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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,) Cause No. DV-11-114

Plaintiff,
vs.

PROPOSED
ORDER re: Motion for
Sanction and Removal
Of Attorney

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.

On July 9, 2013, the Plaintiffs Daniel and Valery O'Connell (collectively "the O'Connell's") filed a motion to remove Defendant's (collectively, "the Board") limited scope attorney. The Board responded and the O'Connell's replied. This matter is ripe for a decision.

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 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. It appears that the Board wished to limit Ms. Griffith's scope in this matter, so that they were not paying two attorneys to review everything in this matter. By filing as a limited scope attorney, Ms. Griffith's liability and counsel is limited to the counterclaim. The Brown Law Firm is responsible for all other matters in this case. Ms. Griffith gave the appropriate notice to the Court and Plaintiff's regarding the scope of her appearance. Therefore, on paper, it appears that Ms. Griffith may represent the Board regarding the issue of the counterclaim.

ISSUE AND LEGAL ANALYSIS

~~The issue presented by the O'Connells is whether Ms. Griffith, a duly licensed attorney~~
with the State of Montana, may represent the Board regarding the counterclaim on a limited scope basis. According to the Board, 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 waiving attorney-client privilege information, the Board showed that it has given its informed consent in writing. The Board argues that it 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 council [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, according to the law, 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. Ethic's Opinion 000008 stands for the rule that an attorney must represent a corporation. In this case, the corporation has counsel, Ms. Griffith and the Brown Law Firm, covering all aspects of the legal matters in this case. Therefore, no non-attorney member is representing the corporation. 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 argue that M.R.Prof.Conduct, Rule 5.5(b) states 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.

The O'Connells also argue that the limited scope representation is not reasonable in this matter. 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 against the O'Connells. 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 argue that M.R.Prof.Conduct, Rule 4.3 is violated by Ms. Griffith representing the Board in a limited capacity. Rule 4.3 states:

(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(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

In other words, this Rule sets forth the requirements of *an attorney* should the opposing side be represent only in limited scope with regards to communications. In those cases, *that attorney* should communicate with the limited scope attorney only on matters involving the attorney's limited scope. Therefore, this Rule is not applicable to this matter. All that this is stating is that if the O'Connell's were represented, that their attorney would have to communicate with Ms. Griffith regards the counterclaim, and The Brown Law Firm regarding the other claims. The O'Connells claim that is somehow means that the Board is unrepresented in fact is not supported by the plain language of the Rules, or the fact that attorneys are representing them on all issued.

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). The Court finds it interesting that the O'Connells failed to mention that Judge Gilbert had summarily dismissed all of the actions filed before her right before the O'Connells filed this motion. Based on the number of claims the O'Connells have filed, and the number they continue to threaten to file, the Board has the right to request relief from the multitude of filings (which relief may or may not be granted based on the outcome of this and the other cases.) 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.

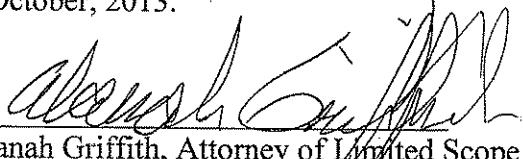
FOR GOOD CAUSE, as stated above, the O'Connells Motion for Sanctions and Removal of Attorney is **DENIED**.

Dated this ____ day of _____, 2013.

Hon. David Cybulski

Cc: Daniel and Valery O'Connell
Michael P. Heringer and Seth M. Cunningham
Alanah Griffith

Respectfully submitted this 2nd day of October, 2013.

By 
Alanah Griffith, Attorney of Limited Scope for
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2 day of October, 2013, a true and correct copy of the foregoing, was mailed, postage prepaid, to the following counsel of record:

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