IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS, *et al.,* Plaintiffs, v. U.S. DEPARTMENT OF THE INTERIOR, *et al.*, Defendants.	No. 24-3594-APM

PLAINTIFFS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO DISQUALIFY KEITH HARPER & JENNER & BLOCK LLP

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I. INTRODUCTION

Plaintiffs Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek"), the Karuk Tribe ("Karuk"), and Tolowa Dee-ni' Nation ("Tolowa"), each federally recognized Tribal nations, move to disqualify Jenner & Block LLP ("Jenner") from representing the Coquille Indian Tribe ("Coquille") in this litigation.

At least four Jenner attorneys—including Keith Harper, who filed a Notice of Appearance ("NOA") on behalf of Coquille (ECF No. 14), and Charles Galbraith[1]—represented Cow Creek, Karuk, and Tolowa on issues germane to this litigation over seven months in 2022. Messrs. Harper and Galbraith and others with Jenner received wide-ranging privileged and confidential information from Plaintiffs relevant to their then potential and now current claims and defenses against the U.S. Department of the Interior ("DOI") Defendants.

By appearing and seeking intervention for Coquille in this action, Jenner attorneys, Mr. Harper in particular, have "switched sides." Despite Jenner having represented Cow Creek, Karuk, and Tolowa—including before Defendant DOI—from June to December 2022, Jenner now assumes (or reassumes) representation of Coquille, in defense against this lawsuit along with DOI Defendants. *Compare* ECF No. 13, *with* ECF No. 17. Coquille has a strong interest in ensuring that Plaintiffs' lawsuit fails so that Defendants may move forward with their plan to take land in Medford into trust to establish Coquille's second casino 170 miles from Coquille's Reservation. In that respect, Coquille's interest directly aligns with those of Defendants. *See id.* Coquille's interests are undoubtedly adverse to Plaintiffs' interests, as those three Tribal nations seek to enjoin Defendants from taking the proposed

[1] While Mr. Harper appeared in this case, Jenner allegedly "timely screened" Mr. Galbraith from this litigation. *See* Galanda Decl., Ex. 1. For the reasons discussed below, however, Jenner's unspecified screening measures are insufficient to prevent the substantial possibility that Coquille will gain an unfair advantage because of Messrs. Harper's and Galbraith's prior representation of Plaintiffs.

casino site into trust before the Court adjudicates the merits of Plaintiffs' claims. Plaintiffs seek to protect their sovereign, constitutional, historical, cultural, economic, and socioeconomic interests in preserving the status quo. *See generally* ECF. No. 1.

Jenner attorneys' prior representation of each of the three Tribal nation Plaintiffs precludes the firm from now or further representing Coquille in this heavily contested litigation, at least without flagrant violations of the District of Columbia's Rules of Professional Conduct ("RPC") 1.9 and 1.10. Under these extraordinary circumstances—including the extent to which Messrs. Harper and Galbraith and at least two other Jenner lawyers counseled and represented the three Plaintiffs in this very same controversy—warrant the disqualification of Mr. Harper and Jenner from representing Coquille.

There is a substantial possibility that Jenner attorneys will give Coquille an "unfair advantage" because of their prior representation of all three Plaintiffs; and it is doubtful that Jenner can act as an effective advocate for Coquille, on account of their competing ethical obligations to their former Tribal nation clients, Plaintiffs. *See Paul v. Judicial Watch, Inc.*, 571 F. Supp. 2d 17, 22, 26 (D.D.C. 2008). Tribal nation clients deserve far better ethical and legal treatment. Plaintiffs therefore urge the Court to grant Plaintiffs' Motion to disqualify Mr. Harper and Jenner from representing Coquille.

Plaintiffs submit two attorney declarations of Ray Martin and Gabriel Galanda,[2] along with exhibits demonstrating Jenner's representation of the Tribal nation Plaintiffs from June to December 2022. These filed declarations and certain exhibits have been redacted, and all exhibits to Mr. Martin's declaration have been fully withheld, to expressly protect any attorney-client privilege, attorney work product immunity, common interest privilege, or other protection enjoyed by Plaintiffs.[3] Because this

[2] Mr. Martin is currently Karuk's in-house General Counsel and previously served as in-house counsel for Cow Creek and Tolowa. Martin Decl., ¶ 1. Mr. Galanda is counsel of record for Plaintiffs in this matter. *See* ECF Nos. 1, 2.

[3] By filing this Motion, Plaintiffs expressly do not waive and hereby preserve any attorney-client privilege, work product, common-interest privilege, or other privilege, immunity, or protection.

privileged and confidential information cannot be filed under seal (as it would be available to DOI Defendants and Coquille), Plaintiffs request that the Court review *in camera* the two unredacted declarations and exhibits thereto.[4]

On January 2, 2025, Plaintiffs conferred with counsel for DOI Defendants and Coquille, as well as Jenner itself, to ascertain their position on this Motion in accordance with LCvR 7(m). Coquille and Jenner each oppose the Motion. Defendants take no position. *See* Galanda Decl., ¶ 8 & Ex. 4.[5]

II. BACKGROUND

The following facts are derived from the Declarations of Messrs. Martin and Galanda ("Martin Decl." and "Galanda Decl.," respectively), yet redacted in order to protect Plaintiffs' attorney-client privilege, attorney work product immunity, common interest privilege, or other protections. More specific privileged information is contained in Mr. Martin's Declaration and exhibits thereto, which Plaintiffs are prepared to offer the Court for *in camera* review.

A. Jenner's Representation of Plaintiffs (and Apparently Coquille) in 2022

In June 2022, Plaintiffs contacted Jenner to seek counsel regarding their opposition to the Coquille's proposed Medford gaming project in anticipation of Defendants issuing a Draft Environmental Impact Statement ("DEIS"), as required under the National Environmental Policy Act ("NEPA"). Martin Decl., ¶ 3.

On June 21, 2022, counsel for Cow Creek participated in a conference call, lasting nearly an hour, with Charles Galbraith, in advance of Cow Creek, Karuk, and Tolowa's scheduled trip to Washington D.C. *Id.*, ¶ 4 & Ex. 1. During that call, Cow Creek's in-house and outside counsel

[4] Upon court order, Plaintiffs will deliver hard copies of the privileged materials supporting this Motion to the Clerk's Office in a securely sealed envelope labeled with the title of the Court, case caption and number, descriptive title, and marked as "**FOR *IN CAMERA* REVIEW ONLY**." *See* LCvR 5.1(h)(2).

[5] Plaintiffs did not confer with Coalition of Large Tribes ("COLT") because they are not a party to the litigation and COLT has not been granted leave to file an *amicus* brief. *See* ECF No. 16.

exchanged privileged and confidential information with Mr. Galbraith directly related to this lawsuit. *Id.* Cow Creek's counsel then sent Mr. Galbraith a follow-up email with eight attachments, including privileged work product. *Id.*, ¶ 5 & Ex. 2. The next day, on June 22, 2022, Cow Creek's outside counsel sent Mr. Galbraith two additional emails containing information about Coquille's proposed Medford gaming project. *Id.*, ¶ 6 & Ex. 3.

On June 23, 2022, Karuk's Tribal Chairman, Tolowa's Tribal Chairwoman, and other Karuk and Tolowa officials attended a meeting, arranged by Jenner attorney Craig Williams, with Office of Indian Gaming Director Paula Hart at DOI headquarters. *Id.*, ¶ 7. The purpose of the meeting was to discuss Karuk's and Tolowa's concerns regarding Coquille's proposed Medford gaming project. *Id.* Apart from Mr. Williams, two other Jenner attorneys or staff attended this meeting between Karuk, Tolowa, and DOI: Rob Harmala, an attorney, and John Sobel. Mr. Harmala, who was then a lawyer at Jenner and who counseled Karuk and Tolowa's representatives both before and after the meeting, advocated for Karuk's and Tolowa's positions regarding Coquille's proposed project ***to Defendant DOI*** via Director Hart during the meeting. *Id.*

Meanwhile on June 23, 2022, and continuing through June 25, Mr. Galbraith and Cow Creek's outside counsel exchanged privileged information under an email exchange entitled "Coquille Medford Materials." *Id.*, ¶ 8 & Ex. 4.

On June 24, 2022, Karuk's Chairman and other Tribal government officials met with yet another Jenner attorney, Keith Harper, at Jenner's Washington, D.C. office. *Id.*, ¶ 9. Later that day, Cow Creek's outside counsel emailed Mr. Galbraith additional information about Coquille's proposed project. *Id.*, ¶ 10 & Ex. 5.

On July 6, 2022, Mr. Harper emailed Cow Creek's in-house counsel to set up a meeting in an email exchange entitled "Challenge to fee to trust," which culminated in a scheduled meeting on the Karuk Reservation two weeks later. *Id.*, ¶ 11 & Ex. 6. On July 21, 2022, Karuk hosted a meeting on its

Reservation, located in Happy Camp, California, with Cow Creek's in-house counsel and four Jenner attorneys. *Id.*, ¶ 12. Mr. Galbraith attended the meeting in person; Messrs. Harper, Harmala, and Sobel attended by conference call. *Id.* The parties discussed privileged and confidential matters concerning Coquille's proposed Medford casino project. *Id.*, ¶ 12 & Ex. 7.

Mr. Harper sent a follow-up email to Cow Creek's in-house counsel on September 9, 2022. *Id.*, ¶ 13 & Ex. 8. The following month, Cow Creek's counsel emailed Mr. Galbraith a letter drafted by U.S. Senators Ron Wyden and Jeff Merkley, among other Senators, who wrote to Defendant DOI Secretary Deb Haaland, expressing their concerns about Coquille's Medford gaming project. *Id.* ¶ 14 & Ex. 9. Mr. Galbraith responded, indicating he had spoken to Karuk's Tribal Chairman about this letter. *Id.*

Shortly after Defendants published the DEIS for Coquille's proposed Medford project on November 25, 2022, Cow Creek's outside counsel emailed Mr. Galbraith to enter into a formal engagement letter for Jenner to provide legal services to Cow Creek in connection with Coquille's proposed gaming project. *Id.*, ¶ 16. Later that day, Mr. Galbraith indicated that Jenner might have a potential conflict. *Id.* To Plaintiffs' knowledge, this was the first time they were made aware of any potential conflict between Jenner and their representation of those three Tribal nations. *Id.* At no time in the prior six months of in-person meetings (including with Defendant DOI), conference calls, emails, and information exchanges, did Jenner or any of the four Jenner lawyers who counseled and represented Cow Creek, Karuk, and Tolowa ever tell any of the Plaintiffs the firm had a potential conflict. *See id.*

Nevertheless, Cow Creek's counsel and Jenner attorneys, namely Mr. Galbraith and Mr. Harper, proceeded to exchange emails from November 30 to December 19, 2022, including an email entitled "DEIS Substitution Effects" and with Mr. Galbraith at one point seeking additional information about Coquille's proposed gaming project. *Id.*, ¶¶ 16–18 & Exs. 10–12.

On December 20, 2022, Mr. Galbraith informed Cow Creek's counsel that Jenner could no longer represent Cow Creek because Coquille representatives had previously shared information with

Jenner regarding Coquille's proposed Medford gaming project. *Id.*, ¶ 19. To Plaintiffs' knowledge, however, neither Mr. Galbraith, Mr. Harper, nor any other Jenner attorney, ever communicated this conflict in writing to Cow Creek, Karuk, Tolowa, or their counsel. *Id.*, ¶ 20. Nor did any Jenner attorney advise Cow Creek, Karuk, Tolowa in writing that Jenner could no longer represent them. *Id.*

B. Jenner's Representation of Coquille in 2024

On December 23, 2024, Plaintiffs filed this action, which was perfected on December 26, 2024, in order to protect their significant sovereign, governmental, historical, cultural, economic, and other interests at stake in this action—namely, if Defendants proceed to enforce their unconstitutional and otherwise unlawful Final Environmental Impact Statement ("FEIS") or issue the Record of Decision ("ROD"). ECF No. 1. Plaintiffs are parties to a Common Interest and Joint Defense Agreement regarding the Coquille's proposed Medford gaming project. Martin Decl., ¶ 2.

On December 31, 2024, Mr. Harper and Jenner filed an NOA on behalf of Coquille in this case (ECF No. 14)—the very same lawyer and law firm who represented and advised each of the three Plaintiffs for about seven months in 2022 regarding Plaintiffs' anticipated challenge to Coquille's proposed Medford gaming project. Martin Decl., ¶¶ 9, 11–13, 18. Coquille, now also represented by at least one other law firm, seeks to intervene in this action to advocate for Coquille's strong interest in ensuring that Defendants enforce the FEIS and issue the ROD and take the Medford parcel into trust for Coquille's second casino. *See* ECF Nos. 15 & 17.

Earlier on December 31, 2024, very soon after Mr. Harper conferred with Plaintiff Cow Creek's counsel of record, Mr. Galanda, about Coquille's intervention motion, Mr. Galanda emailed Jenner attorneys, explaining that Jenner "may have a conflict that prevents its appearance for or representation of Coquille in this instance." Galanda Decl., Ex. 1 at 21. Plaintiff Karuk and Tolowa's attorneys likewise responded by email, indicating that they believed a clear conflict existed with Jenner's representation of Coquille and that Plaintiffs could not in good faith waive the conflict. *See id.*, Ex. 1 at 1, 15, 18. Later

that day, Cow Creek Tribal Chair Carla Keene sent Messrs. Harper and Galbraith and Jenner a letter, explaining the Tribe's official position that a conflict of interest exists, and citing the relevant RPCs and other applicable legal authority. *See id.*, Ex. 1 at 10 & Ex. 2.

Mr. Harper, however, ultimately maintained his and Jenner's position that no conflict exists regarding his representation of Coquille in this matter principally because (1) "information *may have been* shared with [Messrs. Galbraith or Harmala], bot [sic—but] no one else at Jenner"; and (2) Mr. Galbraith "has been screened off since inception of the Coquille representation and [Mr. Harmala] was not at the firm when Coquille approached Jenner." Galanda Decl., Ex. 1 at 3 (original emphasis). Mr. Harper admitted to meeting with Karuk officials on June 23, 2022, suggesting he merely "drop[ped] in"; but Mr. Harper did not disclose that he and three others from Jenner also attended the July 21, 2022, meeting with the Karuk Tribal Council. *Compare* Martin Decl., ¶¶ 9 & 12, *with* Galanda Decl., Ex. 1 at 11. When presented with his emails with Plaintiffs on June 23 and July 21, 2022, containing privileged and confidential discussions, Mr. Harper discounted the email exchanges as a "splattering of nonsubstantive emails spanning a number of months." Galanda Decl., Ex. 1 at 7. Mr. Harper concluded: "So, at this point, we do not see the conflict you are suggesting." *Id.* at 3.

On January 2, 2024, counsel for all three Plaintiffs conferred with Mr. Harper and three other Jenner lawyers about this Motion. *Id.*, ¶ 8. After a nearly 30-minute call, Jenner, for both itself and Coquille, expressed their opposition to this Motion. *Id.* Plaintiffs now seek to disqualify Mr. Harper and any other Jenner attorney from representing Coquille in this matter.

III. ARGUMENT

A. Disqualification Standard

Courts have inherent power to discipline attorneys who appear before it—power that "derives from the lawyer's role as an officer of the court which granted admission." *In re Snyder*, 472 U.S. 634, 643 (1985); *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("[A] federal court has the power to

control admission to its bar and to discipline attorneys who appear before it."). "Because the district court bears responsibility for supervising the members of its bar and its exercise of this supervisory duty is discretionary," this Court's disqualification of a conflicted attorney will be disturbed "only for abuse of discretion." *Groper v. Taff*, 717 F.2d 1415, 1418 (D.C. Cir. 1983) (finding district court did not abuse discretion in disqualifying attorney).

In this Court, motions to disqualify are governed by (1) the Court's Local Civil Rules ("LCvR"), including its General Principles ("GP") and (2) the District of Columbia's RPCs. *See Paul*, 571 F. Supp. 2d at 20. Because motions to disqualify affect the substantive rights of the parties, they are typically decided by applying federal standards. *Id.*

Under GP 23, the Court may seek "disqualification of counsel" if "reasonably justified by the circumstances after conducting a reasonable investigation, which includes attempting to confer with opposing counsel." GP 23. "A court may disqualify an attorney from appearing in a case if there is a conflict of interest or if the attorney has committed ethical violations. *See United States v. Crowder*, 313 F. Supp. 3d 135, 141 (D.D.C. 2018). When a violation of RPC 1.9 is at issue, the disqualification motion "can be granted on the basis of a violation of [RPC] 1.9, *without any further showing*." *Paul*, 571 F. Supp. 2d at 26 (original emphasis). That is because the RPCs "are prophylactic measures designed to prevent potential conflicts from developing into actual conflicts and to maintain the integrity of the profession by guarding against the appearance of a conflict." *United States v. Davis*, 780 F. Supp. 21, 23 (D.D.C. 1991). Moreover, these "[d]isciplinary rules cannot be waived by the clients since the rules 'are also for the protection of the bar and the integrity of the court.'" *Moyer v. 1330 Nineteenth St. Corp.*, 597 F. Supp. 14, 16 (D.D.C. 1984); *but see Crowder*, 313 F. Supp. 3d at 141 (concluding because disqualification motions are disfavored, the motion must be examined with "a skeptical eye").

B. Mr. Harper Must Be Disqualified for Failure to Comply with RPC 1.9.

Mr. Harper represented Plaintiffs in 2022 and now he seeks to represent Coquille in a

substantially related matter: this lawsuit. He seeks to represent Coquille in the same action, despite Coquille's material adverse interests to Plaintiffs. Because Plaintiffs do not consent to this representation, Mr. Harper is precluded under RPC 1.9 from now representing Coquille.

RPC 1.9 provides:

> A lawyer who has formerly represented a client in a matter *shall not* thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

Id. (emphasis added). When the client has not provided informed consent, as here, the Court considers three factors in assessing whether an RPC 1.9 violation has occurred, whether: (1) the attorney in question is a "former attorney" with respect to a party presently before the Court; (2) the subject matter of the former representation is the same as, or substantially related to, the present matter; and (3) the interests of the former client are adverse to the interests of the party represented by the attorney. *Paul*, 571 F. Supp. 2d at 21.

In assessing the first factor, the Court considers whether an attorney-client relationship was formed between the attorney subject to disqualification and the party claiming to be the attorney's former client. "An attorney-client relationship is formed when a client and an attorney 'explicitly or by their conduct, manifest an intention to create the attorney/client relationship.'" *Headfirst Baseball LLC v. Elwood*, 999 F. Supp. 2d 199, 209 (D.D.C. 2013) (citation omitted).

As for the second factor, the Court considers the definition of "matter," i.e., "any litigation, administrative proceeding, lobbying activity, application, claim, investigation, . . . negotiation . . . or any other representation." RPC 1.0(h). Matters are "substantially related" within the meaning of RPC 1.9 "if they involve the same transaction or legal dispute or if there . . . is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." RPC 1.9 cmt. 3. This rule "is intended to

incorporate District of Columbia and federal case law defining the 'substantial relationship' test." RPC cmt. 2.

The third factor arises "when a lawyer has been directly involved in a specific transaction" and "subsequent[ly] represent[s] . . . other clients with materially adverse interests." RPC 1.9 cmt. 2. According to Comment 2 to RPC 1.9, this "*clearly* is prohibited." *Id.* As this Court has explained, disqualification is proper when there is "substantial possibility of an unfair advantage to the current client because of counsel's prior representation of the opposing party." *See Paul*, 571 F. Supp. 2d at 26.

When these three factors are met, RPC 1.9 provides that the attorney in question "*shall not thereafter represent*" the party with adverse interests to the attorney's former client. *Paul*, 571 F. Supp. 2d at 25 (quoting RPC 1.9) (original emphasis). Thus, "a motion to disqualify can be granted on the basis of a violation of [RPC] 1.9, *without any further showing*." *Id.* at 26 (emphasis added). In *Paul*, for example, this Court found that because a "substantial relationship" existed between the attorney's prior representation and the present matter, in violation of RPC 1.9, there was "an irrebuttable presumption that the attorney has information that can be used for the benefit of the present client to the detriment of the former." *Paul*, 571 F. Supp. 2d at 26.

Applying those factors here, Mr. Harper had an attorney-client relationship with all three Plaintiffs from about June to December 2022. *See* Martin Decl., ¶¶ 9, 11–13, 18 & Exs. 6–8. During that time, he received privileged and confidential information from Plaintiffs relevant to Coquille's proposed Medford casino. *Id.* In other words, both Plaintiffs and Mr. Harper, "'explicitly or by their conduct, manifest[ed] an intention to create the attorney/client relationship'" during those seven months. *Headfirst Baseball LLC*, 999 F. Supp. 2d at 209.

Second, Mr. Harper's prior representation of Plaintiffs, advising them on their challenge to Defendants' anticipated decision to take the Medford parcel into trust for Coquille's second casino, is unquestionably "substantially related"—and from Plaintiffs' point of view, identical—to the issue at the

heart of this litigation: enjoining Defendants from taking the Medford parcel into trust for Coquille's second casino based on an unlawful FEIS and a soon-to-be-issued ROD. *See generally* ECF No. 1; *see also* Martin Decl., ¶¶ 9, 11–13, 18 & Exs. 6–8.

Third, and finally, there can be no doubt that Coquille's interests are materially adverse to Mr. Harper's former clients, all three Plaintiffs. Coquille has a strong interest in seeing Plaintiffs' lawsuit fail so that Defendants may move forward with their plan to take the Medford parcel into trust to establish a second casino for Coquille. *See generally* ECF Nos. 15 & 17. Coquille's interests are materially adverse to Plaintiffs' interests, given that Plaintiffs filed this lawsuit to prevent DOI Defendants from taking the proposed casino site into trust for Coquille. *See* ECF No. 1. On these facts, there is a "serious question as to [Mr. Harper's] ability to act as a zealous and effective advocate for" Coquille; yet, there is also a "substantial possibility of an unfair advantage to [Coquille] because of [Mr. Harper's] prior representation of [Plaintiffs]." *Paul*, 571 F. Supp. 2d at 22, 26.

Mr. Harper in particular should be aware that his prior representation of Plaintiffs would present an inevitable conflict of interest, a potential breach of his duty of loyalty to former clients (if not to Coquille as his present client), and a violation of RPC 1.9. Indeed, in 2008, Mr. Harper made the very same arguments that Plaintiffs make now in another case involving contested Tribal interests, *Nisqually Indian Tribe v. Gregoire*, No. 08-cv-5069-RBL (W.D. Wash. Feb. 6, 2008). In *Nisqually*, Mr. Harper successfully moved to disqualify an attorney and national law firm because, among other reasons, they were in receipt of "written and oral confidential information" from their former "prospective client," the Frank's Landing Indian Community, which had later retained Mr. Harper. *See* Galanda Decl., Ex. 3 at 2, 11 (ECF No. 61). There, the U.S. District Court in Washington agreed with Mr. Harper and disqualified the attorney and firm because they received confidential information from a *prospective* client "about the very subject substantially related to the issues" raised by Frank's Landing in the *Nisqually* lawsuit. *See id.*, Ex. 3 at 4; *see also Nisqually Indian Tribe v. Gregoire*, No. 08-cv-5069-RBL,

ECF No. 83 (Minute Order disqualifying attorney and law firm).

Here, there is little doubt that Jenner attorneys received privileged and confidential information from Plaintiffs over many months in 2022, which was arguably Jenner's client at the time (not even a prospective client). Martin Decl., ¶¶ 3–20, Exs. 1–12. Mr. Harper concedes as much, *see* Galanda Decl., Ex. 1 at 3; but he fails to recognize that he also received multiple privileged and confidential materials regarding Plaintiffs' opposition to Coquille's proposed Medford casino—again, the issue at the heart of this litigation. *Compare* Martin Decl., ¶¶ 9, 11–13, 18 & Exs. 6–8, *with* Galanda Decl., Ex. 1.

Mr. Harper must be precluded from representing Coquille for failure to comply with RPC 1.9.

C. Jenner Must Be Disqualified for Failure to Comply with RPC 1.10.

Even assuming Mr. Harper is not subject to disqualification for violating RPC 1.9, Mr. Galbraith *admits* that he is prohibited from representing Coquille under RPC 1.9. *See* Galanda Decl., Ex. 1 at 3. Accordingly, all other Jenner attorneys, including Mr. Harper, are likewise prohibited from representing Coquille in this matter, again whose interests are directly aligned with those of Defendants and materially adverse to those of Plaintiffs.

Under RPC 1.10, "[w]hile lawyers are associated in a firm, *none of them* shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by [RPC] 1.9, unless" an enumerated exception exists. Relevant here, "[t]he firm is not disqualified by [RPC 1.10] if the prohibition is based upon [RPC] 1.9" *and*

- "the disqualified lawyer is screened from the matter and is apportioned no part of the fee therefrom"; *and*
- "written notice is promptly given by the firm and the lawyer to any affected former client of the screened lawyer, such notice to include a description of the screening procedures employed and a statement of compliance with [the RPCs]."

RPC 1.10(b)(3). Comment 16 to RPC 1.10 explains the purpose behind the rule: to honor the attorney's duty of "loyalty to a client" or "obligation to decline subsequent representations involving positions

adverse to a former client arising in the same or substantially related matters." RPC 1.10 cmt. 16. This duty of loyalty "requires abstention from adverse representation by the individual lawyer involved, and may also entail abstention of other lawyers through imputed disqualification." *Id.*

In *Davis*, this Court considered whether, under RPC 1.9 and 1.10, an attorney could represent a criminal defendant whose law partner previously represented a "cooperating individual" who would be called to testify as a witness by the prosecution. *Davis*, 780 F. Supp. at 23. The Court concluded that because the defense attorney's law partner previously represented the witness in a matter that was "substantially related" to the pending criminal case and whose interests were adverse to those of the defendant, the defense attorney's representation of the defendant fell "within the prohibitions of Rule 1.9 and Rule 1.10." *Id.* (explaining the witness confided to one of the firm's attorneys about the nature of his pending charge and his intention to cooperate with the government and thus "should not face cross-examination on those issues from [that attorney's] law partner").

Here, Jenner all but acknowledges that at least one current attorney (Mr. Galbraith), as well as a former attorney (Mr. Harmala), are prohibited from representing Coquille under RPC 1.9. *See* Galanda Decl., Ex. 1 at 3. Accordingly, no Jenner attorney is permitted to represent Coquille in this matter unless a specific exemption under RPC 1.10 applies. The only exemption that could possibly apply here is RPC 1.10(b)(3). But Jenner did not promptly notify Plaintiffs of Jenner's intended representation of Coquille in this matter, at least not until *after* Plaintiffs objected to the filing of Mr. Harper's NOA. *See* Galanda Decl., Ex. 1 at 21. Nor did Jenner's screening notice "include a description of the screening procedures employed and a statement of compliance with [the RPCs]." RPC 1.10(b)(3)(B); *see* Galanda Decl., Ex. 1 at 3, 21. The Jenner law firm, and its attorneys, should be precluded from representing Coquille on this ground alone.

Jenner will likely respond that they complied with RPC 1.10 because Mr. Galbraith—again, the only current Jenner attorney who apparently acknowledges his prior representation of Plaintiffs—has

been "screened" from this matter. *Id.* As the record demonstrates, however, Jenner failed to comply with RPC 1.10's clear notification requirements because the firm neither "promptly" notified Plaintiffs of the firm's decision to represent Coquille; nor did it detail, in any level of specificity, the screening procedures the firm took to avoid a potential conflict of interest. *See id.*

Likewise, Jenner will likely represent to the Court that no information regarding the firm's prior representation of Plaintiffs in 2022 (obtained by Mr. Galbraith or other Jenner attorneys) will flow to Mr. Harper and the other Jenner attorneys who intend to represent Coquille in this matter. Yet, Mr. Harper *also* directly represented Plaintiffs in 2022, which put him in direct receipt of their privileged information. *See* Martin Decl., ¶¶ 9, 11–13, 18 & Exs. 6–8. These are flagrant violations of RPC 1.9 and 1.10, as Mr. Harper rather obviously has no intent to be screened from this case. *See* Galanda Decl., Ex. 1 at 3; ECF No. 14. As this Court previously held, regardless of whether attorneys represent that appropriate screening measures are in place, which tends to show their "high ethical standards," "[t]he conflict of interest rules apply to *all* attorneys," just as they "apply to a *potential* conflict of interest." *Davis*, 780 F. Supp. at 23 (emphases added).

Nor will Coquille suffer any prejudice if Jenner is disqualified. To the contrary, Coquille may suffer prejudice if they are represented by Jenner attorneys who cannot "zealously and effectively" represent Coquille due to their conflicting ethical obligations to Plaintiffs. *See Paul*, 571 F. Supp. 2d at 22 (citation omitted). Further, given the very early stages of this case, attorneys from other law firms can promptly appear on Coquille's behalf and prepare for litigation without any disadvantage. *See Davis*, 780 F. Supp. at 24. Indeed, it appears Coquille is already represented by at least two other attorneys from other law firms: Judith Shapiro of Big Fire Law (who already filed an appearance) and Scott Crowell of Crowell Law Offices (whose *pro hac vice* application is pending). *See* ECF Nos. 15, 17, & 25. Thus, Coquille will not suffer prejudice if the Court enforces RPC 1.9 and 1.10 and disqualifies Jenner from representing Coquille in this matter.

IV. CONCLUSION

For these reasons, the Tribal nation Plaintiffs respectfully ask the Court to grant their Motion and disqualify all Jenner attorneys from representing Coquille in this action.

DATED this 3rd day of January, 2025.

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CERTIFICATION OF COMPLIANCE

This brief complies with the applicable word-count limitation under Local Rule 7(e) because it contains 15 pages, excluding the caption, tables of contents and authorities, signature block, declarations, exhibits, and any certificates of counsel.

DATED this 3rd day of January, 2025.

/s/ Gabriel S. Galanda
Gabriel S. Galanda

CERTIFICATE OF SERVICE

I hereby certify that this document will be served on the Defendants in accordance with Federal Rule of Civil Procedure 5(a).

DATED this 3rd day of January, 2025.

/s/ Gabriel S. Galanda
Gabriel S. Galanda