

PARK COUNTY CLERK
OF DISTRICT COURT

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

JUNE LITTLE
2014 SEP 10 PM 2 54

FILED
BY MOLLY BRADREBY
DEPUTY

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' MOTION FOR RELIEF FROM ORDERS
DATED SEPTEMBER 8, 2014**

Per M.R.Civ.P., Rule 60, the Plaintiffs,' as GLA Director & member(s) of the GLA

Landowners Association, submit this "Motion For Relief From Orders Dated September 8, 2014." Plaintiffs respectfully request relief from such Orders of "1) oversight/ omissions and mistake, inadvertence, or excusable neglect" and for Defendants "misrepresentation" of facts: & for any other reason that justifies relief.

Rule 60. Relief from Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the supreme court and while it is pending, such a mistake may be corrected only with the supreme court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

b. Orders again err to quash Naclerio's subpoena for lack of pre-discovery disclosure, because Naclerio's "pre-discovery disclosure" notice was also given by attached "Notice to modify...Depositions." Defendants' council letter (that agreed to depositions on Sept 9th) of August 14, 2014 is a second pre-discovery disclosure, as such document was also given to all parties 21 days before depositions were scheduled. These notices of "pre-discovery disclosure" given to all parties sufficed to put all parties on notice of discovery, and obviously both Deposed witnesses received disclosure of pre-discovery. Orders oversight/omission thus failed to realize "pre-discovery disclosure" was given to all parties seven times.*

(*Note: "Appropriate pre-discovery disclosure" includes the May 23rd "Notice of Delayed Discovery & [notice of] Oral Deposition" for Allen's deposition. In August both Allen and Naclerio were deposed and notice was given to all parties by a Aug. 28th deposition request; and by council Brown Law Firm August 14th letter stating what dates Allen & Naclerio was available for depositions; and also by Plaintiffs three attached emails. Then on August 18th, Both Allen and Naclerio were given Plaintiffs "Notice to modify...Depositions" further notice. All these notices amount to seven (7) different notices of pre-discovery depositions.)

2. Whether or not these seven pre-discovery disclosures were "appropriate" was not a motion claim nor in the Order.

Sixth Judicial District local court rule 6(c)(1) requires "making an appropriate pre-discovery disclosure" prior to seeking discovery, (which was not clear to Plaintiffs what this meant, nor which local court rules to follow since the Judge is from another court).

a. However, local Rule 6 referred to in the Motion to Quash (page 4) only cite a claim for lacking any "pre-discovery disclosure" NOT for inappropriateness and rule 6 above does not define what is "appropriate" disclosure. Also the motion only claimed that no discovery disclosure was given at all. Whether

such seven notice disclosures were “inappropriate” was thus NOT a motion claim, yet such claim is refuted by Plaintiffs motion affidavit & reply showing their “Delay of Deposition...” and “Notice to modify...Depositions” were both appropriate pre-discovery disclosure notice given 3 months and again 31 days before depositions. More importantly, Defendants council responded to “Delay of Deposition...” and “Notice to modify...Depositions” in their letter of August 14, 2014 by agreeing to depositions date of September 9th; thereby showing they confirmed and agreed that such discovery disclosure was appropriately given by such documents.

b. Again, local court rule 6(c)(1) fails to define or give example of what constitutes “appropriate pre-discovery disclosure” and Orders and motion failed to cite any “inappropriate” disclosure. Orders apparently added this claim not found in the motion. To the detriment of Plaintiffs’ discovery attempts Orders thus in err arbitrarily and capriciously granted such claim not pleaded in the motion & contrary to the evidence & affidavit.

3. Orders ¶13 also demanded “Once Plaintiffs comply with the [pre-discovery disclosure] requirement, all future requests for depositions shall be coordinated through opposing council.” However nowhere in the rules or law does it require a party to “coordinate” ALL depositions “through opposing council.” This Order is an undue burden on Plaintiffs attempts at discovery. Local court rule 6 requires only pre-disclosure notice to all parties. If the Orders meant to impose this additional requirement that exceeds authority under the rules as a sanction against Plaintiffs, the Orders mistakenly failed to

do so for failure to state any sanctions were granted; which Plaintiffs hereby argue is prejudicial and unfair for delaying discovery by this requirement for them only.

- c. Orders mistakenly imposed this new condition for all future depositions on Plaintiffs absent good cause and absence evidence, especially since attached emails (August 16th and two more on August 18th) all show Plaintiffs coordinated with opposing council for their request for discovery AND deposition date change from August 28th to September 9th.
- d. Defendants council after agreeing to this Sept. 9th deposition date, opposing council demanded Plaintiffs again change the deposition date to late September due solely to Naclerio's vacation plans. This date chosen by opposing council due to no fault of Plaintiffs conflicted by Naclerio's vacation, due only to Brown Law Firm failure to consult with their client-Naclerio before they agreed to the Sept. 9th date.

To penalize and impose this condition on Plaintiffs for opposing councils mistake is an unfair abuse of discretion. Thus Orders ¶3 err that arbitrarily and capriciously impose such claim not in the motion and err for being contrary to evidence and affidavits.

Rule 45(d)(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.

"A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject

to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee." Mont. R. Civ. Proc. 45(c)(1).

4. **UNDUE BURDEN ISSUE:** This rule 45 above clearly allows for sanctions for only two reasons 1) if a party caused "undue burden" 2) or undue expense on a person subject to the subpoena. The Orders failed to state that any sanctions were taken against Plaintiffs for any of these two reasons. Orders also failed to find any undue burden or expense existed against Naclerio. Plaintiffs reply motion affidavit evidence disproves any undue burden or expense were caused by Plaintiffs. Plaintiffs affidavit shows a one day delay in vacation does not constitute any "undue burden or expense." Instead, Brown Law Firm failing to consult with their client Naclerio BEFORE they agreed to Naclerio's Deposition date of September 9th caused any burden or expense. Plaintiffs acted in good faith on GLA council's written agreement (see attached August 14th Brown Law Firm letter) to reschedule depositions on council's requested date of September 9th. Brown themselves claimed their law firm was not available on August 28th date. So deposition schedule change was for Brown's requested benefit that ended up conflicting with his client Naclerio's vacation date by one day.

5. Orders only reason to quash both subpoenas appears to imply (not state) that "appropriate pre-discovery disclosure" was not first given. Orders fail to address the rule 45 "undue burden" requirements to quash a subpoena, as contrary to rule 45 above that requires an "undue burden." Nowhere in the motion does it claim absence of "pre-discovery disclosure" was an undue burden on anyone. Defendants motion instead

claimed "undue burden" ONLY for Naclerio's vacation date conflicting with deposition date of September 9th agreed upon by Naclerio's council. Affidavit evidence refuted this "undue burden" claim. And motion response page 6 claims "all the conflict arising from these subpoenas could have been avoided with...a letter or email stating who they would like to depose and requesting dates of availability."

This is contradictory to Defendants motion page 1 that said "on May 23, 2014... Plaintiffs filed "Notice of Delayed Discovery & [notice of] Oral Deposition" ... stating they were going to subpoena Alyssa Allen for [oral] depositions." Also Seven documents total notice was given in June and early August refute this. Defendants thus misrepresented to the court that Plaintiffs somehow refused "to communicate with GLA's council" because all seven documents were communications between Plaintiffs & GLA council.

6. **New claim:** Council Brown's letter (Aug. 14) also made a contract agreement with Plaintiffs that if Plaintiffs contacted Brown then no motion to quash would be filed. Plaintiffs agreed to this contract by emailing Brown Law Firm August 16th and 18th. This written contract was obviously violated by Brown who yet filed a motion to quash after Plaintiffs contacted them. This Brown's contract violation and Brown's failure to first consult with Naclerio and MT. Supreme Court ruling below all negate Orders imposing motion attorney fees against Plaintiffs.

Montana generally follows the American rule that a party may not recover attorney fees in a civil action absent statutory or contractual authority. Hughes v. Ahlgren, 2011 MT 189, ¶ 13, 361 Mont. 319, 258 P.3d 439.

ATTORNEY FEES: *Contrary to the Opinion above, there was no contract in question.*

Attorney fees were yet awarded without contract or statutory authority. The only possible

statutory authority was under rule 45 for sanctions for a finding of "undue burden" on Allen deposed. However Orders never made such finding. If Orders meant to impose sanctions on Plaintiffs, such Orders error being absent findings that Deposed incurred any "undue burden or expense." More importantly, the motion made NO "undue burden" claims for Allen, only for Naclerio. Motion page 7 is prima facia evidence of this by saying, "Ms. Allen is available on September 9th" for deposition. This admission clearly shows the motion never claimed any "undue burden" on Allen, who was available for depositions on September 9th.

The motion claimed ONLY Naclerio NOT Allen was burdened by the subpoena. Plaintiffs reply & affidavit yet negate such claim of Naclerio's "undue burden." Brown's contract violation, Brown's failure to first consult with Naclerio, the MT. Supreme Court ruling, all refute Naclerio's "undue burden" claim. That is why Plaintiffs reply argued Defendants gave no foundation showing how Naclerio's one day vacation delay was an "undue burden." The motion failed to even refute this defense. Orders contrary to this rule 45 requirements thus err lacking "undue burden" evidence and lacking any statutory authority to quash the subpoenas and attorney fees just for lack of pre-discovery notice. In fact, since Plaintiffs prevailing on two motion issues (regarding service and "undue burden"), they should not be sanctioned nor penalized by the Order requirements.

C. Kansas Court decision supports this Rule 60 motion for relief from all Orders of September 8th:

Since 1980, the Montana Supreme Court has only allowed a handful cases to be sanctioned or allow attorney fees under rule 45. But none of these few Montana cases

ever awarded attorney fees for lack of “pre-discovery disclosure” notice. Only one case found in Kansas even addresses this rare issue.

Under Mont. R. Civ. P. 45(c)(1), a party responsible for the issuance of a subpoena must “take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.”

The Kansas court (2007, Case No. 06-2422-JWL) stated, “defendant does not contend that it was unaware of plaintiffs’ intention to send subpoenas[.]” Rather, defendants contend that because a copy of the subpoena was not forwarded to defendant prior to the issuing of the subpoenas or at the time the subpoenas were issued, defendant was deprived of an opportunity to object ... The court disagrees. The court notes as an initial matter that few cases in this district have directly addressed whether notice under [this] Rule 45 must be provided prior to or contemporaneous to service of a subpoena. .. but such violations of Rule 45 [notice] do not necessarily warrant quashing the subpoena. Rather, when notice has been given [contemporaneous or] after a subpoena is served but before the response period has expired, courts generally look to whether opposing counsel has had sufficient time to object. Specifically, when opposing council has notice and sufficient time to object, they are not prejudiced by the [notice] violation.”

In this present case, Defendants & council received sufficient time to object after notice was given in May (see “Notice of Delayed Discovery & [notice of] Oral Deposition”) before the subpoena was served; and after subpoenas the day the subpoena was served August 11th and August 13th (see Plaintiffs subpoena certificate of services). Defendant then received more notice by Plaintiffs (see three attached emails) and by council Brown’s August 14th and 16th emails in response—a few days after the subpoena was served, but at least 17 days before the date of compliance; which Brown yet agreed to the depositions be changed to September 9th, giving a total of 31 days notice before the date of compliance. Historically under these circumstances, courts found that a defendant has not shown it was prejudiced by this, as defendant still had sufficient time to object. For this same reason, the Kansas court overruled defendant’s motion to quash on these grounds of sufficient notice. Likewise, Defendants

had notice given 31 days prior was sufficient time (appropriate discovery notice) to object, and defendants have not shown they were prejudiced in any way by this. Orders awarding attorney fees thus lack sufficient evidence for defendants failure to show they were prejudiced in any way by these seven notices.

D. Orders error to allow local Rule 15 violation: Orders demand that Plaintiffs follow the Sixth Judicial District Court Local Rules for "pre-discovery disclosure" notice; which Plaintiffs arguably did. However court Orders by mistake or oversight allowed Defendants to violate these same local court rules. This is because Sixth Judicial District Court Local Rules 15 requires, "in all civil cases in which attorney's fees are requested in the pleading, the party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim..."

Defendants motion request for sanctions of attorney fees failed to give any affidavit itemizing this attorney fee claim. This absence of such affidavit proves Orders granted Defendant attorney fees in violation of this rule. Such Orders not only harms Plaintiffs equal protect rights under this local rule and constitution, it fatally harmed Plaintiffs rights to plead against such attorney fees before granting attorney fees (in violation of this rule).

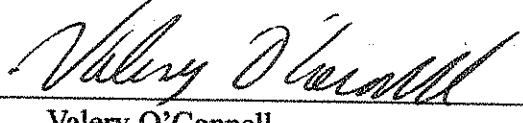
Conclusion

Plaintiffs respectfully request relief from September 8th Orders due to courts "1) oversight/omissions and mistake, for Plaintiffs inadvertence or excusable neglect for believe pre-discovery documents were adequate, for Defendants "misrepresentation" of facts regarding notice & for any other reason that justifies relief as follows:

- 1) Orders mistakenly violate local rule 15 requirement absent Defendants' affidavit itemizing attorney fee claim; and

- 2) Orders demand of "all future requests for depositions shall be coordinated through opposing council" exceeds rule requirements for depositions, as an undue burden on Plaintiffs discovery attempts; and
- 3) Motion admission (page 7) that Allen was available for depositions September 9th and affidavit shows lack of sufficient evidence to support the Order for quashing depositions; and
- 4) Orders err absent sufficient evidence to support Order's implied lack of "pre-discovery disclosure" since notice was given seven times and Defendants failed to cite any prejudice by these notices or violation; and
- 5) Orders lack authority to quash subpoenas & award motion attorney fees without "statutory or contractual authority" (Id. Hughes Opinion) and absent finding any sanctionable "undue burden" on Deposed per rule 45(d); which Orders are thus in err as contrary to rule 45 requirements.
- 6) To not vacate all Orders, unduly burdens & unlawfully penalizes Plaintiffs' discovery attempts, and needlessly delays such discovery several weeks or months.

Respectfully submitted this 10th day of September, 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

1 HON. DAVID CYBULSKI
District Judge
Fifteenth Judicial District
2 573 Shippe Canyon Road
Plentywood, Montana 59254
3 (406) 286-5615
4
5

6 MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

7 DANIEL K. O'CONNELL and VALERY A.
8 O'CONNELL,

9 Plaintiffs,

10 v.

11 GLASTONBURY LANDOWNERS
12 ASSOCIATION, INC. & Current GLA Board
of Directors,

13 Defendants.

Cause No.: DV-2011-114
Judge David Cybulski

ORDER GRANTING DEFENDANT'S
MOTION TO QUASH SUBPOENAS
FOR DEPOSITIONS

14 THE COURT, having reviewed Defendant Glastonbury Landowners Association, Inc.'s (GLA)
15 Motion to Quash Subpoenas for Depositions, Plaintiffs' Response in Opposition, and the GLA's Reply
16 to the Response, the file and the law, now makes the following Order:
17


18 1. Defendant's Motion to Quash Subpoenas for Depositions is GRANTED, and the subpoenas
19 commanding Alyssa Allen and Janet Naclerio to appear for their depositions are hereby quashed and
20 any upcoming depositions are canceled.

21 2. Before conducting any more discovery in this case, Plaintiffs are ordered to comply with Rule
22 6 of the Montana Sixth Judicial District Court Rules and make an appropriate pre-discovery disclosure.
23

24 3. Once Plaintiffs comply with the above requirement, all future requests for depositions shall be
25 coordinated through opposing counsel.
26
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1 4. Plaintiffs shall pay Defendant's reasonable attorney fees and costs incurred in bringing and
2 briefing this Motion. Defendants shall submit to the Court an affidavit of fees and costs with a proposed
3 order no later than September 1, 2014 for approval by the Court.

4 SO ORDERED this 8th day of September, 2014.

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7 

8 DAVID CYBULSKI, District Judge

9
10 cc: Daniel and Valery O'Connell
11 Michael P Heringer
12 Alanah Griffith
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27
28

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

JUN 12 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.)

Plaintiff(s),)

v.)

Glastonbury Landowners Association, Inc.)
Board of Directors)

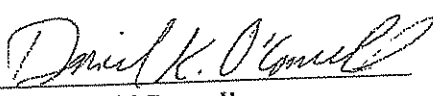
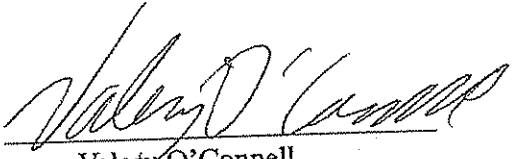
Defendant(s))

Cause No. DV-12-114

DELAY OF DEPOSITION PENDING
MOTION TO INDEMNIFY

Plaintiffs-Daniel and Valery O'Connell, hereby submit this notice of "Delay of Deposition Pending Motion To Indemnify." Delay of Oral Deposition for Alyssa Allen is hereby temporarily postponed until a later date to be announced by Plaintiffs to allow for the indemnification motion of June 3, 2014 to be settled. This is because such indemnification can effect the oral deposition by providing legal council to the O'Connells.

DATED this 10th day of June, 2014.

Signed  Signed: 
Daniel O'Connell Valery O'Connell

Certificate of Service


We, Daniel & Val O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via certified mail AND EMAIL on this same day to:

Alanah Griffith
26 E. Mendenhall
Bozeman, Mt. 59715
alanah@papegriffithlaw.com

Alyssa Allen
PO Box PO Box 333
Emigrant, MT. 59027
alyssaallen33@gmail.com

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

U.S.L.I. Insurance Agent & GLA attorney
Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849
mheringer@brownfirm.com

By: 
Valery O'Connell

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. Tourlotte
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

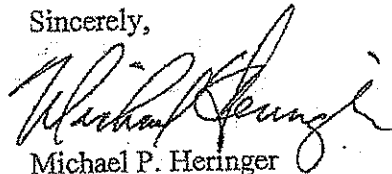
Retired
Rockwood Brown
John Walker Ross
Margy Bonner

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

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.)
)
Plaintiff(s),)
)
v.)
)
Glastonbury Landowners Association, Inc.)
Board of Directors)
)
Defendant(s))
_____)

Cause No. DV-12-114

NOTICE TO MODIFY DATE
AND PLACE OF DEPOSITIONS

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 ~~Monday~~ ^{Tuesday} September 2nd 2014 at 10Am for Janet Nacleroi 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
Daniel O'Connell

Signed: Valery 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

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

By: Valery O'Connell
Valery O'Connell

Alanah Griffith
26 E. Mendenhall
Bozeman, Mt. 59715

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

BROWN LAW FIRM, PC

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

August 14, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

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

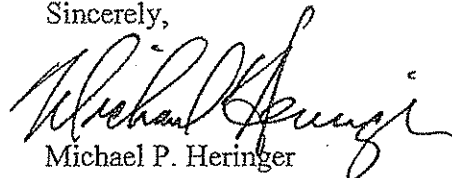
Dear Mr. and Ms. O'Connell:

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

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

Retired
Rockwood Brown
John Walker Ross
Margo Bonner

Seth Cunningham

From: Daniel O'Connell [dko@mac.com]
Sent: Monday, August 18, 2014 10:27 PM
To: Kelly Anderson; Michael Heringer; Seth Cunningham; Anna Robertus
Cc: alyssaallen33@gmail.com; Janet Naclerio
Subject: Re: O'Connell v Glastonbury Landowners Association

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.

nd pleadings paPage one 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
Emigrant Hall is not back to August 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

Sin

Sincerely,
Damn and Val O'Connell

On Aug 18, 2014, at 4:02 PM, Kelly Anderson <KAnderson@brownfirm.com> wrote:

Attached is a letter from Mike Heringer regarding the depositions of Alyssa Allen and Janet Naclerio. The original is being sent U.S. mail.

Kelly Anderson
Paralegal
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
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<8-18-14 O'Connell re depositions.pdf>

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** MHeringer@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** MHeringer@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 August 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