Daniel & Val O'Connell-PRO SE
P.O. Box 77
Emigrant, Mt. 59027
406-577-6339
valoc@mac.com

**MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

| | |
|---|---|
| Daniel K. O'Connell & Valery A. O'Connell & on behalf of themselves as members of Glastonbury Landowners Association.<br><br>Plaintiff(s),<br><br>v.<br><br>Glastonbury Landowners Association, Inc. & current GLA Board of Directors<br><br>Defendant(s) | Cause No. DV–11–114<br><br>**PLAINTIFFS MOTION(s) FOR: SANCTIONS & REMOVAL OF LIMITED SCOPE REPRESENTATIVE** |

Plaintiffs & GLA members-Daniel & Valery O'Connell, pursuant to **M.R.Civ.P., Rule 11**, hereby submit Motion(s) For Sanctions Against the GLA Defendants AND separate sanctions against Alanah Griffith, so called "Attorney of limited scope [representation] for Defendants" within GLA Inc. Defendants counterclaim, counterclaim motion, & counterclaim response.

The GLA Defendant-GLA Inc. is a corporation and Defendant (Board of Directors) are all non-attorneys. However starting April 17, 2013, the GLA Defendants' filed a counterclaim, motion & responses **without council**. Alanah Griffith was only the "Attorney of limited scope [representation] for Defendants." As GLA Defendants are a corporation and all non-attorneys, and as such non-attorneys filed the counterclaim since Alanah Griffith is only limited scope representative for Defendants' counterclaim; which limited representation is NOT "reasonable" but contrary to M.R.P.Conduct. Rule 1.2(c), rule 5.5, & Ethic Opinion 00008. As proven below, sanctions are thus allowed and warranted against Alanah Griffith, per M.R.P.Conduct, Rule 4.3(d) "An attorney's violation of this Rule[1.2(c)] may subject the attorney to sanctions provided in Rule 11."

Also per M.R.Civ.P., Rule 11(b) & proven below, separate sanctions are allowed and warranted against the GLA Defendants themselves who brought their counterclaim without council, and because their counterclaim is not warranted on the evidence, not reasonably based on belief, or lack of information; which are "being presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation."

## FACTUAL ARGUMENTS AND BRIEF

(Note: GLA's Counterclaim, counterclaim motion, and Counterclaim response are factual evidence for this motion, and hereby included as if fully set forth herein.)

**M.R.Civ.P., Rule 11. Signing Pleadings, Motions, and other Papers; Representations to the Court; Sanctions.**

**(a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name -- or by a party personally if the party is unrepresented. The paper must state the signer's address, email address, and telephone number, if any. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

**(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later advocating it -- an attorney or unrepresented party certifies to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

**(1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

**(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

**(3)** the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

**(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

**(c) Sanctions.**

**(1)** ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

**(2)** ***Motion for Sanctions.*** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for the motion.

(3) ***On the Court's Initiative.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) ***Nature of a Sanction.*** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include non-monetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.

(5) ***Limitations on Monetary Sanctions.*** The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) ***Requirements for an Order.*** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) **Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(e) **Limited Scope Representation.** An attorney may help to draft a pleading, motion, or document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

**A. Sanctions Against Alanah Griffith–"Attorney of limited scope [representation] for Defendants"**

Attorney-Alanah Griffith has practiced law more than a decade and used this rule in prior pleadings in this case. Thus Griffith should be well aware of this Rule 11(e) above that states, "limited scope representation" to mean "a pleading, motion, or document [is] filed by an otherwise self-represented" party.

On April 9, 2013, non-attorneys for the GLA Corporation filed a counterclaim against its members, the Plaintiffs. Notice the GLA counterclaim lists eight GLA "Board of Directors;" which Directors are all non-attorneys, and also lists "The Glastonbury Landowners Association;" which Association is a Montana registered Corporation.

However, the GLA counterclaim, & counterclaim motion & response are all signed by "Alanah Griffith, Attorney of Limited Scope [representative] for Defendants." Below this it says the GLA counterclaim, & counterclaim motion & response was serviced by Katie Hintz, an employee of Griffith's Law Firm. These signatures are prima facia evidence that Alanah Griffith

assisted the GLA Corporation to file, serve, and allegedly draft their counterclaim, & counterclaim motion & counterclaim response, or 3 separate documents.

MT. Ethic Committee publishes all Opinions regularly to members of the MT. state bar, so a member of the bar–Alanah Griffith would have received Ethics Opinion 000008 that forbids the GLA non-attorneys from representing a corporation. Attorney Alanah Griffith would also received M.R.P.Conduct 5.5(b) binding on attorneys that says, "A lawyer shall not: ... assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law."

Rule 11(e) above & M.R.P.Conduct, Rule 4.3(b) below clearly states that Griffith's limited scope representation means the GLA corporation counterclaim "is considered to be unrepresented" by an attorney. Yet Attorney-Alanah Griffith obviously did "assist" the GLA corporation non-attorneys in "the unauthorized practice of law" when Griffith did file, serve, and allegedly draft the counterclaim, & counterclaim motion & counterclaim response on behalf of the GLA corporation and agents of the corporation. Thus Alanah Griffith's limited scope representation for the GLA corporation is NOT "reasonable," but contrary to M.R.P.Conduct., Rule 1.2(c) &(d), Rule 4.3(a), Rule 5.5, & Mt. Ethics Opinion 00008, as follows:

**M.R.P.Conduct.,Rule 1.2(c)** "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, "

**M.R.P.Conduct. Rule 4.3** -- Dealing with Unrepresented Person

(a) In accordance with Rule 1.2(c) [Rule 1.2 (c)-- "if the limitation is reasonable under the circumstances"] of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation...

**(d) An attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.**

**M.R.P.Conduct. Rule 5.5(b)**, "A lawyer shall not: assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law."

**Ethics Opinion 000008:**

**"QUESTION PRESENTED:**

A hearing examiner (administrative judge) conducting administrative hearings pursuant to the

Montana Administrative Procedure Act, 82-4201, et seq., R.C.M. 1947, observes that recently a number of corporations made appearances, testified and made final arguments through individuals not admitted to practice law. His question is ". . . whether, as an attorney, I may ethically allow a corporation to represent itself pro se through an unlicensed individual before such a tribunal." **ANSWER:**

For purposes of this opinion and for purposes of clarification, it is our judgment that the matter presents three (3) separate questions: 1. Does the making of appearances, testifying and making final arguments before an administrative agency constitute the practice of law? 2. If such activity does constitute the practice of law does the pro se exception operate to permit representatives of corporations not admitted to practice to appear before such administrative agencies? 3. Assuming that such activity constitutes the practice of law and does not fall within the pro se exception, may an administrative law judge (an attorney) ethically allow a corporation to represent itself pro se through an unlicensed individual before such a tribunal?

1. It is the opinion of this committee that the making of appearances, testifying and making final arguments before administrative judges by representatives of corporations constitutes the practice of law. Section 93-2009, R.C.M. 1947, provides the statutory definition of what constitutes the practice of law:

"Any person who shall hold himself out, or advertise as an attorney or counselor at law, or who shall appear in any court of record of before a judicial body, referee, commissioner, or other officer appointed to determine any questions of law or fact by a court, or who shall engage in the business and duties and perform such acts, matters and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of this act, shall be deemed to be practicing law." (emphasis supplied)

It is clear that representation undertaken before administrative agencies is ". . . usually done or performed by an attorney at law in the practice of his profession . . ." It goes without saying that when an attorney undertakes to represent a corporation or an individual before an administrative body, he is practicing law. Factual disputes are resolved and legal rules and principles are applied. Appeals go to the courts. Practically speaking, administrative agencies perform most of the functions of courts when engaged in adjudicatory activities.

Whether the Montana Supreme Court under Article VII of the 1972 Constitution or the Legislature defines what constitutes the practice of law, there is little doubt that the results would be the same. Presumably, the Supreme Court, in the exercise of the judicial power, has the ultimate authority to define what constitutes the practice of law. (See In Re Senate Bill No. 630, 164 Mont. 366, 523 P.2d 484.) The Supreme Court has indicated that it would ". . . give consideration to the interpretations of the Canons promulgated by the American Bar Association." (See Supreme Court of the State of Montana -- Canons of Professional Ethics, Order No. 12500.) Ethical Consideration 3-5 of the ABA Code of Professional Responsibility broadly defines the practice of law as relating to:

". . . the rendition of services for others that call for the professional judgment of a lawyer. The essences of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment."

The complexities of administrative law call for the exercise of the professional judgment of a lawyer insofar as representation is involved. The reason for the organized profession's concern in this matter is well stated in EC 3-1.

"The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to tender legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession."

Section 82-4221, R.C.M. (Administrative Procedure Act) provides that ". . . every party shall be accorded the right to appear in person or by or with counsel . . ." This section merely permits representation by an attorney and accords the right "to appear in person." It does not sanction the practice of law by non-lawyers. It does not sanction the representation of others. Some highly specialized federal agencies have authorized lay representation after training and examination. (See Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379, 83 S. Ct. 1322, 10 L.Ed. 2d 428 (1963).) But this was accomplished by specific statute and has no application here. If the Montana Legislature had intended such a result it could have and would have so provided.

2. Representatives of corporations not admitted to practice law may not represent such corporations before administrative agencies.

Corporation representatives who are not attorneys may not engage in any activity which constitutes the practice of law. We have already determined that appearing before administrative agencies constitutes the practice of law, just as it would be if engaged in by a lawyer. Since this activity constitutes the practice of law, it follows that non-lawyers may not appear in a representative capacity--the same rule which of course applies to any other activity deemed the practice of law such as appearing in the courts.

There remains the pro se question, but it is not difficult. A corporation is an artificial entity created by law, and not a natural person. As such it cannot (being an artificial entity) represent itself as an individual could. Its officers or representatives would, in effect, be representing another. (See Nicholson Supply Co. v. First Federal Saving and Loan Association of Hardee County, 184 So. 2d 438, 19 A.L.R. 3d 1967 (Fla. App. 1966).) (See generally pages 157 et seq., Unauthorized Practice Handbook, American Bar Foundation (1972).)

3. An administrative law judge may not ethically permit a corporation to represent itself pros se through an unlicensed individual.

DR3-101 (A) provides that "A lawyer shall not aid a non-lawyer in the unauthorized practice of law." The question of course is whether the administrative law judge "aids" in the unauthorized practice when he permits a non-lawyer to represent others (here, a corporation). It is the opinion of this committee that a lawyer administrative law judge "aids" in the unauthorized practice of law when he knowingly permits a non-lawyer to represent others before the agency. It may be that the administrative law judge is in the only position to know that such conduct is occurring. He (the lawyer judge) certainly would be violating the spirit if not the letter of Canon 3: "A Lawyer Should Assist in Preventing Unauthorized Practice of Law." It is further opinion of this committee that all administrative law judges cease from permitting such unauthorized practice and to report any instances of such to the appropriate authorities."

---

Alanah Griffith is the registered legal council for GLA Inc. Defendants in this amended complaint DV-11-114, but Alanah Griffith is not legal council for Defendants counterclaim, but only "limited scope representative" for the counterclaim. Thus the GLA corporation

counterclaim "is considered to be unrepresented" by an attorney per M.R.P.Conduct, Rule 4.3(b) above. It does not appear to be "reasonable under this circumstances" (per Rule 1.2(c)) for Alanah Griffith (attorney for case DV-11-114) at the same time to give ONLY limited scope representation to the GLA corporation counterclaim (which means not represent the GLA corporation counterclaim). Alanah Griffith's limited scope representation for the GLA corporation is NOT "reasonable," because it is contrary to M.R.P.Conduct., Rule 1.2(c) &(d), Rule 4.3(a), Rule 5.5, & Mt. Ethics Opinion 00008 above that states, "Representatives of corporations not admitted to practice law may not represent such corporations before administrative agencies."

Notice rule 4.3(b) above says "An attorney's violation of this Rule [Rule 1.2(c)] may subject the attorney to sanctions provided in Rule 11," because Griffiths conduct is NOT "reasonable," but illegal to "assist" the GLA corporation in "the unauthorized practice of law." Therefore sanctions are allowed (per rule 4.3(d) above) and warranted against Attorney Alanah Griffith, who no doubt "assisted" the GLA corporation in "the unauthorized practice of law" when Griffith assisted the GLA Corporation & Directors to file, serve, and allegedly draft their counterclaim, & counterclaim motion & counterclaim response, as three separate documents.

**B. Sanctions Against the GLA Defendants**

Rule 11, M.R.Civ.P., allows a court to impose sanctions on the "signer" of a pleading, motion or other paper which is 'not well grounded in fact or warranted by law, or which the signer has interposed for an improper purpose such as harassment, delay or increase in the cost of litigation.' "Sanctions are proper only where a suit is totally frivolous or appears to have been brought for an improper purpose." See *Smith v. Barrett* (1990), 242 Mont. 37, 43, 788 P.2d 324, 328.

This motion for sanctions are warranted against Defendants for bringing forth their counterclaim (absent council) to prevent further violations by GLA Defendants. This is because the GLA Defendants were warned of sanctions due to their counterclaim being unconstitutional, not warranted on the evidence, not reasonably based on belief, or lack of information; which are "being presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation" as per M.R.Civ.P., Rule 11(b). On April 31, 2013 within pg. 3 of Plaintiffs motions against counterclaim, this warning stated:

"Defendants counterclaim alleged that Plaintiffs 4 complaints filed against Defendants are "frivolous" "baseless" thus "vexatious." However, Defendants motion response on pg. 8 contradicts this allegation as cited above. Defendants can not allege this claim after now admitting this claim was NOT found to be true by a court of law. **Defendants should thus withdraw their [counterclaim] suit or face a motion for sanctions.**"

Such pleading warning of sanctions was served on Defendants secretary-Janet Naclerio. Defendants thus had over two months to withdrawal, yet refused to withdrawal their counterclaim. GLA Defendants were warned to withdraw the counterclaim or face a sanction motion, also given M.R.Civ.P., Rule 11 supporting such sanctions, and made aware of numerous deficiencies within their counterclaim pursuant to Rule 11(b). Such counterclaim deficiencies included:

1. Defendant's counterclaim is absent any claims for which relief can be granted because Montana has no legal authorities in place to prevent filings of frivolous civil complaints as the relief sought; 2. and the counterclaim (to enjoin Plaintiffs from "filing civil litigation without prior court permission") is unconstitutional, because the counterclaim denies Plaintiffs' constitutional rights (Mt. Article II, part 3 -- right to protect property and defend liberties & Art. II, part 16 -- right to administrative justice ... "without denial or delay" to file lawsuits); which is Plaintiffs' compulsory right & clearly not a claim upon which relief can be granted; 3. and counterclaim gives no affidavit nor facts in support; 4. and the counterclaim is absent any supporting legal basis or authority, because the counterclaim is contrary to established facts of Plaintiffs cases; Established facts or Plaintiffs four cases are as follows:

1. The Supreme Court ruled that this case (Dv-11-114) had merit, 2. the DV-11-193 case was settled out of court denying Defendants counterclaim; 3. Plaintiffs won all their claims for relief in that case (193); 4. within two other remaining cases, DV-12-164 and DV-12-220, Defendants gave no defense regarding any "frivolous" claims therein; 5. and defendants failed to dismiss those cases or failed to file a motion to dismiss; 6. also absent affidavit, Defendant's counterclaim falsely asserts Plaintiffs threatened future suits thereby to "bankrupt the GLA."* (*Note: The O'Connells never said this since they were out of state proving this to be hearsay and **should be stricken from the record**. (see proof in DV-12-220 O'Connell affidavit (¶ d).)

Furthermore on pg. 8 of GLA's counterclaim response, Defendants clarified their one and only one **hypothetical** claim for relief, "**If** the Court takes the Board's allegations that all of the O'Connells claims are vexatious frivolous and/or meritless and that there is threat of future [frivolous] litigation as true, then the Board has stated a claim ...entitled to relief." Defendants on pg. 8 then contradict this hypothetical claim by saying, "O'Connells argue as of today, none of the multitude of cases that they have filed has proven to be "frivolous" "vexatious" or "meritless." This is true," says Defendants. Defendants thus admitted there are NO "frivolous" 'vexatious" or "baseless" claims exist, for which counterclaim was made absent any such court finding of "vexatious frivolous and/or meritless" claims, which hypothetical claim has no merit.

Therefore Defendants counterclaim request for injunctive relief to prevent members frivolous filings fails the likelihood of succeeding on the merits, and fails to demonstrate irreparable harm for injunctive relief as required under Title 27. Therefore Defendants counterclaim claiming Plaintiff cases in the FUTURE may be "frivolous" "baseless" "vexatious" is itself frivolous and vexatious.

As shown above, Defendants counterclaim to enjoin Plaintiffs constitutional right to **file** lawsuits against the GLA is also unconstitutional, not a claim warranted on the evidence, not reasonably based on belief, or lack of information. The GLA Defendants thus received prior warning to withdraw their counterclaim, because the counterclaim is obviously "presented for an improper purpose and/or causing unnecessary delay, and/or harassment, and/or needlessly increase the cost of litigation" pursuant to M.R.Civ.P., Rule 11, above. Therefore this motion for sanctions against the GLA Defendants is warranted for all these reasons above.

## CONCLUSION

As shown above in Opinion 00008, "representatives of corporations not admitted to practice law may not represent such corporations..." A member of the bar–Alanah Griffith would have received this Ethics Opinion 000008 that forbids the GLA non-attorneys from representing the GLA corporation (contrary to MT.Rule of Conduct 5.5(b) that says, "A lawyer shall not: assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law."

As allowed pursuant to M.R.P.Conduct. Rule 4.3 and for Griffith's violations to rule 1.2(c), rule 5.5(b), & Ethics Opinion 00008 (above), sanctions are warranted against Attorney-Alanah Griffith who obviously did "assist" the GLA Corporation & Directors in "the unauthorized practice of law" three separate times for three separate documents (counterclaim, & counterclaim motion & counterclaim response).

Separate sanctions are also warranted against the GLA Defendants who (without council) brought three counterclaim pleadings, because they were forewarned on April 31, 2013 that their counterclaim pleadings were contrary to M.R.Civ.P., Rule 11; which warning said their counterclaim is not "warranted on the evidence, not reasonably based on belief, or lack of

information;" which are "being presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation."

Plaintiffs therefore pray this Court grant sanctions against Attorney–Alanah Griffith, for removal of limited scope representation, and for separate sanctions against GLA Defendants imposed under M.R.Civ.P., Rule 11(c) "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated" and "include non-monetary directives; and include "an order directing payment to the movant of part or all of the ... other expenses directly resulting from the violation[s]."

Respectfully submitted this 9th day of July, 2013.

Signed _____ Signed: _____
Daniel O'Connell Valery O'Connell

**Certificate of Service**

A true and correct copy of forgoing document(s) were sent to the following parties via first class mail on this same day to:

Sixth Judicial District Clerk of Court
414 E. Callender St.
Livingston, Mt. 59047

Alanah Griffith
26 E. Mendenhall
Bozeman, Mt. 59715

Hon. Judge David Cybulski
573 Shippe Canyon Rd.
Plentywood, Mt. 59254

Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

By _____ By: _____
Daniel O'Connell Valery O'Connell