

SEP 03 2014

Filed this 28th day of Aug. A.D. 2014  
at 4:30 o'clock PM  
**JUNE LITTLE**

Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

Clerk of District Court  
Park County, Montana

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY By FAMELA PENDILL Deputy

Daniel K. O'Connell & Valery A. O'Connell )  
& on behalf of themselves as members of )  
Glastonbury Landowners Association. )

Plaintiff(s), )  
v. )

Glastonbury Landowners Association, Inc. )  
& current GLA Board of Directors )  
Defendant(s) )

Cause No. DV-11-114

**PLAINTIFFS' RESPONSE IN OPPOSITION TO  
MOTION TO QUASH SUBPOENAS**

Plaintiffs' as GLA Director & member(s) of the GLA Landowners Association, pursuant to M.R.Civ.P., Rule 56, submits this "Plaintiffs' Response in Opposition to Motion to Quash Subpoenas" with attached evidence and affidavit that shows the motion to quash Naclerio's deposition lacks any factual foundation to blame Plaintiffs AND subpoena for alleged "undue burden" to Naclerio. Defendants' motion to quash also needlessly requests to delay deposition discovery for a third time, because Naclerio's alleged "undue burden" of vacation scheduling conflict Sept. 8th can be rescheduled one day later after her morning deposition September 9th, 2014 date chosen by Brown.

**Motion page 4 claim #1 regarding subpoena service & "discovery disclosure:"**

Defendants motion affidavits stated Allen and Naclerio both received the August 11,

2014 subpoenas, for which both Defendants signed the certificate of service (filed with the clerk of court and attached hereto). So both parties “consented to in writing” to service (per Rule 5(b)(2)(F)), & these signed subpoena service papers (attached) are factual evidence against motion claim #1 for showing even if service was improper, service is allowed by consent:

M.R.Civ.P., Rule 5 Serving and Filing Pleadings and other Papers. (b) Service: How Made. (2) Service in General. A paper is served under this rule by: (F) delivering it by any other means that the person consented to in writing ...”

Also Alyssa Allen and Naclerio were both put on notice for “pre-discovery disclosure” (per Rule6(C)(1) with the attached May 23rd delay of discovery notice & with the attached Aug. 11th subpoena that served as notice, since subpoenas were modified from its original date of Aug. 28th to September 9th at Brown’s request Aug. 14th. Therefore Defendants had “pre-discovery” notice 28 days before deposition new date.

**Regarding page 4 motion claim #2 regarding “defective subpoena:**

Both subpoenas state **“August 28th, 2014 at 10am. ... this time, date, and place may be modified... however, this subpoena will remain in effect for a new time, date, and place...unless this subpoena is quashed.”** The Brown Law Firm August 14th email letter attached requested a new date of September 8th or 9th for deposition.

Both subpoena clauses allow modification without issuing a new subpoena. This factually refutes the 2nd part of motion claim #2 on page 5, because rule 45(d)(3) was not violated for having this subpoena clause that allowed modification without the need to issue a new subpoena. Plaintiffs complied with Brown’s request to change subpoena date to September 9th as modified on August 18th, (see attached Notice to Modify...) filed with all parties the same day that was 8 days after notice and 28 days before the September 9th deposition. Therefore, the subpoena August 11th and August 14th Brown

Law Firm letter thus served as notice of “pre-discovery disclosure” serviced to all parties 28 days before the subpoena modified date of September 9th.

Motion claim #2 also mentions “defective subpoena” must be quashed for subpoena failing to cite Rule 45(c) & (d). This motion claim misrepresents Rule 45 that does NOT allow a subpoena to be quashed for “defective subpoena.” This rule 45 cited below in part allows only four reasons to quash a subpoena:

- (3) Quashing or Modifying a Subpoena. (A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:
- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person -- except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.

**Regarding motion claim #3 “undue burden” on Naclerio:** Above Rule 45 part 3(A)(i), (ii), and (iii) were not part of the motion claims. Therefore motion claim #3 for “undue burden” on page 5 is the only motion claim applicable to quashing the depositions, but for the motion failing to establish any foundation as to subpoena deposition causing Naclerio “undue burden.” The motion page 3 claims alleged “undue burden” is for Naclerio’s vacation scheduling conflict:

Motion page 3: “The GLA counsel sent a letter to Plaintiffs on August 18, 2014 explaining council already had depositions to another case scheduled for August 28, 2014 and requesting alternative dates. (see Exhibit B of Attachment 4). However, this [council’s] letter was sent without realizing that Ms. Naclerio would be unavailable September 8 through September 23 due to a family vacation for which she had already purchased non-refundable plane tickets, hotel accommodations, and other purchases. (See Aff. Naclerio, Attachment 3, ¶ 2).”

This letter cited above from the motion is undisputed evidence contradicting motion claim #3 that somehow Plaintiffs caused "undue burden" by this vacation scheduling conflict, when in fact affidavit states, "Defendants council–Brown Law Firm cause the scheduling mix-up by obviously failing to first consult with their client–Naclerio BEFORE scheduling depositions."

In addition, affidavit states there is no factual foundation of Naclerio's "non-refundable" tickets and hotel are "undue burden" of loss of vacation time and money, because almost all hotels allow rescheduling and all five Bozeman airlines were called by Plaintiff to verifying they allow departure date changes to the next day September 9th (after deposition scheduled in the morning). There is a small fee to reschedule her date: which fee is the fault of Brown not conferring with its client. Thus without proper foundation and factual evidence to the contrary, it is reasonable for Naclerio to reschedule her vacation one day later and have Brown pay a nominal fee for her rescheduled ticket. The vacation scheduling problem was caused solely by the Brown Law Firm (attached email letter) initially agreeing to the 9th of September for depositions, then Brown reneged on that date AFTER Plaintiffs had already made reservations for a meeting hall and booked a court reporter based on attached Brown letter stating September 9th date was available to depose both their clients.

Four days later Brown sent the attached Aug. 18th letter to threaten Plaintiffs "if we do not hear back from you, we will move to quash the subpoenas..." Plaintiffs DID respond back (see attached Aug. 16th email). Thus it is disingenuous for Brown to move to quash by waiting 12 days after Plaintiffs rescheduled at Brown's request. Defendants

motion also failed to disclose some of Plaintiffs' email responses to Brown like this August 16th response agreeing to Brown's request to again reschedule depositions: including Brown's May 18th letter that also requested to reschedule as Plaintiffs also honored. Defendants motion (page 6) is therefore false, even scandalous to claim depositions "must be taken at the drop of a hat according to their [Plaintiffs] schedule." Therefore all attached correspondence from May 23rd through August 18th shows several attempts to conduct oral depositions, yet for scheduling conflicts twice rescheduled by Brown Law Firm, two times by Plaintiffs, and now Naclerio's vacation conflict which can easily be remedied by rescheduling one day later.

It is unfair and disingenuous to blame Plaintiffs for Naclerio's scheduling problems caused solely by Brown failing to consult with their own client—Naclerio before agreeing to Sept. 9th deposition date. Plaintiffs affidavit state for the record that to quash depositions will delay discovery maybe more than three months if and when all five parties can somehow somehow agree on a date which seems unlikely.

Plaintiff affidavit ¶ j contends they are "out of town the end of September as the attached August 18th email said. Also Court rules yet require a court reporter at oral depositions, but their court reporter—Melody Yoes (PO Box 493 Emigrant, Mt) said she is likely not available late September through most of October, since she is taking an extended vacation in Louisiana much of this time. To find another available court reporter to take her place would cost Plaintiffs hundreds of dollars more in fees, because all other reporters live 30 to 60 miles away in Livingston or Bozeman and charge almost **twice** as much fees plus travel expenses. Postponing Naclerio's deposition would also unfairly delay discovery many more months costing hundreds more for separate depositions for which council must TWICE travel approx. 300 miles round trip from Billings to Emigrant."

To get another date (Plaintiffs, Brown Law Firm, Court Reporter, Alyssa Allen, and Janet Naclerio) these five parties agree on seems to be late October. September

9th is the best date for all parties already agreeing to this date except for Naclerio. Naclerio's vacation delay due to council's failure to notify her before agreeing to deposition date September 9th is not the Plaintiffs fault. Rule 45 above limits the issuing court to "quash or modify a subpoena that: (iv) subjects a person to undue burden." Defendants motion claim #3 fails under this rule to lay any factual foundation for "undue burden" to Naclerio who can simply reschedule her vacation reservations one day later. In the interest of justice, affidavit shows "it is unfair and undue burden on **Plaintiffs** to delay discovery for months to come for one person whom can reschedule her vacation one day later, rather than inconvenience all other parties (six out of seven people to the matter) that already agree to the deposition date of September 9th, 2014."

**Motion claim #4 for sanctions:** This last motion claim (page 6) for sanctions against Plaintiffs states reasons for requesting sanctions are since "all the conflicts arising from these subpoenas could have been avoided by the simple courtesy— a ... email to ask council for requested dates of availability" without which is somehow "a calculated attempt to harm Ms. Naclerio."

This is another scandalous statement from Brown and absurd considering the fact they caused the scheduling conflict by rescheduling the deposition date BEFORE consulting with their client—Naclerio. Brown twice requested to reschedule depositions and Plaintiffs both times complied (as attached evidence prove). Affidavit shows, "Emigrant Hall location was not available September 8th. Alternate deposition date September 9th by Brown was chosen; which date Brown reneged upon 12 days later."

Rule 45 for sanctions are only allowed when the party responsible for issuing and serving a subpoena did not "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." Rule 30(f)(4) says "A party who files the

deposition must promptly notify all other parties of the filing.” Plaintiffs promptly filed notice to all parties under this rule. Affidavit shows ‘Plaintiffs took such reasonable step to find other dates that all five parties were available and rescheduled twice at Brown’s request to avoid undue burden. The motion for sanctions thus lacks factual foundation since reasonable steps were taken & not an “undue burden” for Naclerio to either reschedule her vacation one day later, OR else have Naclerio agree to September 8th date by asking St. John’s Church for use of their facility where Defendants conduct their monthly board meetings (Plaintiffs would pay the usual rental fee of \$25). This way Naclerio’s vacation is delayed hours instead of a day.’

Also per Rule 30(d)(2), Plaintiffs request Brown Law Firm be sanctioned to pay a nominal fee to reschedule Naclerio’s departure date for “Brown impeding, delaying, or frustrating the fair examination of the deponent for failing to consult with client-Naclerio BEFORE agreeing to her deposition date. Brown’s motion to quash further impedes, possibly delays, and certainly frustrates the fair examination of the deponent– Naclerio.” (see affidavit ¶ n).

Rule 30(d)(2) Sanction. “The court may impose an appropriate sanction -- including the reasonable expenses and attorney fees incurred by any party -- on a person who impedes, delays, or frustrates the fair examination of the deponent;”

### **CONCLUSION**

Plaintiffs have made many concessions to get even four out five parties to agree on one deposition date of September 9th, even for an alternate date of September 8th. ‘For Brown to postpone Naclerio’s deposition would unfairly delay discovery many more months, costing hundreds of dollars more for separate depositions for which council

TWICE to travel approx. 300 miles round trip from Billings, plus Plaintiffs added costs of a more expensive court reporter.' (attached affidavit ¶ j).

For all the above reasons, Plaintiffs respectfully request an Order from the Court to 1) deny motion to quash for failing to establish an "undue burden" under Rule 45 & 2) sanction Brown Law Firm for impeding or frustrating the fair examination of the deponent-Naclerio per Rule 30(d)(2).

Respectfully submitted this 28th day of August, 2014,

By:   
Daniel O'Connell

By:   
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:   
Valery O'Connell



Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

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. )

Plaintiff(s),

Cause No. DV-11-114

v.

Glastonbury Landowners Association, Inc. )  
& current GLA Board of Directors )

Defendant(s)

**PLAINTIFFS' AFFIDAVIT AGAINST  
MOTION TO QUASH SUBPOENAS**

STATE OF MONTANA )

:ss

County of Park )

Plaintiff(s) Daniel and Valery O'Connell, on our oath depose and state to the best of our knowledge and belief, the information herein is true, correct, and complete, as follows:

- (a) We are both over the age of 18, of sound mind to lawfully file this affidavit having personal knowledge of such matters.
- (b) Attached evidence shows the motion to quash depositions lacks any factual foundation to blame Plaintiffs AND subpoena for alleged "undue burden" to Naclerio. Defendants' motion to quash also needlessly requests to delay deposition discovery for a third time, because Naclerio's alleged "undue burden" of vacation scheduling conflict Sept. 8th can be rescheduled one day later after morning deposition September 9th, 2014 date chosen by Brown.
- (c) Defendants Alyssa Allen and Janet Naclerio both signed the certificate of service (filed with the clerk of court and attached hereto). So both parties "consented to in writing" to service (per Rule 5(b)(2)(F)).
- (d) Alyssa Allen and Naclerio were both put on notice for "pre-discovery disclosure" (per Rule 6(C)(1) with service of the attached May 23rd delay of

discovery notice & with service of the attached Aug. 11th subpoena that served as notice, since subpoenas were modified from its original date of Aug. 28th to September 9th at Brown's request Aug. 14th.

- (e) Both subpoenas state "**August 28th, 2014 at 10am. ... this time, date, and place may be modified...** however, this subpoena will remain in effect for a new time, date, and place...unless this subpoena is quashed." The Brown Law Firm August 14th email letter attached requested a new date of September 8th or 9th for deposition.
- (f) Plaintiffs complied with Brown's request to change subpoena date to September 9th as modified on August 18th, (see attached Notice to Modify...) filed with all parties the same day and 28 days before the September 9th deposition. Subpoena August 11th and August 14th Brown Law Firm letter thus served as notice of "pre-discovery disclosure" serviced to all parties 28 days before the subpoena modified date of September 9th.
- (g) Rule 45 part 3(A)(i), (ii), and (iii) were not part of the motion claims. Therefore motion claim #3 for "undue burden" on page 5 is the only motion claim applicable to quashing the depositions, but for the motion failing to establish any foundation as to subpoena deposition causing Naclerio "undue burden." The motion page 3 claims alleged "undue burden" is for Naclerio's vacation scheduling conflict. Defendants council-Brown Law Firm cause the scheduling mix-up by obviously failing to first consult with their client-Naclerio BEFORE scheduling depositions.
- (h) In addition, there is no factual foundation of Naclerio's "non-refundable" tickets and hotel are "undue burden" of loss of vacation time and money, because almost all hotels allow rescheduling and all five Bozeman airlines were called by Plaintiff to verifying they allow departure date changes to the next day September 9th (after deposition scheduled in the morning). There is a small fee to reschedule her date: which fee is the fault of Brown not conferring with its client.
- (i) Brown's May 18th letter requested to reschedule depositions as Plaintiffs honored and Plaintiffs' August 16th email response agreed to Brown's request to again reschedule depositions, Naclerio vacation scheduling problem was thus caused solely by the Brown Law Firm (attached email letter) initially agreeing to the 9th of September for depositions, then Brown reneged on that date AFTER Plaintiffs had already made reservations for a meeting hall and booked a court reporter. **It is disingenuous for Brown to move to quash by waiting 12 days after Plaintiffs rescheduled at Brown's request.**
- (j) To quash depositions will delay discovery maybe more than three months if and when all five parties can somehow somehow agree on a date which seems unlikely, because Plaintiffs are out of town the end of September as the attached August 18th email said. Also Court rules yet require a court reporter at oral depositions, but their court reporter-Melody Yoes (PO Box 493 Emigrant, Mt) said she is likely not available late September through

most of October, since she is taking an extended vacation in Louisiana much of this time. To find another available court reporter to take her place would cost Plaintiffs hundreds of dollars more in fees, because all other reporters live 30 to 60 miles away in Livingston or Bozeman and charge almost **twice** as much fees plus travel expenses. Postponing Naclerio's deposition would also unfairly delay discovery many more months costing hundreds more for separate depositions for which council must TWICE travel approx. 300 miles round trip from Billings to Emigrant.

(k) It is unfair and undue burden on **Plaintiffs** to delay discovery for months to come for one person whom can reschedule her vacation one day later, rather than inconvenience all other parties (six out of seven people to the matter) that already agree to the deposition date of September 9th, 2014. Emigrant Hall was not available September 8th. Alternate deposition date September 9th by Brown was chosen; which date Brown reneged upon 12 days later."

(l) Plaintiffs took reasonable step to find other dates that all five parties were available and rescheduled twice at Brown's request to avoid undue burden. Plaintiffs took such reasonable steps that were not an "undue burden" for Naclerio to either reschedule her vacation one day later, OR else have Naclerio agree to September 8th date by asking St. John's Church for use of their facility where Defendants conduct their monthly board meetings (Plaintiffs would pay the usual rental fee of \$25).

(m) Sanctions are proper for "Brown impeding, delaying, or frustrating the fair examination of the deponent for failing to consult with client-Naclerio BEFORE agreeing to her deposition date. Brown's motion to quash further impedes, possibly delays, and certainly frustrates the fair examination of the deponent-Naclerio."

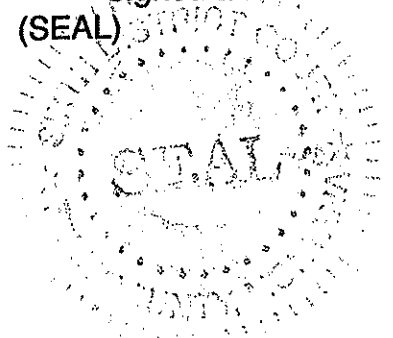
FURTHER AFFIANT SAYETH NAUGHT. Dated AUGUST 28th, 2014.

Signed *Daniel K. O'Connell*  
Daniel O'Connell

Signed: *Valery O'Connell*  
Valery O'Connell

State of Montana )  
County of Park ss. )

Signed and sworn to before me on Aug. 28, 2014.



*Jamela Duvell*  
Deputy Clerk of Court for the  
Sixth Judicial Court  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Matthew I. Tourtlotte  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller

May 28, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027

RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005

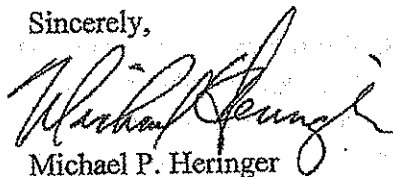
Retired  
Rockwood Brown  
John Walker Ross  
Margo Bonner

Dear Mr. and Ms. O'Connell:

I received your Notice of Delay of Discovery & Oral Deposition dated May 23, 2014. I have a conflict with June 13, 2014, and request that you set the deposition for either June 12, 17, or 18, 2014. If one of those dates is acceptable, please provide an amended notice of deposition including the time, date, method of recording the testimony, and the person before whom the deposition will be taken pursuant to Rule 28(a)(1) of the Montana rules of Civil Procedure.

If none of the proposed dates work with your schedules, I would be happy to provide more dates.

Sincerely,



Michael P. Heringer

MPH:

cc: Alanah Griffith

# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
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Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

August 14, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

**RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005**

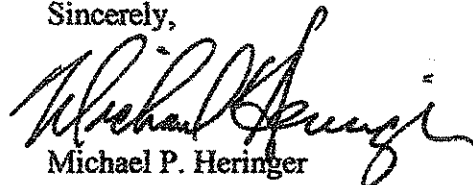
Dear Mr. and Ms. O'Connell:

We have received copies of the subpoenas you served on Alyssa Allen and Janet Naclerio commanding them to appear at depositions on August 28, 2014. Unfortunately, this date will not work for us as we have depositions already scheduled in another case on that date.

We are available for these deposition on August 26, 2014 or September 8, 9 10, or 11, 2014. Please let us know if one of those dates will work for you. If we do not hear back from you, we will move to quash the subpoenas because they are defective.

In the future, if you want to take depositions, it would be helpful to simply write us and let us know who you want to depose. Then, we can provide dates that the deponent and attorneys are available to avoid scheduling conflicts. Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

Retired

Rockwood Brown  
John Walker Ross  
Margo Bonner

MAY 27 2014

Daniel and Valery O'Connell-PRO SE  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

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

Daniel K. O'Connell (a Director of the  
Glastonbury Landowners Association  
Incorporated), & Valery A. O'Connell  
  
Plaintiff(s),  
v.  
"Glastonbury Board of Directors  
& GLA Glastonbury Landowners Assoc. Inc.)  
Defendant(s)

Cause No. DV-2011-114

**PLAINTIFFS  
NOTICE OF DELAY OF DISCOVERY  
& ORAL DEPOSITION**

Plaintiffs, Dan and Val O'Connell, hereby file notice of delay of discovery, and notice of further discovery by oral deposition on June 13, 2014 per M.R.Civ. P., 45 & 30.

**Factual Brief**

Plaintiffs contend for good cause that discovery has being delayed since fall 2013 to give Defendants more time to comply with issues in dispute since seven GLA Directors have been removed or resigned; also for proposed election (Nov. 12, 2014) of proposed amendments to the GLA Governing Documents that would settle some issues in dispute before trial; and also for medical reasons that took Plaintiff(s) Daniel out of state for several months for physical therapy.

This is also notice of discovery by subpoena to compel an Oral Deposition and documentation from Defendant and GLA President, Alyssa Allen on June 13, 2014 per M.R.Civ. P., 45 & 30 at County Court House lower room (across from Planning Dept.).

Submitted this 23rd day of May, 2014.

By: Daniel K. O'Connell Daniel K. O'Connell

By: Valery A. O'Connell Valery A. O'Connell

Certificate of Service

The following parties were serviced the same day the forgoing documents by Plaintiff via first class mail postage prepaid to the following addresses:

GLA Attorney(s) of record:  
Alanah Griffith  
1184 N. 15th St. Suite #4  
Bozeman, Mt. 59715

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

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

By: Valery A. O'Connell Valery A. O'Connell

# BROWN LAW FIRM, PC

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Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

August 18, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

**RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

We have reviewed your email of August 18, 2014 with the attached "Notice to Modify Date and Place of Depositions," and we need to clarify some things regarding your taking the depositions of Alyssa Allen and Janet Naclerio. First, your email stated the depositions would be on Tuesday, September 9, 2014, but the "Notice to Modify Date and Place of Depositions" states you wish to depose Ms. Allen and Ms. Naclerio on Monday, September 8, 2014.

Second, Ms. Allen and Ms. Naclerio are not Defendants in this lawsuit. The only named and served Defendant is the Glastonbury Landowners Association, Inc. To refer to Ms. Allen and Ms. Naclerio as Defendants is erroneous.

Third, Ms. Naclerio is not available for her deposition from September 8 through September 23. She will be out of town visiting family, a trip planned well before you tried to subpoena her. She is available on August 26, and Ms. Allen and I are available that day as well. I would prefer to do both depositions the same day. However, if you want to depose only Ms. Allen on September 8 or 9, then we can be available.

Please let us know how you wish to proceed, and contact me with any questions.

Sincerely,

  
Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

Retired  
Rockwood Brown  
John Walker Ross  
Margo Bonner



# BROWN LAW FIRM, PC

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August 14, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

Retired

Rockwood Brown  
John Walker Ross  
Margo Bonner

**RE: O'Connell v. Glastonbury Landowners Association**  
**Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

We have received copies of the subpoenas you served on Alyssa Allen and Janet Naclerio commanding them to appear at depositions on August 28, 2014. Unfortunately, this date will not work for us as we have depositions already scheduled in another case on that date.

We are available for these deposition on August 26, 2014 or September 8, 9 10, or 11, 2014. Please let us know if one of those dates will work for you. If we do not hear back from you, we will move to quash the subpoenas because they are defective.

In the future, if you want to take depositions, it would be helpful to simply write us and let us know who you want to depose. Then, we can provide dates that the deponent and attorneys are available to avoid scheduling conflicts. Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr  
Cc: Alyssa Allen

From: **Daniel O'Connell** dko@mac.com  
Subject: **Re: O'Connell v Glastonbury Landowners Association**  
Date: **August 16, 2014 at 1:40 PM**  
To: **Kelly Anderson** KAnderson@brownfirm.com



On Monday, we will send out a notice to all parties changing the date and place of these two depositions to September 8, 2014 at the Emigrant Hall.

From: **Daniel O'Connell** dko@mac.com  
Subject: **Re: O'Connell v Glastonbury Landowners Association**  
Date: **August 18, 2014 at 10:44 AM**  
To: **Kelly Anderson** KAnderson@brownfirm.com  
Cc: **Michael Heringer** MiHeringer@brownfirm.com, **Seth Cunningham** SCunningham@BrownFirm.com, **Anna Robertus** ARobertus@BrownFirm.com



We are filing this notice to change the subpoena date and place to Tuesday September 9, 2014 at the Emigrant Hall.



From: **Daniel O'Connell** dko@mac.com  
Subject: **Re: O'Connell v Glastonbury Landowners Association**  
Date: **August 18, 2014 at 10:27 PM**  
To: **Kelly Anderson** KAnderson@brownfirm.com, **Michael Heringer** MiHeringer@brownfirm.com, **Seth Cunningham** SCunningham@BrownFirm.com, **Anna Robertus** ARobertus@BrownFirm.com  
Cc: **alyssaallen33@gmail.com**, **Janet Naclerio** Jannac99@aol.com



Date: **Aug. 18, 2014**  
Re: **Brown Law Firm letter of Aug. 18, 2014**  
To: **Brown Law Firm and Alyssa Allen, and Janet Naclerio,**

The notice to modify date and place was changed at the last minute to September 9th, because Emigrant Hall was not available on the 8th. caption reads Defendants are "Glastonbury Landowners Association, Inc. & current GLA Board of Directors." Thus Allen and Naclerio are Defendants. Any captions without this are a typo and should read as stated above for Defendants.

Janet Naclerio must be at the oral deposition Scheduled for September 9, 2014. We changed the date at your request and booked the Emigrant Hall. We can not change it just as the 26th is not available, nor are we. We also need time to prepare and 7 days is not enough, since we put this off due to the date change. Therefore, September

Sincerely,  
Damn and Val O'Connell

AUG 20 2014

Daniel & Valery O'Connell - PRO SE  
P.O. Box 77  
Emigrant, Mt. 59027  
406-577-6339

**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. )

Cause No. DV-12-114

Plaintiff(s), )

v. )

**NOTICE TO MODIFY DATE  
AND PLACE OF DEPOSITIONS**

Glastonbury Landowners Association, Inc. )  
Board of Directors )

Defendant(s) )

Plaintiffs Daniel and Valery O'Connell, hereby submit this "Notice To Modify Date And Place of Depositions" for Alyssa Allen and Janet Naclerio (both GLA Defendants). The August 11, 2014 Subpoenas originally stated the the date and place of these depositions "to be held at the Court House in Park County on (modified) Thursday, August 28th, 2014 at 10am. or as this time, date, and place may be modified,..." This notice hereby modifies this date and place of these depositions to now be held at the Emigrant Hall (Emigrant MT. next to the Emigrant Post Office) in Park County on <sup>Tuesday</sup> ~~Monday~~ September 2<sup>nd</sup> 2014 at 10Am for Janet Naclerio and 12 PM for Alyssa Allen. This modified date was requested by GLA Defendants council per attached email letter.

(Note: Oral Depositions may necessitate discovery of document requests to support oral deposition statements given. Also GLA Board Defendants for no good cause have repeatedly denied O'Connell/GLA member requests for documents made June-July

2014. This is because O'Connell's as members have a right to request GLA member documents that may or may not be used for discovery.)

Respectfully submitted this 18th day of August, 2014.

Signed Daniel K. O'Connell Signed: Valery O'Connell  
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: Valery O'Connell  
Valery O'Connell

Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027 &  
P.O. Box 77 4  
406-577-6339

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. )

Cause No. DV-11-114

Plaintiff(s), )

v. )

**SUBPOENA**

Glastonbury Landowners Association, Inc. )  
& current GLA Board of Directors )

Defendant(s) )

PLAINTIFFS TO:

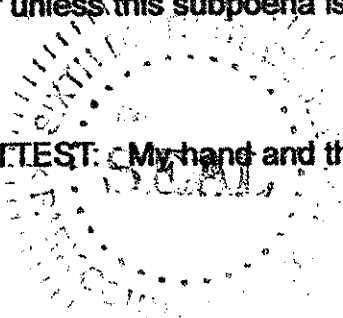
Janet Naclario  
119 Capricorn Drive  
Emigrant, Mt. 59027

WE COMMAND YOU, that all business and excuses being laid aside, and that you appear in person regarding this matter, before the Court Reporter of the Sixth Judicial District, State of Montana, for the County of Park, at a term of the Court Reporter & using audio/visual recording devise to transcribe, to be held at the Court House in Park County on (modified) **Thursday, August 28th, 2014 at 10am.** or as this time, date, and place may be modified, then and there to testify for oral deposition questions in the above said civil action now pending, on the part of the Plaintiffs and disobedience will be punished as a contempt of said court.

Please contact the O'Connells to confirm the time, date, and place when you must appear at (406) 577-6339. This matter may be continued, however, this subpoena will remain in effect for a new time, date, and place until final determination of this case or unless this subpoena is quashed.

Witness, Clerk of Court of the Sixth Judicial District, in the Sixth Judicial District, and seal of said Court, this 11 day of August, 2014.

ATTEST: My hand and the seal of said court the day and year last above written.



Janet Naclario  
Clerk

\_\_\_\_\_  
Deputy Clerk

State of Montana )  
County of Park )

**Certificate of Service**

*Janet Naclerio*

*Janet Naclerio*

HEREBY CERTIFY that I received the within  
Subpoena in said action on the 13<sup>th</sup> day of August 2014, and personally served the same on the 13<sup>th</sup>  
day of August, 2014 & fees for one day service and mileage fee, on Janet Naclerio, being the person  
named in said Subpoena, by delivering to and leaving with said person personally, in the County of Park,  
State of Montana, a copy of said Subpoena & fees.

Daniel & Val O'Connell  
P.O. Box 77  
Emigrant, Mt. 59027 &  
P.O. Box 77 4  
406-577-6339

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. )

Cause No. DV-11-114

Plaintiff(s), )

v. )

**SUBPOENA**

(modified date)

Glastonbury Landowners Association, Inc. )  
& current GLA Board of Directors )

Defendant(s) )

PLAINTIFFS TO:

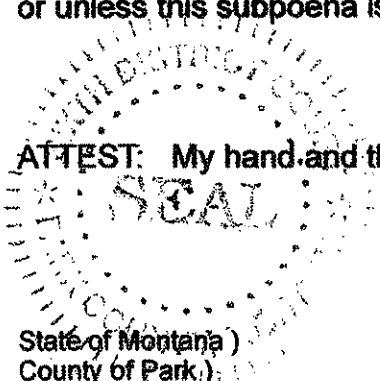
**Alyssa Allen**  
53 Polaris Way  
Emigrant, Mt. 59027

**WE COMMAND YOU, that all business and excuses being laid aside, and that you appear in person regarding this matter, before the Court Reporter of the Sixth Judicial District, State of Montana, for the County of Park, at a term of the Court Reporter & using audio/visual recording devise to transcribe, to be held at the Court House in Park County on (modified) Thursday, August 28th, 2014 at 12pm. or as this time, date, and place may be modified, then and there to testify for oral deposition questions in the above said civil action now pending, on the part of the Plaintiffs and disobedience will be punished as a contempt of said court.**

Please contact the O'Connells to confirm the time, date, and place when you must appear at (406) 577-6339. This matter may be continued, however, this subpoena will remain in effect for a new time, date, and place until final determination of this case or unless this subpoena is quashed.

Witness, Clerk of Court of the Sixth Judicial District, in the Sixth Judicial District, and seal of said Court, this 11 day of August, 2014.

ATTEST: My hand and the seal of said court the day and year last above written.



Jane Fink  
Clerk

\_\_\_\_\_  
Deputy Clerk

State of Montana )  
County of Park. )

**Certificate of Service**

*Alyssa Allen*

I *Alyssa Allen* HEREBY CERTIFY that I received the within Subpoena in said action on the *14* day of August, 2014, and personally served the same on the *14th* day of August, 2014 & fees for one day service and mileage fee, on Alyssa Allen, being the person named in said Subpoena, by delivering to and leaving with said person personally, in the County of Park, State of Montana, a copy of said Subpoena & fees.



From: mymovies2@mac.com  
Subject: oral deposition payment  
Date: August 21, 2014 at 2:16 PM  
To: Alyssa Allen alyssa@imt.net

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Alyssa and Janet,

It is required to pay you mileage for the oral deposition. The minimum is \$11 per day for your September 9, 2014 oral depositions at Emigrant Hall.

I mailed you both a check for \$11.

Alyssa, please tear up the prior check we gave you for \$44 since it was not the right amount after moving the location to Emigrant Hall.

Thanks,  
Val

PS. Janet sorry if the deposition date is inconvenient, but this was the only time that every one else was available, including the court reporter.