

1 IN THE DISTRICT COURT FOR THE NINTH JUDICIAL DISTRICT  
2 FREMONT COUNTY, STATE OF WYOMING  
3 Civil Action No. 42436

4 -----  
5 ANTHONY A. ADDISON, SR., )  
6 Individually and as a duly )  
7 elected member and Co-Chairman) )  
8 of the Northern Arapaho )  
9 Business Council; SAMUEL )  
10 DRESSER, individually and as a )  
11 duly elected member of the )  
12 Northern Arapaho Business )  
13 Council; FAITH L. WALLOWING )  
14 BULL; and ROSELLA MORIN, )  
15 )  
16 Plaintiffs, )  
17 vs. )  
18 )  
19 KILPATRICK, TOWNSEND AND )  
20 STOCKTON, LLP, a non-resident )  
21 limited liability partnership;) )  
22 KEITH HARPER; CHARLES )  
23 GALBRAITH; LAWRENCE ROBERTS; )  
24 ADAM E. PHILLIPS; and ADAM E. )  
25 PHILLIPS, Attorney at Law, )  
P.C., a Wyoming professional )  
corporation, )  
Defendants. )  
-----

**TRANSCRIPT OF PROCEEDINGS**  
**THURSDAY, MARCH 5, 2020**  
**3:08 p.m.**  
**MOTION HEARING**

23 The following proceedings were had in Courtroom  
24 A, of the Laramie County Courthouse, 319 W. 20th Street,  
25 Cheyenne, Wyoming, before the Honorable THOMAS CAMPBELL,  
District Court Judge Presiding.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**APPEARANCES**

For the Plaintiff:

JOEL M. VINCENT LAW OFFICE  
P.O. Box 311  
Riverton, WY, 82501  
BY: MR. JOEL M. VINCENT  
and  
MS. ALEXANDRIA ZAFONTE

For the Defendant:

HATHAWAY & KUNZ, LLP  
2515 Warren Avenue  
Cheyenne, WY 82001  
BY: MR. LUCAS E. BUCKLEY  
and  
MR. NATHAN NICHOLAS

**P R O C E E D I N G S**

1  
2 THE COURT: Good afternoon. Court's in  
3 session in 42436 of the civil docket in the Ninth  
4 Judicial District of Fremont County. I'm Judge  
5 Campbell. Noting the appearance -- or appearances  
6 today, Mr. Buckley for responding defendants KTS and  
7 their members, as well as outside counsel, Mr. Phillips.

8 The plaintiffs represented in this matter by  
9 Joel Vincent.

10 Is Mr. Vincent on the line?

11 MR. VINCENT: I'm present, Your Honor, as is  
12 Alexandria G. Zafonte.

13 THE COURT: Ms. Zafonte as well. The motions  
14 before the Court -- there are motions before the Court  
15 that will be heard today that have been the subject of  
16 some briefing.

17 It occurs to me that challenge to counsel  
18 should go first. And I'll address that in order.

19 Mr. Buckley -- excuse me. Mr. Buckley, it  
20 would be for argument today?

21 MR. BUCKLEY: Yes, Your Honor.

22 THE COURT: I did note Mr. Nicholas also from  
23 your firm also present here today. I have Mr. Rosenthal  
24 for all other purposes, but you were the signator. And  
25 I'll hear from you as to any argument, in addition to

1 your written one, as to disqualification of Mr. Vincent.  
2 Go ahead.

3 MR. BUCKLEY: May it please the Court and  
4 counsel.

5 THE COURT: Mr. Buckley.

6 MR. BUCKLEY: My name is Lucas Buckley, for  
7 the folks on the phone here representing defendants KTS,  
8 the individual defendants as well as Mr. Phillips and  
9 his law office.

10 For the Court's information, Susan Cahoon,  
11 who is general counsel for Kilpatrick Townsend Stockton  
12 is on the phone as well as a client representative.

13 THE COURT: Very well.

14 MR. BUCKLEY: And certainly, Your Honor,  
15 motion to disqualify, we don't take that lightly. And  
16 it wasn't something that we wanted to do or do with any,  
17 you know, eye towards gaming the system or, you know,  
18 getting some sort of tactical advantage.

19 We take the issues raised in this  
20 disqualification very seriously, and sort of the flip  
21 side of that coin is we would not have filed this motion  
22 except for really some very egregious facts, Your Honor.

23 So a few of those preliminary facts that I do  
24 believe are useful in determining the motion, I think  
25 it's undisputed that the Vincent firm had represented

1 the casino and, therefore, the Tribe for some time  
2 preceding, kind of the events of the spring and summer  
3 of 2019, when there was a change of counsel for the  
4 Tribe.

5 At that time for, you know, whatever reasons  
6 the Tribe ultimately decided on, the leadership of the  
7 Tribe, which is vested in the Northern Arapaho Business  
8 Council, decided to take a look at some of the closer  
9 relationships with the Tribe. Those included the CEO of  
10 its casino operations, as well as the Tribe's legal  
11 counsel.

12 Taking those deep looks ultimately resulted  
13 in enacting resolutions that did a number of things.  
14 First, there was resolution to limit the ability of the  
15 CEO or any tribal member to enter into contracts without  
16 the express approval of the NABC, Northern Arapaho  
17 Business Council. NABC is a little easier to say, Your  
18 Honor.

19 Limited expenditures were also one of these  
20 resolutions that could be made by any tribal entity  
21 without NABC approval.

22 Ultimately, NABC decided not to extend the  
23 former CEO's contract with the casino, which then that  
24 decision was made, and there was approximately a month  
25 or a month-and-a-half before that contract terminated.

1           So the outgoing CEO knew that his employment  
2 would be terminated at that point at the end of June of  
3 2019.

4           The NABC also ultimately terminated counsel,  
5 including Mr. Vincent's firm, and the Baldwin Crocker  
6 Rudd firm. Specifically in late May 2019, the Vincent  
7 firm was notified by letter that its representation was  
8 terminated, and it would not take on any new matters,  
9 and wasn't allowed to. It should wind up its  
10 representation, and it should limit any expenditures or  
11 fees incurred in winding up representation and  
12 transferring those files to new counsel, to \$2500.

13           And to my knowledge in response, the Tribe  
14 never heard from Mr. Vincent's firm; simply no, we still  
15 get to represent you. You know, it's our choice and not  
16 yours, Business Council.

17           So we fast forward a month after this  
18 termination letter was sent and this spending  
19 restriction was put into place, and the Vincent firm  
20 accepted from the outgoing CEO, who knew he was being  
21 terminated, a \$75,000, quote unquote, retainer from  
22 casino funds. That retainer was, in fact, signed by  
23 plaintiff Faith Wallowing Bull. Demands -- multiple  
24 demands were made for return of those funds, and the  
25 Vincent firm fundamentally responds, no, we were prepaid

1 these amounts by the outgoing CEO to represent the  
2 casino relating to the casino's decisions to terminate  
3 two of the plaintiffs in this case.

4 And I do want to point out the kind of  
5 absurdity there, to say, we're representing the casino  
6 with the casino's money in order to assert claims of  
7 terminated employees of the casino against agents of the  
8 casino.

9 Approximately two weeks after the demand of  
10 the return of funds, the Vincent firm uses those funds,  
11 which were tribal funds, casino funds are tribal funds,  
12 to file this lawsuit, which contains a litany of  
13 complaints about the Tribe, the Tribe's management, the  
14 Tribe's resolution, its chosen representatives, and  
15 functionally attacks on the agents of the Tribe.

16 Now, I do want to emphasize that as well,  
17 this money of the Tribes is being used to fund the  
18 instant lawsuit, as far as anyone knows in this case,  
19 and it's being done in a way where the plaintiffs'  
20 counsel in this case, the attorney that we ask to be  
21 disqualified are, in fact, saying they still represent  
22 the Tribe and the Tribe's interests despite the fact  
23 that the Tribe has very clearly spoken through NABC  
24 resolutions, General Council votes, and really any way  
25 that the Tribe can, to say, one, don't do this. Two,

1 stop spending our money. And, three, we don't want you  
2 involved in a case that's fundamentally in opposition to  
3 the Tribe.

4 THE COURT: But isn't the sequence of  
5 events -- intervening in that sequence of events is,  
6 after being told at least some of this, and the  
7 resolutions that were passed concerning limitations,  
8 after that, some tribal council member with authority  
9 authorizes the \$75,000 retainer?

10 MR. BUCKLEY: Absolutely not.

11 THE COURT: That does not occur after the  
12 resolution?

13 MR. BUCKLEY: No. The only person who, quote  
14 unquote, authorized, if you can say that, the retainer,  
15 was the outgoing CEO, who was paid approximately 10 days  
16 before the CEO's final day. And it was absolutely,  
17 unequivocally in contrast to a limitation on any  
18 spending or any contracts being entered into by the CEO,  
19 as well as in -- or, I'm sorry, in opposition or  
20 prohibited by the NABC resolution, which the Vincent  
21 firm is aware of, that would prohibit them from taking  
22 on new matters and prohibiting them --

23 THE COURT: That's what I meant. In other  
24 words, after the Vincent law firm knows these  
25 limitations are growing through resolution, limitation



1 on fees and so forth, after that the CEO, as an outgoing  
2 proposition -- that's your argument -- signs off on a  
3 \$75,000 retainer --

4 MR. BUCKLEY: Right.

5 THE COURT: -- ten days later, and he knows  
6 this ahead of time, he's leaving?

7 MR. BUCKLEY: Right. And unambiguously and  
8 expressly without authorization. And, in fact, with an  
9 NABC resolution telling the CEO he cannot do things like  
10 that.

11 THE COURT: And I know it's not directly in  
12 front of me, but that would indicate to me that action's  
13 about to be taken against him as well; the outgoing CEO.

14 MR. BUCKLEY: The outgoing CEO. And that's a  
15 decision of the Tribe.

16 THE COURT: Sure. Possibility.

17 MR. BUCKLEY: Absolutely.

18 THE COURT: And I ask, not because it's  
19 directly my business but indirectly, that could add to  
20 the complication were he to also be sued, having  
21 authorized a retainer. And I don't know which side of  
22 the case he or Mr. Vincent would wind up on, but it's  
23 not happened yet?

24 MR. BUCKLEY: Right. It hasn't happened yet.

25 THE COURT: Okay. Excuse the diversion. Go

1 ahead.

2 MR. BUCKLEY: Absolutely, Your Honor. So in  
3 light of all this, of course, not only does the Vincent  
4 firm continue as counsel and continue to bill the Tribe,  
5 not even relating to this case, but relating to, you  
6 know, issues that were in direct conflict with what the  
7 Tribe had asked. So bills the Tribe to try to prevent  
8 the Tribe from getting its files back. Bills the Tribe  
9 to argue that the Tribe's new counsel shouldn't actually  
10 be counsel, you know, some of these issues you heard  
11 about in the other case and the briefing. But these  
12 things are going on as well.

13 And then in this case when demand is made for  
14 the Vincent firm to withdraw, in fact, leans in to the  
15 allegations as opposed to defend against them; claiming  
16 first that it's, as of today, still working for the  
17 Tribe, still employed by the Tribe; claiming to know  
18 what's best for the Tribe; claiming that tribal -- the  
19 tribal General Council in August and NABC don't know  
20 what's best for them.

21 And for all these reasons -- as I say I don't  
22 take this motion lightly. And this isn't just some sort  
23 of game playing or litigation advantage, but this is  
24 something that truly is, ethically speaking, a very,  
25 very large problem, and very, very concerning, of

1 course, to the Tribe and certainly to me as an attorney.

2 Now, let's get to the facts and the law in  
3 the case. Disqualification of counsel is warranted in  
4 Wyoming where, first, there is a preexisting  
5 attorney-client relationship between counsel now, the  
6 Vincent firm, and the Tribe.

7 Second, where the interests of the current  
8 plaintiffs represented by the Vincent firm and the  
9 Tribe, as the former client, are adverse.

10 Third, the former client has not consented.

11 And, fourth, the current and former matters  
12 are substantially related.

13 A couple of these issues I think are pretty  
14 easy. I don't think anybody's disputing, first, the  
15 Vincent firm had a valid attorney-client relationship  
16 with the Tribe and its subsidiary entities including the  
17 casino. This is beyond dispute. And as I said, counsel  
18 for plaintiffs don't dispute this. They say instead, in  
19 fact, they still represent the Tribe, despite all  
20 resistance to the contrary.

21 Even worse, they've decided that the actions  
22 taken to terminate their representation are invalid  
23 unilaterally or through two of the plaintiffs who are  
24 consistently outvoted members of the Northern Arapaho  
25 Business Council.

1           So we've got a situation where counsel  
2 apparently gets to choose that they represent the Tribe  
3 despite the Tribe's wishes.

4           Counsel represents two outvoted members of  
5 the Tribe, as well as two terminated members -- not  
6 terminated members of the Tribe, but tribal members who  
7 were terminated from their employment with the casino.  
8 And all these things, of course, happen at the 11th  
9 hour.

10           So I would say this is bad enough to do to a  
11 client, but then, of course, the law places special  
12 emphasis on the fact that this is a sovereign entity as  
13 well. This is an autonomous government. And where we  
14 understand counsel's argument to be that they cannot be  
15 fired unless some action is taken that in their opinion  
16 is valid, we've got a situation where fundamentally the  
17 lawyer chooses the client as opposed to the client  
18 choosing the lawyer. And all of this is done in light  
19 of the fact that the Tribe has specifically said, we do  
20 not want this, and this needs to stop.

21           So all of this is to say that the defense of  
22 the question of that first element, was there a valid  
23 preexisting attorney-client relationship, is not just  
24 yes, but there still is a continuing relationship by the  
25 Vincent firm.

1           Second, moving on to, I guess, the third  
2 element, the former client has not consented. As the  
3 Court's aware, I'm also counsel for the Tribe, and would  
4 certainly represent to you that the Tribe hasn't  
5 consented to Mr. Vincent's representation.

6           Moreover, that's not even the issue because  
7 the issue is, has anyone shown the Court where the Tribe  
8 has consented. And obviously that hasn't happened.  
9 When we're talking about consent it's an affirmative  
10 act. It's not applied, and it's not the default. The  
11 Tribe needs to have informed consent to this  
12 representation.

13           THE COURT: He seems, and you -- the Tribe,  
14 of course, but he seems to draw a distinction as between  
15 the Tribe and the casino.

16           MR. BUCKLEY: Right.

17           THE COURT: Is that a distinction?

18           MR. BUCKLEY: It is not under federal law.  
19 Under federal law it's clearly not a distinction. So  
20 the NABC is the governing body of the Tribe. The casino  
21 is a subsidiary entity of the Tribe, and however you  
22 want to analogize it, but it is an arm of the Tribe and  
23 is fully controlled by the Tribe.

24           Now, there are some issues where generally  
25 management of the casino is not vested day-to-day in

1 NABC. There's subentities that fundamentally run the  
2 Tribe day-to-day, but the NABC ultimately does have  
3 authority over the Tribe.

4           And I certainly understand as well when we  
5 talk about consent, that the plaintiffs believe that  
6 there was improper action by the NABC, and that, you  
7 know, they've been authorized to act by two of the six  
8 members of the NABC.

9           I think it's incredibly telling in this case,  
10 however, that despite the arguments about NABC action  
11 from June or even May 2019, up to today, these two  
12 minority members of the NABC, who are plaintiffs in this  
13 case, have never overturned any of these actions that  
14 they say were invalid. And have never gotten the votes  
15 to attack, invalidate, void or otherwise change anything  
16 that's happened with these resolutions that are even  
17 claimed to be invalid in this case. And, in fact, as  
18 the Court's well aware in August, I believe August 10th  
19 of 2019, the full tribal General Council votes and says,  
20 we absolutely ratify everything that's gone on from the  
21 NABC, despite the fact that there are two dissenting  
22 members, we agree with the four majority members who  
23 have voted for all of these things.

24           So, again, we've got a situation where, as we  
25 talk about disqualification, we're not just talking

1 about, you know, a generalized older representation that  
2 maybe conflicts with this. We're talking about a  
3 representation that is truly disrespectful and  
4 disdainful for the will of the Tribe or the actions of  
5 the Tribe and for everything that the Tribe has  
6 demanded.

7           And worse, that representation is being  
8 funded by the Tribe, and that money will not be returned  
9 to the Tribe despite demand.

10           So -- and, again, I suppose I've digressed,  
11 but on that third element, absolute and clear, there's  
12 no consent by the Tribe, and there was a valid  
13 attorney-client relationship.

14           So we really have two elements that meet any  
15 sort of analysis for disqualification. You know, one,  
16 whether the interest of the Tribe and the plaintiffs are  
17 adverse, supporting disqualification of the former  
18 counsel. And, two, whether the matters are  
19 substantially related.

20           Now, no surprise, and we all know this, but  
21 the Vincent firm, even as former counsel, which I'll  
22 refer to them as because I think that's factually true,  
23 but former counsel still owes an absolute duty of  
24 loyalty that survives the termination of their  
25 representation.

1           The Tribe made a decision to replace the  
2 Vincent firm, and ultimately hired the defendants as new  
3 counsel. The Vincent firm is now prosecuting claims  
4 which undermine the tribal sovereignty, tribal  
5 governance, and those tribal resolutions.

6           Those claims which would have to be proved --  
7 and I guess let me unpack that. Expecting to argue the  
8 motion to dismiss first, I would have talked about this  
9 a little bit, but fundamentally in order to prosecute  
10 any of the claims in this matter the Court has to, if it  
11 were to examine them, which as I'll state when I talk  
12 about the motion to dismiss, it shouldn't, is the Court  
13 has to be willing to say, one, I'll analyze, and, two,  
14 potentially find that tribal actions, tribal  
15 resolutions, and tribal governance through the NABC has  
16 been invalid. And it absolutely can't do that. It just  
17 doesn't have the jurisdiction.

18           So as it relates to this, the Vincent firm is  
19 prosecuting claims which fundamentally asks the Court to  
20 undermine the tribal governance and to invalidate the  
21 tribal resolutions.

22           Now, here are some other ways that is clearly  
23 adverse. One, plaintiffs are attacking the agents of  
24 the Tribe in their official capacity through their  
25 complaint.



1           Two, plaintiffs are funding their litigation  
2 through the Tribe's own money. So even if there was no  
3 other adversity shown in this case, the fact that  
4 there's a financial adversity, and the fact that this  
5 litigation is being funded by the Tribe's own money,  
6 shows pretty clear and insurmountable conflict -- or  
7 adversity.

8           Three, they're adverse, in that a decision in  
9 plaintiffs' favor would, as I said, necessarily or  
10 expressly or at least impliedly question tribal self-  
11 governance. And I don't want to understate this either  
12 because even at these initial stages in this case, a  
13 decision by the Court that even says, I may not agree  
14 with what the Tribe has done, or, I will need to look at  
15 the validity of these resolutions, absolutely undermines  
16 the Tribe's ability to govern itself.

17           You know, further adversity, in that the  
18 Tribe elected to terminate two employees who are now  
19 plaintiffs in this case, and are challenging that  
20 termination, so clearly adverse there.

21           They're further just fundamentally adverse in  
22 that what plaintiffs' counsel is fundamentally saying,  
23 sure, the Tribe doesn't agree with us, but we know  
24 better what the Tribe needs to do than the Tribe does  
25 itself.

1           So the question I believe of adversity of  
2 interest clearly met under the disqualification test.

3           The last element then is whether this matter  
4 and the prior representation are substantially related.

5           In the sense that I can't tell the story of  
6 this matter without telling the story of counsel's  
7 representation, I certainly think they're related, but,  
8 again here, plaintiffs, instead of arguing that they're  
9 not related, they lean in. Instead of arguing that this  
10 case and prior representation have nothing to do with  
11 each other, plaintiffs have made statements such as,  
12 quote, The current plaintiffs in this case represent the  
13 true interest of the casino as its constituents who  
14 oppose the hostile and illegal takeover by defendants.  
15 And to be clear, the takeover being referred to is at  
16 least, in part, the termination of the Vincent firm.

17           Plaintiffs go on to say that upon learning of  
18 defendants' intentions to take over the operation of the  
19 casino, as one of his last acts as CEO, Mr. Conrad  
20 preserved the best interests of the casino by  
21 authorizing the prepayment of legal services to Joel M.  
22 Vincent Law Office, to represent key employees and NABC  
23 members who were likely to be ousted by the, quote,  
24 invading regime. And this goes on and on, and I would  
25 refer the Court to paragraphs 7 and 12 of the opposition

1 to the motion to disqualify.

2 But the point being that these matters are  
3 clearly substantially related. You can't look at this  
4 case without looking at the termination issues with  
5 Vincent.

6 Further, I have no doubt that we would find  
7 that the Vincent firm was involved in representing and  
8 providing advice to the outgoing CEO relating to these  
9 last-minute employment contracts that we've discussed;  
10 was providing information, and likely advice to the two  
11 members of the NABC throughout the time that really  
12 these issues arose.

13 So in closing, I do just want to reiterate,  
14 just as in a dispositive motion, it's not a simple  
15 motion in limine, and it's not just a way to try to gain  
16 an advantage or get somewhere at trial.

17 This case deals with really fundamental  
18 fairness issues and fundamental ethic issues that just  
19 can't be ignored, and obviously I believe shouldn't be  
20 taken lightly.

21 So certainly disqualification is warranted in  
22 this case. And there's a question of whether that's  
23 enough. And realistically the disqualification is  
24 probably not the end of the story.

25 But where you got a plaintiffs' counsel

1 representing interests directly adverse to the Tribe,  
2 advocating directly for a judicial overturning of tribal  
3 decisions that are beyond the Court's jurisdiction,  
4 attacking directly the agents of the Tribe, and then  
5 doing that with the Tribe's own money, which it refuses  
6 to return, there's not a better case for  
7 disqualification than this one, Your Honor.

8 And so with all that in mind, we'd certainly  
9 ask that the Court grant the motion to disqualify.

10 I'd further ask, Your Honor, that certainly  
11 the Court could look at this and the motion to dismiss  
12 and say, well, I'm going to dismiss, and so the motion  
13 to disqualify is moot. We would ask for a ruling  
14 irrespective on the motion to disqualify in light of  
15 potential appellate rights and those sorts of things.

16 THE COURT: Before you step back then and I  
17 call on -- call for a response, they also -- I'm not  
18 saying I'm weighing this, but you're up so let's hear  
19 from you, that either yourself, your firm, or  
20 Mr. Kaufman in your firm, likewise, have some sort of  
21 conflict. Again, I'm not saying that's the proper way  
22 to argue back, but you should have an opportunity to  
23 voice or make comments. Go ahead.

24 MR. BUCKLEY: Sure, sure. If the Court's at  
25 all interested, I'm certainly happy to talk about it.

1 Our firm does represent the Wyoming Lottery Corporation.  
2 They are in no way in this legislative session or  
3 otherwise adverse to the interest of the Tribe or the  
4 casino. The lottery corporation doesn't take a position  
5 on slot machines and those sorts of things that have  
6 come up. Lottery corporation doesn't -- doesn't care  
7 and doesn't want to know. More fundamentally though, of  
8 course, and the reason I didn't think it warrants  
9 comment is that even if I should be disqualified, and  
10 even if we had met three of the four elements of  
11 disqualification, of course, that the client consents,  
12 that would be fine, and certainly the client is well  
13 aware of anything that even, you know, reflects on those  
14 sorts of disqualification issues.

15 So, you know, ultimately it's the last gasp  
16 of trying to argue against disqualification is to say,  
17 well, I shouldn't, but you should, and I certainly would  
18 ask the Court not to give that any weight.

19 THE COURT: Thank you. Would it be you,  
20 Mr. Vincent, or Ms. Zafonte?

21 MR. VINCENT: Ms. Zafonte.

22 THE COURT: Ms. Zafonte then, in opposition.  
23 I've read your opposition; I hope you understand that,  
24 and would hear from you by way of argument today. Go  
25 ahead.

1 MS. ZAFONTE: Thank you, Your Honor. May it  
2 please the Court, Counsel.

3 THE COURT: Counsel.

4 MS. ZAFONTE: My name is Alexandria Zafonte,  
5 and I am on the phone today to argue against defendants'  
6 motion to disqualify myself and Mr. Vincent as the  
7 lawyers for the plaintiffs in this case.

8 First, I'd like to explain to the Court that  
9 there is a certain distinction between the casino and  
10 the Northern Arapaho Tribe. While the Northern Arapaho  
11 Tribe is ultimately the owners of the casino, the  
12 internal operations of the casino are governed by the  
13 management of the casino, the day-to-day operations.  
14 And the reason for that is there needs to be a  
15 separation between the political arm of the Tribe with  
16 NABC and also the General Council, and the actual  
17 compliance operations, hiring and firing of employees,  
18 and of hiring of even outside counsel on occasion.

19 And that is vested in the CEO, the casino.  
20 And the Northern Arapaho code makes that explicitly  
21 clear, and I believe I quoted it, I quoted the code  
22 section in my briefs, but the gaming operations of the  
23 Tribe, sort of the economic engines, cannot be subject  
24 to political whims of mob rule. And in instances of the  
25 General Council, which is a body made up of every single

1 voting member of the Northern Arapaho Tribe, the General  
2 Council does not get to dictate what the casino does on  
3 a day-to-day basis, because it could be subject to  
4 personal biases and other political issues.

5           Then the NABC, which is the Business Council,  
6 which are six members who are elected to represent the  
7 business interests of the Tribe, they oversee the  
8 casino's management, but it is in the management where  
9 the day-to-day decisions are made, such as what attorney  
10 is going to represent the casino, not the Tribe, but  
11 specifically the casino, and issues that take place such  
12 as personnel problems, or in this instance, a hostile  
13 takeover of a corporation, which I think the situation  
14 is quite akin to.

15           Mr. Conrad was in charge of hiring and firing  
16 employees and the day-to-day operations of the casino,  
17 including hiring outside counsel, including myself and  
18 Mr. Vincent, to the day that his contract was -- it  
19 expired.

20           And when he prepaid those funds, he was doing  
21 so authorized by his contract and authorized by the  
22 Northern Arapaho gaming code.

23           Mr. Buckley refers to the resolutions that  
24 were passed on June 6th, that took that power away from  
25 Mr. Conrad. And those resolutions are invalid.

1 I would like to point you to the affidavits  
2 that were provided by Mr. Addison and Mr. Dresser in  
3 this case. They were lied to, to go home the night that  
4 those resolutions were passed. They were told to go  
5 home. We're going to reconvene later in the week to,  
6 you know, rule on some matters, including Mr. Conrad's  
7 contract.

8 So they went home. When they were gone the  
9 remaining members of the NABC voted and said that they  
10 passed specific resolutions that limited Mr. Conrad's  
11 power; that fired my law firm, and also told members of  
12 the NABC that they were not allowed to talk to the  
13 press.

14 They also said that the defendants are the  
15 ones who are the lawyers for the Tribe, and have  
16 basically unfettered power to advise the Tribe however  
17 they want.

18 Those resolutions are all invalid. And it's  
19 not just an examination into Northern Arapaho law to  
20 figure that out.

21 It's inherently wrong to lie to voting  
22 members of a governing body, to tell them to go home,  
23 and then hold a vote in their absence, and then use the  
24 resolutions that were passed in their absence as valid  
25 law.



1           It doesn't matter if they were consistently  
2 outvoted. They had a right and a duty on behalf of  
3 their constituents to be present at any vote, and they  
4 were not.

5           And because of that the resolutions that were  
6 passed on June 6th are invalid, and cannot be used as a  
7 basis for limiting Mr. Conrad's power as the CEO of the  
8 casino, and for firing Joel M. Vincent Law Office.

9           Now, to get to -- and also another thing I  
10 would like to clear up. Mr. Dresser and Mr. Addison did  
11 approve that prepayment of legal fees after the  
12 resolutions were passed. They did so verbally, and they  
13 also -- Mr. Addison had -- Mr. Addison wrote in, I think  
14 it was -- well, Mr. Addison in writing authorized the  
15 prepayment of legal fees to my office in addition.

16           And they are both governing members of the  
17 Northern Arapaho Business Council; Mr. Addison being the  
18 co-chairman, who were elected by the Northern Arapaho  
19 people.

20           Now, Wyoming Rule of Professional  
21 Responsibility 1.9 states, A lawyer who has formerly  
22 represented a client in a matter shall not thereafter  
23 represent another person in the same or substantially  
24 related matter in which that person's interests are  
25 materially adverse to the interests of the former client

1 unless the former client consents.

2           Materially adverse means directly adverse  
3 under Wyoming Rule of Professional Responsibility 1.7,  
4 and that states, A lawyer ordinarily may not act as  
5 advocate against a person the lawyer represents in some  
6 other matter even if it's wholly unrelated.

7           On the other hand, simultaneous  
8 representation in unrelated matters of clients whose  
9 interests are only generally adverse such as conceding  
10 economic enterprises, do not require the consent of  
11 respective clients.

12           The gaming enterprise which we define as the  
13 Wind River Casino and its subsidiary entities has not  
14 officially terminated our representation.

15           As I've stated earlier, defendants are  
16 relying on the invalid resolutions that were passed on  
17 the night of June 6th, 2019, and because they were  
18 invalid we don't -- we don't have any official  
19 termination in place.

20           Regardless, even if the casino was a former  
21 client and a current client, the test is still the same;  
22 the client -- to make sure that the client's interests  
23 are not materially adverse.

24           Now, this lawsuit arose from the CEO, Jim  
25 Conrad, and the plaintiffs exercising their fiduciary

1 duty towards the casino and its operation. And because  
2 of that the casino's operation and the plaintiff's  
3 interests are the same.

4 The plaintiff has a fiduciary duty to the  
5 casino set forth in Section 504 of the Northern Arapaho  
6 Gaming Code.

7 It states, Gaming enterprise management and  
8 the Business Council shall be governed by fiduciary or  
9 trust principles, and the obligation to exercise due  
10 care and prudent business judgment, including the  
11 obligation to avoid material breach or default on any  
12 loan agreement involving the gaming facilities or gaming  
13 assets.

14 In the spring of last year, and summer of  
15 last year, Mr. Buckley characterizes the decisions that  
16 were being made as the Tribe deciding on its own to  
17 examine its relationship and reorganize its business  
18 relationship with people. However, that's not what  
19 occurred.

20 What occurred in the spring of 2019, was an  
21 out-of-state law firm from Washington, D.C. -- well from  
22 Atlanta, but out of their Washington, D.C. office,  
23 showed up in Wyoming without any approval by the current  
24 council, at that time which was Baldwin Crocker Rudd.  
25 And they insisted on having us open the casino doors,

1 and they wanted to go in and evaluate Mr. Conrad.

2 Well, that evaluation turned into a full on  
3 takeover, and purging of the current management that was  
4 in place at the time.

5 Like I said, the resolutions were put in  
6 place. Two members of the Business Council were not  
7 present when they were allegedly passed.

8 Those resolutions were clearly drafted by the  
9 defendants, by the attorneys. And what the resolution  
10 did was, one of the things was they got rid of a  
11 conflict of interest provision that was in place at the  
12 time, that said, any outside counsel that may have a  
13 conflict of interest needs to clear it with the General  
14 Council of the Tribe at the time, which was Baldwin  
15 Crocker Rudd.

16 Rather than engage with Baldwin Crocker Rudd  
17 and try to resolve any potential conflicts, the  
18 defendants just abolished that -- that resolution. And  
19 then proceeded to come in and fund a misinformation  
20 campaign that was spread throughout the Tribe, to vilify  
21 the current casino managers, and consolidate power in  
22 the hands of the defendants.

23 And the defendants, in doing so, infiltrated  
24 the important governing body of the Tribe, the Northern  
25 Arapaho Business Council.

1           Now, this seems like what happens in  
2 corporate law occasionally where there's a hostile  
3 takeover. And when an attorney represents an  
4 organization, they are bound by Wyoming Rule of  
5 Professional Responsibility 1.13.

6           That rule states, If a lawyer for an  
7 organization knows that an officer, employee or other  
8 person associated with the organization is engaged in  
9 action, intends to act or refuses to act in a matter  
10 related to the representation that is a violation of a  
11 legal obligation to the organization, or a violation of  
12 law which reasonably might be imputed to the  
13 organization, and is likely to result in substantial  
14 injury to the organization, then the lawyer shall  
15 proceed as is reasonably necessary in the best interest  
16 of the organization. Unless the lawyer reasonably  
17 believes that it is not necessary in the best interest  
18 of the organization to do so, the lawyer shall refer the  
19 matter to higher authority in the organization,  
20 including, if warranted by the circumstances, to the  
21 highest authority that can act on behalf of the  
22 organization as determined by applicable law.

23           During this time when the defendant showed up  
24 from D.C., and insisted on having access to confidential  
25 information, and insisted on being named the attorneys

1 of record, and ousting anybody else who resisted,  
2 including my clients, the casino was clearly at risk of  
3 defaulting on certain contracts, on loan agreements, on  
4 vendor contracts, and on other obligations that it had  
5 towards -- under the gaming code, that it had to do  
6 certain -- handle money in certain ways that only the  
7 chief financial officer who was in place at the time,  
8 Ms. Wallowing Bull, knew how to do.

9           When it became apparent that the key  
10 employees were being fired, and Mr. Conrad was set to  
11 have his contract expire, and the economic viability of  
12 the casino was at risk, the attorneys in this case,  
13 myself and Mr. Vincent, went to the highest authority of  
14 the organization, Mr. Conrad.

15           And what Mr. Conrad did was he tried to  
16 preserve the status quo of the casino in the key  
17 management, and bound legitimate government of the  
18 gaming enterprise, which was the NABC, and he did that  
19 by authorizing funds from the casino, which he was  
20 allowed to do so under his contract and under the  
21 Northern Arapaho law. And, again, that was ratified and  
22 authorized by both Mr. Dresser and Mr. Addison.

23           Now, I cite the case *Simpson Performance*  
24 *Products vs. Robert Horn*, for the notion that material  
25 adversity cannot be -- well, interests are not

1 materially adverse, it's just vague economic interests  
2 that are at play here.

3           And in that case there was no evidence  
4 showing that Mr. Horn's representation of a former  
5 client caused -- or representation of a current client  
6 caused its former client to suffer damage in its  
7 economic relationship.

8           Here, like in that case, the interests of the  
9 plaintiffs are not materially adverse to the casino.

10           Defendants do not represent the best  
11 interests of the casino. They were not the duly  
12 authorized attorneys, and I still don't believe they are  
13 since the resolutions that were passed appointing them  
14 as such are invalid.

15           And the plaintiffs in this case are not  
16 trying to sue the casino. They're suing the defendants  
17 for the defendants' tortious actions in enabling  
18 these -- in advising these decisions that caused my  
19 clients to lose their jobs, and to lose their ability to  
20 govern the -- to govern under the position that they  
21 were voted into on the NABC.

22           It's in the casino's best interest to remain  
23 economically viable and retain a positive relationship  
24 with the community.

25           It is also in the casino's best interest to

1 remain free of legal liability.

2           So in preserving those best interests that  
3 were in place before the arrival of defendants and the  
4 chaos that ensued in the management of the casino,  
5 Mr. Conrad preserved those interests in these key  
6 employees, and in the two NABC business members. And he  
7 did this as a way to protect the casino, and to make  
8 sure that it was not sabotaged by outsiders looking to  
9 make a steady stream of income.

10           Now, the casino also, I think, waives any  
11 conflict of interest in this case because, as I  
12 explained, Mr. Conrad was the highest authority in  
13 charge at the time, and he authorized the retainment of  
14 the legal funds knowing what was going on, and knowing  
15 that he was going to fund this lawsuit on behalf of  
16 Ms. Morin and Ms. Wallowing Bull, Mr. Addison and  
17 Mr. Dresser.

18           And despite Mr. Buckley's assertions, no  
19 actual evidence of particular confidences were disclosed  
20 here between anything that we learned from representing  
21 the casino, to this lawsuit.

22           You know, there's no evidence besides what  
23 Mr. Buckley is saying he might be able to find.

24           So in sum, the attorneys in this case were  
25 acting pursuant to Rule 1.13 of the Rules of



1 Professional Responsibility as attorneys for an  
2 organization, and the CEO and the two members of the  
3 Northern Arapaho Business Council authorized the use of  
4 these funds to fund this lawsuit, knowing that this was  
5 the best chance to preserve the casino from potential  
6 economic instability that has occurred and is still  
7 occurring because of defendants' actions.

8 Thank you.

9 THE COURT: Thank you, Ms. Zafonte.

10 It's your motion. Final word, counsel.

11 MR. BUCKLEY: Thank you, Your Honor. And I  
12 just -- I just want to jump around a little bit. And  
13 I've tried throughout the day -- as you know we've had  
14 hearings before -- to avoid the good guy/bad guy  
15 argument, for lack of a better word, but you've heard a  
16 bit though of this idea that defendant KTS has come in  
17 and overwhelmed the Tribe and stolen their ability to  
18 think for themselves. And what I would say, Your Honor,  
19 is, one, if we need to try these cases we can, and I'm  
20 not concerned about those sorts of allegations.

21 But, two, and more fundamentally, let's, in  
22 this case, assume that maybe the folks at the Northern  
23 Arapaho Tribe know what's best for them. And when we  
24 assume that, let's wonder why the Northern Arapaho  
25 Business Council and the General Council vote has been

1 in favor of things KTS and the other defendants have  
2 done in this case.

3 And, so again, I don't want to pit that  
4 there's a good guy and a bad guy, and that the Court has  
5 to see somebody as the enemy and somebody as the hero  
6 here. But I do want to let the Court know that that's  
7 not a one-sided story, and this idea that KTS came in  
8 and overwhelmed the sensibilities of the Tribe is, one,  
9 untrue. And, two, maybe really does speak to the race-  
10 baiting issue that Mr. Ortiz said today, that we've got  
11 a lot of -- and just let's say it, white lawyers who  
12 have told you today that they know better for a  
13 sovereign Indian nation than the nation knows for  
14 itself. That's all I'll say on that, Your Honor.

15 But as I said, please feel free to look at  
16 the affidavits and the actual decisions of the Northern  
17 Arapaho Tribe here because you'll find that they're very  
18 happy with their counsel.

19 Now, all that said, I do think it's  
20 interesting, and I think it's incredibly valuable to  
21 look at Rule 1.13, as Ms. Zafonte noted. And  
22 Ms. Zafonte seems to think that the highest authority  
23 that they could go to was Mr. Conrad as CEO, while at  
24 the same time acknowledging that the Northern Arapaho  
25 Business Council ultimately does have final say over the

1 casino.

2 And I'll posit this, Your Honor, that if as  
3 counsel you're in a situation where you've got an  
4 outgoing CEO telling you he wants to give you \$75,000,  
5 telling you to ignore the resolution of the Northern  
6 Arapaho Business Council, do you take that money or do  
7 you go to the Northern Arapaho Business Council and do  
8 you say, what do I do?

9 I think Rule 1.13 is incredibly clear what  
10 you do in that situation.

11 Now, additionally -- and maybe this is glib,  
12 Your Honor, but I'd be incredibly interested to know  
13 that as counsel for the casino, who is it that  
14 Mr. Vincent and Ms. Zafonte deal with at the casino  
15 day-to-day approving or disapproving actions? Again, it  
16 doesn't exist because counsel's not attorneys for the  
17 casino. And if they are, I'd invite them to enter an  
18 appearance in the other case where the casino is a  
19 party.

20 So, finally, maybe I'll just point out the  
21 inherent difficulty in the argument as well that we  
22 heard from Ms. Zafonte, that the \$75,000 was actually  
23 approved, and it was approved by Mr. Addison and  
24 Mr. Dresser, while in the next breath telling us that  
25 four members of the Northern Arapaho Business Council

1 had no business approving hiring of counsel, and, you  
2 know, taking the actions that they took in order to  
3 terminate the Vincent law firm.

4           Ultimately in all this, I guess my only point  
5 in rebuttal here is that there's holes in the arguments  
6 of plaintiffs' counsel, and ultimately what we didn't  
7 hear, Your Honor, is any real argument to say  
8 disqualification is not appropriate.

9           And again, this isn't a case where we're  
10 saying dismiss because of the disqualification at least.  
11 We'll talk about the dismissal motion, but it is a case  
12 where we're saying this counsel can't represent these  
13 plaintiffs, and the rules are incredibly clear on that  
14 issue, as well as statutes, case law, and ultimately our  
15 ethical rules that we're all bound by as attorneys.

16           So to be in a situation where we even have to  
17 bring this motion when these facts are as clear as they  
18 are, is, quite frankly, astounding.

19           But fundamentally to the point, I guess all  
20 we're asking for the Court to do today is to kind of see  
21 this for what it is, and go ahead and enter that motion  
22 to disqualify counsel.

23           Thank you.

24           THE COURT: Thank you.

25           Of course, there are other motions, and this,

1 the motion to disqualify as you might guess, drew this  
2 Court's attention in preparing for the hearing today.

3 I think both parties perhaps through -- both  
4 the attorneys arguing here today don't mean to be glib  
5 or informal, but start to make assumptions and argue  
6 assumptions, and I think have an eye toward the end of  
7 the lawsuit or what's next in the lawsuit. And I want  
8 to begin my ruling today by emphasizing, I have no idea  
9 where this lawsuit's going or what's going to happen in  
10 the end. And that is not before me today.

11 The -- I am not finding today, based on  
12 sovereignty, lack of sovereignty or otherwise; certainly  
13 not finding that waiver of such sovereignty that may  
14 exist. And it's important to note what I'm not doing  
15 today. The argument that acts of the Arapahoe Tribal  
16 Council and/or the NABC and/or their General Council, it  
17 was a suggestion they also were somehow misled by all  
18 this, and that otherwise the authority exists through  
19 the actions of an outgoing CEO is a bit circular, I have  
20 to say. But let me be more pointed. It doesn't matter.  
21 You cannot, and I will not, in engaging an analysis of,  
22 you know, plaintiffs' counsel and whether they're  
23 disqualified, rely on determinations of who thinks the  
24 council did the wrong thing; who thinks the council, a  
25 sovereign entity, is being manipulated or not

1 manipulated.

2           And for that matter, to a certain degree,  
3 even the timing of the motions and activities as you  
4 both argued them, those may be a part of a motion to  
5 dismiss and/or they may be a part of the underlying  
6 case, wrongful terminations or whatever else happens in  
7 this, but they are not before me. And I want to, again,  
8 spend this time of what's not before me for a reason.

9           It was the wrong power -- Is this about  
10 power, and wrongful conduct, and a big law firm? That's  
11 either -- That is either a horrible thing to happen to  
12 the Tribe as described by Ms. Zafonte; they're being  
13 taken advantage of, or -- or it's an absolutely  
14 appropriate housecleaning by the Arapahoe Nation.

15           It's one of those two. And that's not before  
16 me. What is before me, and for the first time in my  
17 career, is a set of facts and circumstances that dictate  
18 removal of counsel.

19           Nothing could be more materially adverse to  
20 the Tribe and/or the plaintiff or defendant, one party  
21 or the other, than this prior representation. And  
22 candidly, the argument Ms. Zafonte makes is that they  
23 currently represent an entity that they think, or at  
24 least up until recently, think is a separate entity. And  
25 it's not, under no stretch of the facts in front of me,

1 is the casino -- the casino could be shut down tomorrow  
2 by the Business Council. They could just decide they  
3 don't want to engage in casino activity anymore. They  
4 could fire and hire and rehire, although subject to  
5 contract. I mean, I know that's -- I'm not ruling that  
6 your contract argument or employment argument doesn't  
7 have any weight to it, Ms. Zafonte, but your analogy to  
8 a corporation misses the point.

9           Corporations, in fact, can fire, dissolve  
10 divisions and so forth through their board of directors  
11 and otherwise. And, you're right, there are individuals  
12 who may have a say-so, but they have a say-so through  
13 very specific shareholder derivative actions and things  
14 of that nature.

15           And here your disagreement that the politics  
16 should be ignored; the politics are the fundamentals of  
17 democracy, that is entities who run the joint get to  
18 vote, and they did.

19           Now, again, whether that's right or wrong,  
20 attorneys can challenge on behalf of the existing  
21 clients, existing plaintiffs, but not this attorney.

22           Those actions of the Board, the current  
23 client authorizing, just days from when he left, \$75,000  
24 of the Tribe's money, that -- that alone, and the fight  
25 over that money alone should drive plaintiffs' counsel

1 out of this case, and to hire their own to sue over  
2 that, or to defend a suit that might still be coming for  
3 return of those moneys.

4           Nothing could be more adverse, nothing could  
5 be more in conflict than what has been described to me  
6 today.

7           Current counsel thinks they're doing the  
8 right thing. I've known Mr. Vincent my entire career.  
9 I don't believe for a minute he did what he thinks is a  
10 wrong thing, and by imputation I would probably say the  
11 same thing about Ms. Zafonte. But they found themselves  
12 in the wrong case at the time wrong time, and no Court  
13 could countenance the conflicts that are already  
14 present, and if you keep in mind it's only going to get  
15 worse.

16           I have no idea how you could get through  
17 discovery in this case without creating, not only a  
18 conflict, but deposition of opposing counsel.

19           It's going the wrong way, and I have an  
20 obligation, I think, to ensure that the right attorneys  
21 are in on behalf of the existing plaintiffs.

22           I regret doing it on a personal level, but  
23 will order today that the current motion to disqualify  
24 Mr. Vincent and Ms. Zafonte, that firm, will be granted,  
25 and an order generated granting that motion.



1           The motions to dismiss, and the other  
2 activity in the case remain active.

3           New counsel is to be acquired by the  
4 plaintiffs, and any new responses by counsel, fresh  
5 counsel to the motions to dismiss may still be filed.  
6 I'm going to give new counsel an opportunity; I'm going  
7 to give them 45 days.

8           Likewise, the case, pleadings both, at this  
9 juncture might even be plaintiffs' pleadings and the  
10 answer may also be amended 45 days out, such that the  
11 thing gets postured in exactly the way it needs to be  
12 postured for dismissal. May require no modifications,  
13 but I don't want to -- I don't think it's efficient.  
14 It's even contrary to judicial efficiency to, you know,  
15 wait a while for a new attorney, wait for the new  
16 attorney to try to amend or ask for leave to amend.

17           Let's get past that and allow for amendments  
18 in this order.

19           The appearance of substitute counsel and  
20 allowance for amendments by both parties to their  
21 pleadings should be in the order.

22           Hopefully that makes it clear I haven't done  
23 anything except the motion to disqualify today.

24           Likewise, I know you feel strongly about the  
25 money. It's not in front of me. I'm not ordering an

1 accounting be made or not be made. Mr. Vincent's law  
2 firm has accounted for it however they account for it.  
3 No challenge is front of me about the money or return of  
4 the money. That may still be happening, I don't know.  
5 But that's for another day and another motion.

6           The rest of the matters, that professional  
7 responsibility dictates, Ms. Zafonte has already talked  
8 a little bit about one of them; all the rest of those  
9 responsibilities lie with Mr. Vincent and his law firm  
10 until such time as new counsel is in. There's no gap.  
11 They're in until new counsel enters an appearance.  
12 Their clients should not and will not, under this order,  
13 be without counsel.

14           They're disqualified. They have to switch  
15 over, but they've got that amount of time to find and  
16 acquire new attorneys.

17           Winding down, moving documents, transferring  
18 files, all that has to occur within the rules. And I  
19 have no doubt that counsel will obey all of those rules.  
20 She was reading them to me, some of them already, about  
21 those responsibilities.

22           To the extent that Mr. Vincent and  
23 Ms. Zafonte are concerned about letting down clients'  
24 responsibilities, no further -- I don't know of any  
25 better protection than me ordering it to, so I think

1 that covers that.

2           And I certainly don't intend -- and the  
3 record will now reflect, I intend no action, other than  
4 what lawyers ethically do. And I'm not finding that any  
5 other mistake as to the money or accounting or records  
6 has occurred.

7           So albeit there will be small overlap, new  
8 attorney, allowance for new attorney to respond to the  
9 motions to dismiss, and allowance for amendments to the  
10 pleadings by either party, is the best I can do to keep  
11 the case moving.

12           That will be approved under Rule 58, prepared  
13 by you and approved under Rule 58 by counsel.

14           And with that Court's in recess.

15           (Proceedings concluded 4:01 p.m.)

16

17

18

19

20

21

22

23

24

25

