPR.**

The party seeking to assert the privilege bears the burden of proving the existence of the attorney-client relationship or other protected relationship. *Dietz v. Doe*, 131 Wash. 2d 835, 851, 935 P.2d 611, 619 (1997); *see also* RCW 5.60.060(2). An attorney’s bare claim of the privilege is not dispositive. *Id.* The client must also prove the privilege extends to the communication at issue. *Id.* Here, Galanda Broadman is not disputing the existence of an attorney-client relationship between the Tribe and KTS, but this is not the dispositive point. The attorney-client privilege “only applies to communications that are intended by the party to be confidential.” *Seattle Northwest Securities Corp. v. SDG Holding Co., Inc.*, 61 Wn. App. 725, 742, 812 P.2d 488 (1991) (emphasis added). On this point, KTS lacks evidence that the Tribal Council intended the SPR to be privileged in the first instance. To the contrary, the current Vice Chairperson Squally has clearly stated that she has “seen no indication that the Tribal Council intended for Kilpatrick Townsend’s investigation or the Special Prosecution Report to be privileged or confidential” and “to the contrary, [her] expectation is that investigation of this type should have been conducted with transparency.” (Rullman Decl., Ex. C.) Similarly, Councilmember McCloud has stated that the “special prosecutor’s report is not privileged or confidential. The public, especially our Nisqually People, deserve to know what happens within our Tribal government and to see what we are spending our Tribe’s money on.” (*Id.*, Ex. B.) Indeed, Councilmember Frank disclosed the SPR directly to Mr. Galanda because it was not a privileged document. (*Id.*, Ex. A.)

1 KTS contends individual Councilmembers (who they brand as “leakers”) cannot waive  
2 the attorney-client privilege absent action by the full Tribal Council. These Councilmembers  
3 are not claiming to waive the privilege—they are attesting that the SPR was never intended to  
4 be privileged in the first instance. Aside from labeling their report “confidential,” KTS has  
5 offered no evidence that the Tribe concurred that the report would be privileged. In fact, KTS’s  
6 contract says nothing about its work or report in the already-publicized Special Prosecutor  
7 “investigation”<sup>4</sup> being privileged or confidential.<sup>5</sup>

8 **B. The Voluntary Disclosure of the SPR to Galanda Broadman Waived Privilege.**

9 To the extent the Court determines that privilege applied to the SPR, it was waived  
10 through intentional disclosure. *Dietz*, 131 Wn.2d at 849–50, 935 P.2d 611 (quoting 8 JOHN  
11 HENRY WIGMORE, EVIDENCE § 2292, at 554 (McNaughton rev. ed. 1961)); *State ex rel.*  
12 *Sowers v. Olwell*, 64 Wn.2d 828, 833, 394 P.2d 681 (1964). Within days of receiving the SPR,  
13 Councilmember Frank voluntarily sent a copy to attorney Mr. Galanda. A party waives the  
14 attorney client privilege if that party discloses privileged documents to other persons with the  
15 intention that a person outside of the attorney-client relationship can see the documents.  
16 *Limstrom v. Ladenburg*, 110 Wn. App. 133, 145, 39 P.3d 351 (2002). By sending the SPR to  
17 Mr. Galanda, any privilege was waived.

18 Even if Councilmember Frank’s disclosure of the SPR was deemed to be inadvertent,  
19 the waiver still occurs where the producing party fails to take action to rectify the disclosure.  
20 *Harris v. Drake*, 152 Wn. 2d 480, 496, 99 P.3d 872, 879 (2004); *U.S. v. Rigas*, 281 F.Supp.2d  
21 733, 738 (S.D.N.Y.2003). The Tribal Council was informed of the disclosure as early as June  
22 2019, when KTS shared Galanda Broadman’s grievance with Tribal Attorney Nate Cushman.  
23 Mr. Cushman, without the authority of the Tribal Council, made a single objection to the  
24 disclosure of the SPR—presumably at the direction of KTS. That was 10 months ago and the  
25

26  
27 <sup>4</sup> See <https://turtletalk.blog/2018/06/08/friday-job-announcements-78/>.

<sup>5</sup> See Declaration of Leslie Barron, Ex. 3.



1 Tribal Council has taken no further action. Moreover, as discussed above, several members of  
2 the Tribal Council have refuted the notion that the SPR was ever privileged.

3 **C. The Court Should Refrain from Interpreting Tribal Law as It Relates to Waiver.**

4 KTS claims that common law principles of waiver should be disregarded because the  
5 Tribe adopted a resolution that purports to limit the circumstances when privilege can be  
6 waived. In this regard, KTS is inviting the Court to delve into the legal interpretation of Tribal  
7 law and resolutions. The Court should refrain. The adjudication of such matters by non-tribal  
8 courts has the effect of infringing tribal law-making authority through the interpretation and  
9 application of tribal law. *See, e.g., Grand Canyon Skywalk Dev., LLC v. "SA' NYU WA*, No.  
10 CV12-8030-PCT-DGC, 2012 WL 1207149, at \*1 (D. Ariz. Mar. 26, 2012), *aff'd sub nom.*  
11 *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196 (9th Cir. 2013)  
12 (describing the “the Federal Government’s longstanding policy of encouraging tribal self-  
13 government[]” and tribal courts’ “vital role” in effectuating that self-governance). This concern  
14 is aggravated by the fact that KTS—not the Tribe—is purporting to invoke the Tribe’s rights  
15 under Tribal law. Under these circumstances, it is inappropriate for the Court to resolve the  
16 apparent dispute between the common law principles of waiver and KTS’s self-serving effort  
17 to limit waiver to a “unanimous” act of the Tribal Council.

18 **D. The Court Should Refrain from Ruling on the Disputed Issues of Privilege and**  
19 **Waiver When the Tribal Council Intends to Take Up These Issues.**

20 KTS has not engaged the Tribal Council on the subject of privilege—but Galanda  
21 Broadman has. The Tribal Council’s operations, including scheduled meetings, have been  
22 significantly impacted by the COVID-19 virus outbreak. Nonetheless, Councilmember Frank  
23 confirmed in a message copied to Vice Chairperson Squally that the Tribal Council will take  
24 up the privilege issues when it convenes in the next one to two months. In light of the trial  
25 continuance to October 12, 2020 and the extension of the discovery cut-off to August 24, 2020,  
26 there is sufficient time for the parties to await a decision from the Tribal Council before asking  
27 this Court to delve into such Tribal matters. Accordingly, if the Court does not deny the Motion



1 outright, the Court should deny the motion without prejudice subject to re-filing after the Tribal  
2 Council has acted on the privilege issue in the near term.

3 **VI. CONCLUSION**

4 Galanda Broadman respectfully requests that the Court deny the Motion for Protective  
5 Order filed by KTS.

6 DATED: April 24, 2020

7 CORR|DOWNS PLLC

8  
9 By: s/ Charles P. Rullman

10 Charles P. Rullman, WSBA #42733

11 Gretchen J. Hoog, WSBA #43248

12 Jacob M. Downs, WSBA #37982

13 100 W Harrison St, Suite N440

14 Seattle, WA 98119

15 Phone: 206.962.5040

16 [crullman@corrdowns.com](mailto:crullman@corrdowns.com)

17 [ghoog@corrdowns.com](mailto:ghoog@corrdowns.com)

18 [jdowns@corrdowns.com](mailto:jdowns@corrdowns.com)

19 Attorneys for Plaintiff

20 I certify that this memorandum contains 4,200  
21 words, in compliance with the Local Civil Rules.

## **APPENDIX B**

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

**DECLARATION OF CHARLES P.  
RULLMAN IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION FOR  
PROTECTIVE ORDER AS TO  
CERTAIN PRIVILEGED  
DOCUMENTS**

I, CHARLES P. RULLMAN, state and declare as follows:

1. I am over the age of 18 years and am competent to make this declaration. I am counsel for Plaintiff Galanda Broadman, PLLC ("Galanda Broadman"). I make this declaration in response to Galanda Broadman's Opposition to the Motion for Protective Order filed by Kilpatrick Townsend & Stockton LLP, Rob Roy Edward Stuart Smith, and Rachel Saimons (together, the "KTS Defendants").

2. Attached hereto as **Exhibit A** is a document titled DECLARATION OF WILLIAM "WILLIE" FRANK III, which Mr. Frank signed on January 29, 2020. Galanda Broadman produced a copy of Mr. Frank's declaration to the KTS Defendants, marked GB\_009430-9431, on March 17, 2020.

1           3.       Attached hereto as **Exhibit B** is a document titled “DECLARATION OF  
2 BRIAN MCCLOUD,” which Mr. McCloud signed on February 20, 2020. Galanda Broadman  
3 produced a copy of Mr. McCloud’s declaration to the KTS Defendants, marked GB\_009434-  
4 9435, on March 17, 2020.

5           4.       Attached hereto as **Exhibit C** is a document titled “DECLARATION OF  
6 ANTONETTE SQUALLY,” which Ms. Squally signed on March 23, 2020. Galanda Broadman  
7 produced a copy of Ms. Squally’s declaration to the KTS Defendants, marked GB\_009436-  
8 9437, on March 23, 2020.

9           5.       On June 3, 2019, I sent a letter to the KTS Defendants regarding their intentional  
10 interference and other unlawful acts in connection with the Special Prosecution Report (“SPR”)  
11 delivered to the Nisqually Indian Tribe (the “Tribe”). The letter included a draft complaint that  
12 made explicit reference to the SPR and its contents, as well as the other false and defamatory  
13 communications made by the KTS Defendants in connection with their investigation. Attached  
14 hereto as **Exhibit D** is a true and correct copy of my letter.

15           6.       On June 7, 2019, Nate Cushman, writing as Tribal Attorney for the Tribe, sent  
16 me a letter with a copy sent to the KTS Defendants. Attached hereto as **Exhibit E** is a true and  
17 correct copy of Mr. Cushman’s letter. I did not respond to Mr. Cushman’s letter.

18           7.       Galanda Broadman filed this lawsuit on June 26, 2020. Neither Mr. Cushman  
19 nor the Tribal Council has made any further efforts to claim privilege relating to the SPR or  
20 KTS’s actions in connection thereto.

21           8.       I have conferred at length with counsel for the KTS Defendants on how to deal  
22 with the disputed issues of privilege in this case. Rather than take the issue to the Tribal Council  
23 for guidance (as the holder of the purported privilege), counsel for the KTS Defendants has  
24 conditioned such a request on the Tribe waiving privilege both to the SPR and all work  
25 performed by Galanda Broadman for the Tribe. Our position has been that Galanda  
26 Broadman’s work over several years for the Tribe has no bearing on the defamatory claims  
27

1 made by KTS in the SPR, which made no reference to the competency or quality of Galanda  
2 Broadman's legal services.

3 9. On April 17, 2020, I sent an email to Tribal Councilmember Frank to inquire  
4 whether the Tribal Council will address the dispute over whether the Special Prosecution Report  
5 is privileged. He responded to me on April 22, 2020. Attached hereto as **Exhibit F** is a true  
6 and correct copy of our complete email exchange.

7 I declare under penalty of perjury under the laws of the United States and the  
8 State of Washington that the foregoing is true and correct.

9 Dated this 24th day of April, 2020, at Seattle, Washington.

10  
11 *s/ Charles P. Rullman*

12 Charles P. Rullman, WSBA No. 42733  
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# EXHIBIT A

HONORABLE LAURA INVEEN

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

**DECLARATION OF WILLIAM  
"WILLIE" FRANK III**

I, William "Willie" Frank III, hereby declare the following:

1. I am over the age of eighteen years, competent to testify, a resident of the State of Washington, a citizen of the United States, and not a party to this action. I am a Nisqually Tribal Councilperson and I make and offer this Declaration without any waiver of my or my Tribe's sovereign immunity.

2. In early December 2018, I attended a Nisqually Tribal Council meeting that Rob Roy Smith attended by phone.

DECLARATION OF WILLIAM "WILLIE" FRANK III - 1  
Case No. 19-2-16870-6 SEA

**CORR | DOWNS PLLC**  
100 WEST HARRISON STREET  
SUITE N440  
SEATTLE, WA 98119  
206.962.5040

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[REDACTED]

3. Later in December 2018, Gabe called me to see if the Tribe would support a piece of state legislation he was helping introduce in Olympia so that Native American prisoners would be able to better worship in traditional Native ways. The Tribe had supported Gabe's work on behalf of Native prisoners in prior years. I told him that he should not ask the Tribe to support the legislation. He asked "why?"

[REDACTED]

[REDACTED] I told him I would mail him Kilpatrick Townsend Special Prosecution Report, which I did the following week. I asked him to share that report with Leona because she was wronged by it too.

I declare under penalty of perjury under the laws of the State of Washington and Nisqually Indian Tribe that the foregoing is true and correct.

DATED this 29 day of January 2020.

  
WILLIAM "WILLIE" FRANK III



# EXHIBIT B

HONORABLE LAURA INVEEN

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

**DECLARATION OF BRIAN  
McCLOUD**

I, Brian McCloud, declare as follows:

1. I am over the age of eighteen years, competent to testify, a resident of the State of Washington, a citizen of the United States, and not a party to this action. I am a Nisqually Tribal Councilperson. I have been on the Tribal Council for the last 15 years. I make and offer this Declaration without any waiver of my or my Tribe's sovereign immunity.

2. In late 2018, Kilpatrick Townsend served as a special prosecutor for the Tribal Council. [REDACTED]

DECLARATION OF BRIAN MCCLOUD - 2  
Case No. 19-2-16870-6 SEA

CORR | DOWNS PLLC  
100 WEST HARRISON STREET  
SUITE N440  
SEATTLE, WA 98119  
206.962.5040

3. I recall that Kilpatrick Townsend issued a “Special Prosecution Report” to the Tribal Council regarding Leona and Gabe. That special prosecutor’s report is not privileged or confidential. The public, especially our Nisqually People, deserve to know what happens within our Tribal government and to see what we are spending our Tribe’s money on.

I declare under penalty of perjury under the laws of the State of Washington and Nisqually Indian Tribe that the foregoing is true and correct.

Signed this 20th day of February 2020, at Olympia, Washington.

Brian McCloud

DECLARATION OF BRIAN MCCLOUD - 2  
Case No. 19-2-16870-6 SEA

**CORR | DOWNS PLLC**  
100 WEST HARRISON STREET  
SUITE N440  
SEATTLE, WA 98119  
206.962.5040

# EXHIBIT C

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

**DECLARATION OF ANTONETTE  
SQUALLY**

I, Antonette "Maui" Squally, hereby declare the following:

1. I am over the age of eighteen years, competent to testify, a resident of the State of Washington, a citizen of the United States, and not a party to this action. I am the Vice Chairperson of the Nisqually Tribal Council. I was elected to that seat in May of 2019. I previously sat on the Tribal Court from 2013 through 2016. I make and offer this Declaration without any waiver of my or my Tribe's sovereign immunity.

2. Soon after I was elected to serve as Tribal Council Vice Chairperson last May, I began to ask why the Tribe had no more Native American lawyers. When I was previously on the Tribal Council, the Tribe had Leona Colegrove as our in-house Tribal Attorney and Gabe Galanda as our general outside counsel.

1 3. [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 [REDACTED] I sought out Kilpatrick Townsend's "Special Prosecution Report," which is a public  
6 record for all of our Nisqually People to see. I have seen no indication that the Tribal Council  
7 intended for Kilpatrick Townsend's investigation or the Special Prosecution Report to be  
8 privileged or confidential. To the contrary, my expectation is that an investigation of this type  
9 should have been conducted with transparency.

10 4. I have also learned that our Tribe's new in-house Tribal Attorney, Nate  
11 Cushman, sent a letter on June 7, 2019 to the attorneys representing Galanda Broadman  
12 PLLC. A copy of Nate's letter is attached as Exhibit A. The letter asserted various legal  
13 positions about Kilpatrick Townsend's investigation and Special Prosecution Report. This  
14 letter was not presented to the full Tribal Council before it was sent out, and Nate did not have  
15 authority to issue the letter or take those legal positions without getting input and  
16 authorization from the full Tribal Council. I do not agree with those positions, which have yet  
17 to be brought before the full Tribal Council for consideration or adoption.

18 I declare under penalty of perjury under the laws of the State of Washington and  
19 Nisqually Indian Tribe that the foregoing is true and correct.

20 DATED this 23 day of March 2020.

21   
22 ANTONETTE "MAUP" SQUALLY  
23  
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25  
26  
27

# EXHIBIT A



**NISQUALLY INDIAN TRIBE**  
**OFFICE OF THE TRIBAL ATTORNEY**  
4820 She-Nah-Num Drive S.E.  
Olympia, Washington 98513  
360.456.5221 (main)  
877.768.8886 (toll free)  
[www.nisqually-nsn.gov](http://www.nisqually-nsn.gov)

---

June 7, 2019

*Via e-mail ([crullman@corrdowns.com](mailto:crullman@corrdowns.com)) and U.S. Mail*

Charles Rullman  
Corr | Downs PLLC  
100 West Harrison Street  
Suite N440  
Seattle, WA 98119

Re: Privileged Documents Belonging to the Nisqually Indian Tribe

Mr. Rullman:

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

I am writing to demand that you immediately return all documents belonging to the Nisqually Tribe, including but not limited to privileged documents, reports, and communications produced for the Tribe by attorneys from Kilpatrick Townsend. The Tribe has not waived Attorney-Client privilege with respect to any documents generated by Kilpatrick Townsend, and any disclosure of those documents was inadvertent and in error. In accordance with the Washington Rules of Professional Conduct please immediately return any such documents to my attention at the address above and provide written assurance that all remaining copies have been deleted or destroyed.

I do not know how you or the Galanda Broadman firm obtained privileged documents generated by another law firm for the Tribe, but I am also very concerned about what appears to be a collateral attack by Galanda Broadman (one of the Tribe’s outside law firms until January 7, 2019, I would note) on the Tribe’s WSBA grievance against former legal director Leona Colegrove.

I would also like to take this opportunity to correct several fundamental misunderstandings that are apparent from your draft Complaint. First, there is no connection between Kilpatrick Townsend’s work



for the Nisqually Tribe and the Tribal Council's unanimous decision on December 5, 2018, to terminate its contract with Galanda Broadman due to concerns about the quality of advice and representation provided in both ongoing litigation and prior matters. As you are aware, that contract was terminable at will by either party upon 30 days notice.

Second, as you yourself note, Kilpatrick Townsend was selected by the Tribal Council on July 30, 2018, from a number of firms that responded with sealed proposals to the Tribe's publicly available Request for Proposal for a Special Prosecutor to "conduct a comprehensive investigation into employee conduct" and "if necessary, file criminal or civil charges." As Special Prosecutor for the Tribe on this matter the doctrine of prosecutorial immunity likely applies to Kilpatrick Stockton's work on the matter in question. Further, although I do not follow or agree with your reasoning regarding alleged "conflicts" between Galanda Broadman and Kilpatrick Townsend, I would note that your client is not in a position to complain about any alleged conflict of interest you assert was not disclosed to the Tribe.

Third, although Galanda Broadman did withdraw from representing the Nisqually Tribe in the MDL Opioid Litigation, the firm promptly filed an Attorney's Fee Lien in the action to secure their 5% contingent fee. As such, I fail to see how they have suffered any harm. In fact, they will reap the benefit of any settlement obtained on the Tribe's behalf without having to meaningfully participate in the proceedings which are now being handled by the Tribe's in-house attorneys.

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

I look forward to the immediate return of the Tribe's privileged documents in your possession.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nate J. Cushman', with a long horizontal flourish extending to the right.

Nate J. Cushman  
Tribal Attorney  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr. SE  
Olympia, WA 98513

cc: Rob Roy Smith  
Kilpatrick Townsend & Stockton

# EXHIBIT D

June 3, 2019

**PRIVILEGED COMMUNICATION**  
**EVIDENCE RULE 408**

**SENT VIA EMAIL & US MAIL**

Roger D. Wylie, Firm Managing Partner  
Kilpatrick Townsend & Stockton LLP  
1420 Fifth Avenue  
Suite 3700  
Seattle, WA USA 98101  
Email: [rwylie@kilpatricktownsend.com](mailto:rwylie@kilpatricktownsend.com)

Re: *Galanda Broadman, PLLC // Kirkpatrick Townsend & Stockton LLP*

Dear Mr. Wylie:

We are counsel for Galanda Broadman, PLLC. Enclosed is a draft Complaint for Damages we intend to file on June 10, 2019 in the King County Superior Court against Kilpatrick Townsend & Stockton LLP and two of its attorneys, Rob Roy Edward Stuart Smith and Rachel Saimons. We are inviting a discussion before the filing date to determine if litigation can be avoided.

The Complaint is self-explanatory, but the key points are as follows: Since early 2017, Mr. Smith and Ms. Saimons, as counsel for Raymond Dodge, have been involved in contentious federal litigation with the attorneys of Galanda Broadman, who are representing members of the Nooksack Indian Tribe. The parties and their attorney's have strong feelings toward each other, but for 18-months the acrimony was contained by the litigation. In June 2018, that changed. Mr. Smith and Ms. Saimons answered a Request for Proposal from the Nisqually Indian Tribe (the "Tribe") to serve as a Special Prosecutor to investigate the actions of the Tribe's Legal Director, Leona Colegrove. At the time they submitted their proposal, they were aware that Galanda Broadman served as general counsel for the Tribe, and they also knew that Ms. Colegrove shared strongly negative feelings about Mr. Dodge's actions as a tribal judge. Mr. Smith and Ms. Saimons did not disclose any of these conflicts of interest to the Tribe.

On November 13, 2018, Mr. Smith and Ms. Saimons completed their investigation of Ms. Colegrove.<sup>1</sup> They issued a report to the Tribe that included irrelevant, false and misleading claims that Galanda Broadman had engaged in unethical conduct in connection with the departure of Ms. Colegrove. In addition, Mr. Smith and Ms. Saimons delivered an oral presentation to the Tribe

---

<sup>1</sup> Mr. Smith and Ms. Saimons did not interview or request to interview any representatives of Galanda Broadman or Ms. Colegrove.  
[www.corrdowns.com](http://www.corrdowns.com)

wherein they continued to defame Galanda Broadman with allegations of unethical conduct and recommended that the Tribe submit an ethics complaint against Galanda Broadman to the Washington State Bar Association (“WSBA”).

The attacks on Galanda Broadman were baseless yet effective. On December 7, 2018, the Tribe terminated its engagement with Galanda Broadman, which also required the Firm to withdraw as contingency-fee counsel for the Tribe in significant multi-district litigation in the Northern District of Ohio. In a matter of weeks, Mr. Smith and Ms. Saimons succeeded in undercutting one of Galanda Broadman’s key client relationships. The economic harm in the form of lost revenue is clear significant, and the injury to the Firm’s reputation will take considerable time to repair.

This is not the first time that Mr. Smith has engaged in conduct that runs afoul of the ethical standards governing lawyers in Washington State. In 2018, serious charges were leveled against Mr. Smith and another attorney from Kirkpatrick Townsend concerning false statements made to a federal law enforcement agent during their representation of the Snoqualmie Indian Tribe. Evidently, that episode did not persuade Mr. Smith to refrain from making false statements, nor did Kirkpatrick Townsend take steps to reign in his behavior.

Based on these facts, we intend to assert claims against Kirkpatrick Townsend, Mr. Smith, and Ms. Saimons for intentional interference with contractual relationships and violation of the Washington Consumer Protection Act, for which we will seek economic damages (including treble damages) and an award of attorney’s fees and costs. As a law firm, Galanda Broadman does not delight in the idea of being a party to litigation. Regardless, the actions by Mr. Smith and Mr. Saimons cannot and will not be condoned.

If you would like to discuss this matter and propose a resolution, we invite your call. Otherwise, we will be serving our Summons and Complaint on June 10, 2019.

Very truly yours,

CORR|DOWNS, PLLC



Chuck P. Rullman

Cc: Jacob M. Downs  
Encl.

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7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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

10 Plaintiff,

11 v.

12 KILPATRICK TOWNSEND & STOCKTON  
13 LLP, a foreign limited partnership; ROB ROY  
EDWARD STUART SMITH, an individual;  
14 and RACHEL SAIMONS, an individual,

15 Defendants.  
16

No.

**COMPLAINT FOR DAMAGES**

17 COME NOW Plaintiff Galanda Broadman, PLLC, by and through its attorneys, Corr  
18 Downs PLLC, and hereby states and alleges as follows:

19 **I. PARTIES**

20 1. Plaintiff Galanda Broadman, PLLC (“Galanda Broadman”) is a Washington  
21 professional limited liability with its principal place of business located at 8606 35<sup>th</sup> Avenue  
22 NE, Suite L1, Seattle, WA 98115, in King County.

23 2. Defendant Kilpatrick Townsend & Stockton (“Kilpatrick Townsend”) is a  
24 Georgia limited liability partnership doing business at 1420 Fifth Avenue, Suite 3700, Seattle,  
25 WA 98101 in King County, Washington.  
26  
27

1           3.     Upon information and belief, Defendant Rob Roy Edward Stuart Smith  
2 (“Smith”) is an individual residing in King County, Washington.

3           4.     Upon information and belief, Defendant Rachel Saimons (“Saimons”) is an  
4 individual residing in King County, Washington.

5                               **II. JURISDICTION AND VENUE**

6           5.     The Superior Court of Washington for King County has subject matter  
7 jurisdiction over this action pursuant to RCW 2.08.010.

8           6.     Jurisdiction is proper in the State of Washington pursuant to RCW 4.28.185  
9 because the cause of action as alleged herein arose out of activities, including the commission  
10 of tortious acts, within the State of Washington.

11          7.     Venue is proper in this case because all events relating to Galanda Broadman’s  
12 case transpired in King County, Washington, Defendants reside in this County, and a substantial  
13 portion of the transactions and wrongs complained of herein, including Defendants’ primary  
14 participation in the wrongful acts detailed herein, occurred in this County.

15                               **III. FACTS**

16          **A.     About the Parties.**

17          8.     Galanda Broadman is an American Indian-owned boutique law firm specializing  
18 in the advancement of tribal legal rights and Indian business interests. Founded in 2010 by  
19 Gabe Galanda and Anthony Broadman, the firm currently employs approximately eight  
20 attorneys.

21          9.     Kilpatrick Townsend is an international law firm headquartered in Atlanta, GA.  
22 The firm has 19 offices and approximately 650 attorneys. Kilpatrick Townsend established its  
23 Seattle office in 1989, where it employs approximately 35 attorneys.

24          10.    Smith is an attorney and partner at Kirkpatrick Townsend. Upon information  
25 and belief, Smith is the Co-Team Leader for Native American Affairs at Townsend Kilpatrick.  
26 Saimons is an associate attorney at Kilpatrick Townsend. Upon information and belief,  
27 Saimons also focuses her practice on Native American Affairs. Kilpatrick Townsend is liable

1 for all actions of its attorneys, including Smith and Saimons, under the doctrine of respondeat  
2 superior. The conduct of these attorneys was implicitly ratified by Kirkpatrick Townsend.

3 11. Beginning in January, 2017, Galanda Broadman represented certain members of  
4 the Nooksack Indian Tribe in a federal lawsuit, *Margretty Rabang, et al. v. Robert Kelly, Jr., et*  
5 *al.*, Case No. 2:17-CV-00088-JCC (the “*Rabang Action*”), alleging that tribal officials had  
6 violated the federal Racketeer and Corrupt Organizations Act, 18 U.S.C. § 1964. One of the  
7 defendants in the *Rabang* lawsuit, Raymond Dodge, was and continues to be represented by  
8 Smith and Saimons of Kirkpatrick Townsend. As of the filing of this Complaint, the *Rabang*  
9 Action is the subject of a pending appeal before the U.S. Court of Appeals for the Ninth Circuit,  
10 Appeal No. 18-35711. The *Rabang Action* has been a particularly contentious lawsuit between  
11 certain parties and their counsel, including Galanda Broadman and Kirkpatrick Townsend.

12 **B. Galanda Broadman Represented the Nisqually Indian Tribe Pursuant to a**  
13 **Contract for Professional Services.**

14 12. On or about June 25, 2015, Galanda Broadman entered into a written Contract  
15 for Professional Services (the “Services Agreement”) with the Nisqually Indian Tribe (the  
16 “Tribe”). The parties renewed the Services Agreement on January 1, 2017 with a clause stating  
17 that the Services Agreement would automatically renew annually unless terminated in  
18 accordance with its terms. Leona Colegrove, the Tribe’s Legal Director, oversaw the Services  
19 Agreement. Ms. Colegrove is a former officer of the National American Indian Court Judges  
20 Association (the “NAICJA”). At Ms. Colegrove’s urging, the NAICJA removed Raymond  
21 Dodge (who is represented by Smith and Saimons in the *Rabang Action*) from its membership.

22 13. On March 1, 2018, pursuant to Tribal Council Resolution No. 34-2017, the Tribe  
23 entered into a contingency fee-based Representation Agreement with a Minneapolis law firm,  
24 Robins Kaplan LLP, and Galanda Broadman, to represent the Tribe in Multi-District Litigation  
25 in the Northern District of Ohio against certain manufacturers and distributors of opioids (the  
26 “MDL Action”). Under the Representation Agreement, Galanda Broadman would receive five  
27 percent (5%) of Robin Kaplan LLP’s twenty percent (20%) gross recovery, if any.



1 **C. Kirkpatrick Townsend, Smith, and Saimons Intentionally Interfered with Galanda**  
2 **Broadman's Contracts with the Tribe.**

3 14. In May 2018, Ms. Colegrove separated her employment from the Tribe.  
4 Galanda Broadman continued to provide legal services under the Services Agreement under the  
5 direction of two different successors to Ms. Colegrove.

6 15. On June 6, 2018, the Tribe posted a Request for Proposal (the "RFP") for a  
7 Special Prosecutor to conduct an investigation regarding the circumstances surrounding Ms.  
8 Colegrove's departure from the Tribe. Smith and Saimons, on behalf of Kirkpatrick Townsend,  
9 submitted a response to the RFP. Upon further information and belief, Smith and Saimons  
10 made no disclosure to the Tribe regarding the conflicts existing between themselves and  
11 Galanda Broadman or Ms. Colegrove concerning the *Rabang* Action and the removal of  
12 Mr. Dodge from the NAIJCA. The Tribe awarded the Special Prosecutor contract to  
13 Kirkpatrick Townsend, Smith, and Saimons.

14 16. In the course of their work as Special Prosecutor for the Tribe, Smith and  
15 Saimons had access to and knowledge of the Tribe's Services Agreement with Galanda  
16 Broadman, as well as the MDL Action contingency-fee agreement between the Tribe, Robins  
17 Kaplan PLLC, and Galanda Broadman.

18 17. On or before November 13, 2018, Smith and Saimons purported to complete  
19 their investigation of Ms. Colegrove. At no time during their investigation did Smith or  
20 Saimons interview or request to interview any representatives of Galanda Broadman or  
21 Ms. Colegrove. Smith and Saimons issued a report to the Tribe which included irrelevant, false  
22 and misleading claims that Galanda Broadman had engaged in unethical conduct in connection  
23 with the departure of Ms. Colegrove. In addition, in December 2018, Smith and Saimons  
24 delivered an oral presentation to the Tribe wherein they continued to defame Galanda  
25 Broadman with allegations of unethical conduct and recommending that the Tribe file an ethics  
26 complaint against Galanda Broadman to the Washington State Bar Association ("WSBA").  
27 Smith and Saimons made these false statements to the Tribe for the improper purpose of



1 harming Galanda Broadman and to damage the contractual and business relationships between  
2 the Tribe and Galanda Broadman.

3 18. On December 7, 2018, the Tribe terminated its Services Agreement with  
4 Galanda Broadman upon thirty days' notice. As a consequence, Galanda Broadman was forced  
5 to withdraw its representation of the tribe in actions pending in the U.S. District Court for the  
6 Western District of Washington and the MDL Action in the Northern District of Ohio.

7 19. On December 19, 2018, the Tribe filed an ethics complaint with the WSBA  
8 against Ms. Colegrove, which Smith and Saimons prepared for the Tribal Chairman's signature.  
9 In footnote 3, Smith and Saimons made further false and misleading allegations against Galanda  
10 Broadman, including that Galanda Broadman had drafted Ms. Colegrove's severance  
11 agreement and failed to review the agreement with the Tribal Council before it was executed.  
12 Both statements are demonstrably false, as Smith and Saimons either knew or would have  
13 known had they conducted a proper investigation rather than use their role as a Special  
14 Prosecutor to malign Galanda Broadman.

15 20. As a direct and foreseeable result of the actions of Smith, Saimons, and  
16 Kirkpatrick Townsend, Galanda Broadman has suffered significant economic and non-  
17 economic injuries, including damage to its reputation within the Tribe.

18 **IV. FIRST CAUSE OF ACTION:**

19 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONSHIP**

20 21. Galanda Broadman re-alleges and hereby incorporates the foregoing paragraphs.

21 22. To recover on a claim for tortious interference with contractual relations, a party  
22 must prove (1) that at the time of the conduct at issue, the plaintiff had a contractual relationship  
23 with a probability of future economic benefit for the plaintiff; (2) that the defendant knew of  
24 the existence of the contractual relationship; (3) that the defendant intentionally induced or  
25 cause the termination of the contractual relationship; (4) that the defendant's interference was  
26 for an improper purpose or by improper means; and (5) that the defendant's conduct was a  
27 proximate cause of damages to the plaintiff.

1           23.     From June 25, 2015 through December 7, 2018, the Tribe and Galanda  
2 Broadman were parties to a Services Agreement whereby Galanda Broadman provided legal  
3 services to the Tribe in exchange for payment of fees. In addition, on March 1, 2018, the Tribe  
4 entered into a contingency fee agreement with Robins Kaplan LLP and Galanda Broadman,  
5 whereby Galanda Broadman would share in the gross recovery of multi-district litigation  
6 pending in the Northern District of Ohio.

7           24.     Through their work as a Special Prosecutor for the Tribe, Smith and Saimons  
8 had knowledge of the above-referenced contractual relationships between the Tribe and  
9 Galanda Broadman.

10          25.     After conducting an incomplete investigation, Smith and Saimons issued a  
11 report to the Tribe which included irrelevant, false and misleading claims that Galanda  
12 Broadman had engaged in unethical conduct in connection with the departure of Ms. Colegrove  
13 as the Tribe's Legal Director. In addition, in December 2018, Smith and Saimons delivered an  
14 oral presentation to the Tribe wherein they continued to defame Galanda Broadman with  
15 allegations of unethical conduct and recommending that the Tribe file an ethics complaint with  
16 the WSBA against Galanda Broadman.

17          26.     Smith and Saimons made the aforementioned false statements to the Tribe for  
18 the improper purpose of harming Galanda Broadman and to damage the contractual and  
19 business relationships between the Tribe and Galanda Broadman. Among other reasons, Smith  
20 and Saimons were motivated in their improper purpose by proper and legal actions taken by  
21 Galanda Broadman and its clients in the *Rabang* Action, as well as the removal of Raymond  
22 Dodge from the membership of the NAICJA.

23          27.     The aforementioned actions by Smith and Saimons directly resulted in the  
24 Tribe's termination of its Services Agreement with Galanda Broadman, as well as the  
25 termination of Galanda Broadman's participation in the MDL Action.

1           28.    The aforementioned intentional interference with Galanda Broadman's  
2 contractual relationships with the Tribe caused economic and non-economic damages and  
3 injuries to Galanda Broadman in an amount to be proven.

4                                   **V. SECOND CAUSE OF ACTION:**

5                                   **VIOLATIONS OF THE CONSUMER PROTECTION ACT**

6           29.    Galanda Broadman re-alleges and hereby incorporates the foregoing paragraphs.

7           30.    To recover on a claim for violation of the Washington Consumer Protection Act,  
8 a party must prove (1) that the defendant engaged in an unfair or deceptive act or practice; (2)  
9 that the act or practice occurred in the course of the defendant's trade or commerce; (3) that the  
10 act or practice affects the public interest; (4) that the plaintiff was injured in its business or  
11 property; and (5) that the defendant's conduct was a proximate cause of damages to the plaintiff.

12           31.    Smith and Saimons engaged in unfair and deceptive acts and practices by  
13 making false and misleading statements regarding Galanda Broadman to the Tribe as part of  
14 their investigation of Ms. Colegrove. In addition, they engaged in unfair and deceptive acts and  
15 practices by recommending that the Tribe pursue an ethics complaint against Galanda  
16 Broadman without conducting any interviews of Galanda Broadman or Ms. Colegrove. These  
17 actions had the capacity to deceive a substantial portion of the public.

18           32.    The aforementioned unfair and deceptive acts were undertaken by Smith and  
19 Saimons as part of their commercial activities, including as attorneys serving as a Special  
20 Prosecutor for the Tribe.

21           33.    The aforementioned unfair and deceptive acts affect the public interest. Under  
22 the Washington Rules of Professional Conduct, lawyers have a duty to refrain from knowingly  
23 making false statements of material fact or law to third persons. Violation of these rules erodes  
24 and harms the public's trust in the legal system, which negatively affects the public interest.

25           34.    The aforementioned actions by Smith and Saimons directly resulted in the  
26 Tribe's termination of its Services Agreement with Galanda Broadman, as well as the  
27 termination of Galanda Broadman's participation in the MDL Action.



# EXHIBIT E



**NISQUALLY INDIAN TRIBE  
OFFICE OF THE TRIBAL ATTORNEY**

4820 She-Nah-Num Drive S.E.  
Olympia, Washington 98513  
360.456.5221 (main)  
877.768.8886 (toll free)  
[www.nisqually-nsn.gov](http://www.nisqually-nsn.gov)

June 7, 2019

*Via e-mail ([crullman@corrdowns.com](mailto:crullman@corrdowns.com)) and U.S. Mail*

Charles Rullman  
Corr | Downs PLLC  
100 West Harrison Street  
Suite N440  
Seattle, WA 98119

Re: Privileged Documents Belonging to the Nisqually Indian Tribe

Mr. Rullman:

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

I am writing to demand that you immediately return all documents belonging to the Nisqually Tribe, including but not limited to privileged documents, reports, and communications produced for the Tribe by attorneys from Kilpatrick Townsend. The Tribe has not waived Attorney-Client privilege with respect to any documents generated by Kilpatrick Townsend, and any disclosure of those documents was inadvertent and in error. In accordance with the Washington Rules of Professional Conduct please immediately return any such documents to my attention at the address above and provide written assurance that all remaining copies have been deleted or destroyed.

I do not know how you or the Galanda Broadman firm obtained privileged documents generated by another law firm for the Tribe, but I am also very concerned about what appears to be a collateral attack by Galanda Broadman (one of the Tribe's outside law firms until January 7, 2019, I would note) on the Tribe's WSBA grievance against former legal director Leona Colegrove.

I would also like to take this opportunity to correct several fundamental misunderstandings that are apparent from your draft Complaint. First, there is no connection between Kilpatrick Townsend's work



for the Nisqually Tribe and the Tribal Council's unanimous decision on December 5, 2018, to terminate its contract with Galanda Broadman due to concerns about the quality of advice and representation provided in both ongoing litigation and prior matters. As you are aware, that contract was terminable at will by either party upon 30 days notice.

Second, as you yourself note, Kilpatrick Townsend was selected by the Tribal Council on July 30, 2018, from a number of firms that responded with sealed proposals to the Tribe's publicly available Request for Proposal for a Special Prosecutor to "conduct a comprehensive investigation into employee conduct" and "if necessary, file criminal or civil charges." As Special Prosecutor for the Tribe on this matter the doctrine of prosecutorial immunity likely applies to Kilpatrick Stockton's work on the matter in question. Further, although I do not follow or agree with your reasoning regarding alleged "conflicts" between Galanda Broadman and Kilpatrick Townsend, I would note that your client is not in a position to complain about any alleged conflict of interest you assert was not disclosed to the Tribe.

Third, although Galanda Broadman did withdraw from representing the Nisqually Tribe in the MDL Opioid Litigation, the firm promptly filed an Attorney's Fee Lien in the action to secure their 5% contingent fee. As such, I fail to see how they have suffered any harm. In fact, they will reap the benefit of any settlement obtained on the Tribe's behalf without having to meaningfully participate in the proceedings which are now being handled by the Tribe's in-house attorneys.

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

I look forward to the immediate return of the Tribe's privileged documents in your possession.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nate J. Cushman", with a long horizontal flourish extending to the right.

Nate J. Cushman  
Tribal Attorney  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr. SE  
Olympia, WA 98513

cc: Rob Roy Smith  
Kilpatrick Townsend & Stockton

# EXHIBIT F



## Chuck Rullman

---

**From:** Chuck Rullman  
**Sent:** Wednesday, April 22, 2020 4:48 PM  
**To:** Willie Frank  
**Cc:** Antonette Squally  
**Subject:** RE: Nisqually Indian Tribe // Privilege Issue and Request

Thank you.

Best wishes to you and your family.

**Chuck P. Rullman**

**CORR|DOWNS PLLC**

100 W. Harrison St., Suite N440

Seattle, WA 98119

Direct: (206) 686-9856 Cell: (206) 696-5916

[crullman@corrdowns.com](mailto:crullman@corrdowns.com) | [www.corrdowns.com](http://www.corrdowns.com)

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---

**From:** Willie Frank <[frank.willie@nisqually-nsn.gov](mailto:frank.willie@nisqually-nsn.gov)>  
**Sent:** Wednesday, April 22, 2020 4:47:29 PM  
**To:** Chuck Rullman <[crullman@corrdowns.com](mailto:crullman@corrdowns.com)>  
**Cc:** Antonette Squally <[squally.antonette@nisqually-nsn.gov](mailto:squally.antonette@nisqually-nsn.gov)>  
**Subject:** RE: Nisqually Indian Tribe // Privilege Issue and Request

Chuck,

I can bring the question to the tribal council in regards to the issue. It may be a month out or so.

Willie Frank

---

Sent from [Workspace ONE Boxer](#)

On April 22, 2020 at 4:44:07 PM PDT, Chuck Rullman <[crullman@corrdowns.com](mailto:crullman@corrdowns.com)> wrote:

Mr. Frank,

Thank you for the response. Indeed, these are difficult and unpredictable times and I appreciate your message.

For purposes of our case, are you able to confirm that the Tribal Council will take up the issue of privilege re: the Special Prosecutor when the Council is able to resume more normal operations?

Again, thank you.

-Chuck Rullman

**Chuck P. Rullman**

**CORR|DOWNS PLLC**

100 W. Harrison St., Suite N440

Seattle, WA 98119

Direct: (206) 686-9856 Cell: (206) 696-5916

[crullman@corrdowns.com](mailto:crullman@corrdowns.com) | [www.corrdowns.com](http://www.corrdowns.com)

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---

**From:** Willie Frank <frank.willie@nisqually-nsn.gov>  
**Sent:** Wednesday, April 22, 2020 4:38 PM  
**To:** Chuck Rullman <crullman@corrdowns.com>  
**Cc:** Antonette Squally <squally.antonette@nisqually-nsn.gov>  
**Subject:** Re: Nisqually Indian Tribe // Privilege Issue and Request

Chuck,

Thank you for reaching out. Yes we are in some crazy times right now. I do not know when Tribal Council will have a actual meeting again. It may be a month or two before the next scheduled meeting. We have been busy protecting our Nisqually Community. I do not support what was done to Mr Galanda by any means. It is unfortunate that politics comes into play in regards to decisions that were made. Thank you!

Willie Frank

---

Sent from [Workspace ONE Boxer](#)

On April 17, 2020 at 2:50:38 PM PDT, Chuck Rullman <[crullman@corrdowns.com](mailto:crullman@corrdowns.com)> wrote:

Dear Mr. Frank,

I am reaching out to you as counsel for Galanda Broadman. As you know, Galanda Broadman is involved in a lawsuit with the Kilpatrick Townsend law firm regarding the work performed by Rob Roy Smith as a special prosecutor for the Nisqually Indian Tribe.

An issue has come up in our case concerning whether Mr. Smith's work as a special prosecutor was privileged. I am informed that the Tribe did not consider Mr. Smith's work to be privileged, but I also know that decisions regarding privilege can only be made by a majority of the Tribal Council.

While these are hectic and uncertain times, I am hopeful you can help us resolve this issue. If you are willing, we are asking that the Tribal Council consider a resolution confirming that Mr. Smith's work as

special counsel was not privileged. We would never presume to influence the vote and we will, of course, abide by the Tribal Council's decision.

If this is something you are willing and able to do, please let me know. Thank you in advance for considering this request.

Best regards,  
Chuck Rullman

**Chuck P. Rullman**  
**CORR | DOWNS PLLC**  
100 W. Harrison St., Suite N440  
Seattle, WA 98119  
Direct: (206) 686-9856 Cell: (206) 696-5916  
[crullman@corrdowns.com](mailto:crullman@corrdowns.com) | [www.corrdowns.com](http://www.corrdowns.com)

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