

Quileute Tribal Court of Appeals  
P.O. BOX 69  
LaPush, WA 98350

**FILED**

OCT 13 2015

**QUILEUTE TRIBAL COURT**

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4 **In Re the Guardianship of:**

5 **Samantha Brewer**

6  
7 **A minor child under the age of eighteen years**  
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) Case No.: 14-G-0009

) Response to Motion for Continuation of Current  
) Counsel or, in the alternative, Notice of Substitution of  
) Counsel

10 Comes Now, Appellees, Tony and Narcissus Foster, through their Spokes-person of  
11 Record, Paul A. Siewell, and opposes Father's motion to either pay his current counsel's "privately retained  
12 customary fees" or, in the alternative allow her to withdraw from the case.

13 I. No Authority for this Court to Authorize funds from the Tribal Treasury to Pay Legal Fees for Father.  
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15 Father's motion correctly points out that the Quileute Law and Order Code makes no provision for the  
16 Court to pay legal counsel for a parent in a dependency or guardianship. In fact, the trial court making such an  
17 appointment was an extraordinary exercise by the Court which exceeded its authority.

18 The Quileute Tribal Court is not an independent branch of tribal government. Unlike the courts of the  
19 United States, or the state of Washington, the Quileute Tribal Court is a creation of the Quileute Tribal Council and  
20 it is the Council that has sole authority to define the "duties, powers, and limitations" of the Tribal Court {Quil.  
21 Const. Art. VI Section 1(i)}. Father, in his motion, readily admits that Council has never delegated to the Court the  
22 authority pay for private legal representation. In fact there is strong inference in the Quileute Family Code that any  
23 costs associated with legal representation be at the expense of the party seeking such representation. The only  
24 mention of legal representation in the Family Code is found in Chapter 11 § 11.22 (A) which states that parties shall  
25 have the "Right to an attorney or spokes-person at their own expense" (emphasis added). Admittedly, Chapter 11  
26 relates to juvenile offenders and not to a guardianship proceedings. It can reasonably be inferred, however, if the  
27 Quileute Tribal Council did not see fit to afford a juvenile offender, whose liberty is in jeopardy, paid legal counsel  
28 then it certainly never intended to provide paid private counsel in a civil guardianship case.

29 It is in fact uncontested that there is no legal authority to grant Father's motion.

30 Father asks this Court to create right to paid private legal counsel out of thin air. He asserts the Court  
31 should create this right because its "in the best interest of the child for him to keep current counsel and that the case  
32 be concluded on schedule." While Appellees certainly agree that concluding this case on schedule and providing

FII 73

OCT

QUILEUTE

1 Samantha permanency is in her best interest, however that fact is unrelated to whether Father is responsible, under  
2 Quileute law, for paying his own legal fees if he chooses to be represented.

3 A finding by the Court that father is not entitled to this manufactured right is not prejudicial but rather puts  
4 the Father on equal footing with Appellees who have been represented by a lay spokes-person throughout these  
5 proceedings. If Mr. Brewer believes that it is in Samantha's best interest to keep current counsel then he should do  
6 so, at his own expense. It is noteworthy that the trial court never took evidence or entered any finding that the father  
7 was indigent. This Court may not direct expenditures from the tribal treasury, without a specific Council authority,  
8 the absence of which is not disputed.

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10 II. Counsel of Record Should not be Permitted to Withdraw.

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12 The Quileute Family Code requires that an attorney seeking to withdraw from a case filed under that Code must  
13 seek an order from the Court {QFC Chapter 2 § 2.10 (e)}. The granting of an order for counsel to withdraw is not a  
14 ministerial duty but one that requires the Court to exercise discretion. While not binding on this Court the United  
15 States District Court, N.D. California, Eureka Division, set out a reasonable and prudent standard in, Robinson v.  
16 Delgado, for when it is appropriate for a court to allow counsel to withdraw from a case.

17  
18 When addressing a motion to **withdraw**, the consent of the client is not dispositive. *See CE Resource, Inc.*  
19 *v. Magellan Group, LLC*, 2009 WL 3367489, at \*2 (E.D.Cal. Oct.14, 2009). Courts look at several factors,  
20 including the reasons counsel seeks to **withdraw**; the possible prejudice that **withdrawal** may cause to  
21 other litigants; the harm that **withdrawal** might cause to the administration of justice; and the extent to  
22 which **withdrawal** will delay resolution of the case. *Id.* (citing *Canandaigua Wine Co. v. Moldauer*, 2009  
23 WL 89141, at \*1 (E.D.Cal. Jan.14, 2009); *Beard v. Shuttermart of California, Inc.*, 2008 WL 410694, at \*2  
24 (S.D.Cal. Feb.13, 2008). Ultimately, a ruling on a motion to **withdraw** "must involve a balancing of the  
25 equities." *CE Resource, Inc.*, 2009 WL 3367489, at \*2.

26  
27 Father's motion states that he believes proceeding with current Counsel and maintaining the current schedule  
28 is in Samantha's best interest. Appellant's agree with father that a delay is not in Samantha's best interest. The  
29 practical reality is that allowing Counsel to withdraw would likely result in delay and, as agreed by the parties, is  
30 prejudicial because it is not in Samantha's best interest. Father's Counsel does not argue that father is unable to pay  
31 for legal services or that he has refused payment of her customary fees. As stated above, there is no finding that the  
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OCT 13 2015

QUILEUTE TRIBAL COURT

1 father is indigent. Counsel seeks to withdraw at this late hour because of a presumption that father will not pay for  
2 services yet to be performed.

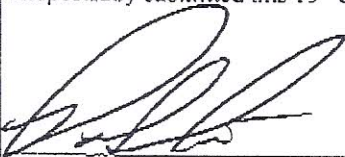
3  
4 III. Conclusion

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6 It is undisputed that this Court has no statutory authority to grant Father's motion. In fact, Father has never  
7 been entitled to have the Quileute Tribe pay his attorney fees. That the trial court ordered representation from a  
8 contracted public defender, a licensed attorney, at the expense of the Quileute people is extraordinary but is not  
9 evidence that he is entitled to further unauthorized draws from the tribal treasury. Father, like Appellees, is entitled  
10 to representation at his own expense and nothing more.

11 The Court should reject the request of Counsel to withdraw because such withdrawal is based on her concern  
12 that she will not get paid for some future services. Counsel offers no evidence that her client has refused to pay for  
13 her services or is unable. There is no finding on the record that he is indigent. The withdrawal will cause  
14 unnecessary delay. Both parties submit that delay is not in the child's best interest. In balancing the equities in this  
15 case the Court should find that the risk of prejudice and harm to the administration of this case outweighs Counsel's  
16 issues regarding future payments.

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18 The Court should deny the motion and proceed as scheduled.  
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21 Respectfully submitted this 13<sup>th</sup> day of October, 2015

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25 Paul A. Siewell  
26 Spokes-person for Petitioners  
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