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Attorney for Defendants on a Limited Scope

MONTANA SIXTH JUDICIAL DISTRICT, PARK COUNTY

DANIEL K. O'CONNELL (a director of the Glastonbury
Landowner's Assoc. Inc., VALERY A. O'CONNELL
(for and on behalf of the landowners & the many members
of the Glastonbury Landowners Association,

Plaintiff,

vs.

RICHARD BOLEN, LAURA BOISE, JANET
NACLERIO, SHERIDAN STENBERG, ALYSSA
ALLEN, GERALD DUBIEL, RICH SPALLONE, &
WILLIAM SMITH (all Directors of the Glastonbury
Landowners Association,) & THE GLASTONBURY
LANDOWNERS BOARD OF DIRECTORS

Defendants.

Cause No. DV-11-114

Response to Motion for
Sanction and Removal
Of Attorney

On July 9, 2013, the Plaintiffs Daniel and Valery O'Connell (collectively "the O'Connell's") file a motion to remove Defendant's (collectively, "the Board") limited scope attorney. Frankly, the Board does not understand the O'Connell's motion, but will do its best to respond.

BACKGROUND

Ms. Griffith, as the O'Connell's noted, is a duly licensed attorney with the Montana Bar Association. Therefore, she may represent clients in this Court. Recently, the Montana Supreme

Court adopted new laws and rules regarding limited scope representation. In this case, the Board's insurance company that is providing the defense in this matter decided that a counterclaim (while justified) was outside the scope of the insurance coverage. The Board met with their general counsel, Ms. Griffith, to discuss moving forward with a vexatious litigant counter-claim in this suit. After discussions with Ms. Griffith, the Board held a meeting and decide to move forward with the claim.

The Board emailed Ms. Griffith of their decision and all parties, including insurance counsel was informed of this decision. All counsel for the Board is on the same page with regards to Ms. Griffith's duties as opposed to the Brown Law Firm. Ms. Griffith gave the appropriate notice to the Court and Plaintiff's regarding the scope of her appearance. Therefore, Ms. Griffith may represent the Board regarding the issue of the counterclaim.

ARGUMENT

Ms. Griffith, a duly licensed attorney with the State of Montana, may represent the Board regarding the counterclaim. She is doing so on a limited scope (as opposed to joint representation with the Brown Firm) to save money for her clients so that she is only responsible for the counterclaim, and does not expend time reviewing the other claims in this matter.

According to the Montana Rules of Professional 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 in writing.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

Without getting into attorney-client privilege information, the Board has given its informed consent in writing. The Board currently retains Ms. Griffith as their attorney outside of anything the insurance policy covers and for the limited purpose of representing the Board on the counterclaim.

It seems that the O'Connells believe that because Ms. Griffith is representing the Board on a limited scope basis, she is not an attorney. (See statement on first page "However, starting April 17, 2013, the GLA Defendants filed a counterclaim, motion and responses without cc unsil [sec]. Alanah Griffith was only the 'Attorney of limited scope [representation] for Defendants' Counterclaim. Is also appears they believe her limited scope representation is not reasonable pursuant to Rule 1.2.

Regarding the first argument, attorneys are still attorneys if they represent someone on a limited scope basis. There is no limit as to who qualifies for limited scope representation. Attorneys can represent single individuals or multi-national corporations as a limited scope. Therefore, Ms. Griffith can represent a corporation on a limited scope basis.

The O'Connell's seem to rely on Ethic's Opinion 000008. First, this opinion is not on point. This was an opinion regarding whether shareholders in a corporation may appear on behalf of the corporation at an administrative hearing. No attorney was involved. In this case, the corporation has counsel, Ms. Griffith. Furthermore, this opinion was entered into in 1985, far before the Limited Scope Representation was adopted by the Montana Supreme Court last year. Therefore, even if it was on point, it is not applicable to this matter.

The O'Connells also attempt to use M.R.Prof.Conduct, Rule 5.5(b) to state that Ms. Griffith cannot represent the Board because that is an attorney assisting a person who is not a member of the board in the performance of activity that constitutes the unauthorized practice of law. The Board is not practicing law in this case. Ms. Griffith is representing the Board in the counterclaim, which is specifically allowed under the Professional Rules and Montana law.

Regarding the reasonability of the limited scope representation, in this case it is entirely reasonable. The Brown Law Firm is representing the Board in a number of suits filed by the O'Connells (the others Judge Gilbert just entered summary judgment against the O'Connells on all claims.) However, the Board's insurance policy did not cover counterclaims. Therefore, if the Board wanted to file the counterclaim they had no choice but to hire counsel on a limited scope basis to file the claim. Therefore, the limited scope representation is reasonable.

The O'Connell's last argument seems to be that the Board should be sanctioned because it appeared without counsel and their claim is not warranted. Of course, the Board is represented by counsel. Ms. Griffith was retained and is doing the typical work of an attorney on behalf of the Board.

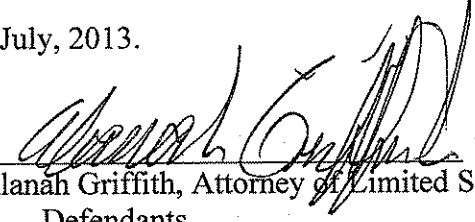
Furthermore, while the O'Connell's keep arguing that the vexatious litigant claim is not warranted (which does not have to be proven by the Board until trial in order for this case to proceed), it seems that it is well warranted as Judge Gilbert summarily decided against the O'Connells on all claims before her. The O'Connells failed to mention this fact to the Court. Furthermore, while it was true that at the time of filing none of the other cases had proven vexatious, the Board expected them to be summarily dismissed by the Court. Therefore, the counterclaim was ripe to file (even though decision must wait until the other cases were

resolved.) As the Board was right, and the cases were summarily dismissed, the counterclaim was timely. Therefore, no sanctions should be granted by this Court.

CONCLUSION

Ms. Griffith has followed the rules of professional conduct regarding representing the Board in a limited scope. Therefore, the Board is represented by counsel. Thus, the Board and Ms. Griffith did not violate any rules by filing the counterclaim. Therefore, sanctions should not be granted and Ms. Griffith should continue with this matter. Furthermore, the Board should not be sanctioned for filing the counterclaim since the counterclaim was ripe.

Respectfully submitted this 14 day of July, 2013.

By 
Alanah Griffith, Attorney of Limited Scope for
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14 day of July, 2013, a true and correct copy of the foregoing, was mailed, postage prepaid, to the following counsel of record:

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