

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

PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

2014 OCT 14 PM 4 35

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

SHILLY BALES

BY _____
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' MOTION FOR DELAY OF ORDERS PENDING RULE 60 MOTION
OUTCOME & RESPONSE AGAINST ATTORNEY FEES & COSTS

Plaintiffs, as GLA Director & member(s) of the GLA Landowners Association, hereby files this response and attached affidavit factually refuting the "Defendant's Submission Of Attorney Fees and Costs" as unproven, unproductive, excessive, or redundant, & unreasonable.

Note: Brown's pleadings were filed on a Friday; which means Plaintiffs rural location did not get this pleading(s) until Tuesday, September 30, 2014; which delayed this timely response.

For all the reasons below & in Plaintiffs' rule 60 pleading, Plaintiffs also hereby file this motion requesting delay of Orders (dated September 8th) until after their Rule 60 Motion has been fully adjudicated.

Plaintiffs absent time and billing documents object to all alleged costs and fees claimed by Brown Law Firm, because such costs and fees are unproven, unproductive, excessive, or redundant, & unreasonable (not necessary) & contrary to Orders. that said, "Plaintiffs shall pay "Defendant's reasonable attorney fees and costs incurred in bringing and briefing this Motion" to quash.

A. Attached affidavit & GLA budget report shows Defendants since January through September 2014 have only incurred \$175.00 for "1310 - Legal Costs - O'Connell." Defendants have only incurred \$175.00 since January, none of which had to do with the Motion to Quash.

This is because Defendants have stated to O'Connells and other members that the GLA has insurance that covered the cost of all Brown's services including bringing the Motion to Quash. The GLA insurance company incurred such costs and fees not the GLA. GLA insurance company is the only party that actually incurred attorney fees & costs for the motion to quash. Thus the Orders err (as mistake, inadvertence, neglect) since "Defendants" did not incur any legal fees or costs, nor did Brown Law Firm.

B. Not only is 32.5 hours total an unreasonable amount of hours taken for this motion to quash; but also notice both Brown attorneys claim to do the same thing absent time and billing documents as unsupported, unproductive, excessive, or redundant fees and costs, & one attorney charged \$2,468.50 MORE than the other attorney further showing unreasonable costs & fees.

Heringer affidavit claims he spent 6.8 hours & \$1,258 as his "fees billed for review of documents, communication with clients, research, drafting, and revising... the Motion to Quash." Also Cunningham affidavit claims the same thing except he spent 25.7 hours & \$3,726.50 as his "fees billed for review of documents, communication with clients, research, drafting, and revising... the Motion to Quash."

Obviously 32.5 hours is so exorbitant as to be unbelievable nor reasonable in and of itself just to file one motion to quash. But are absent evidence of time and billing documents.

Montana Supreme Court said, " Reasonable fees do not include fees that were "unproductive, excessive, or redundant," and the fee claimant must establish reasonableness by the presentation of evidence." *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d at 799 (5th Cir. 2006), (citation omitted)."

The evidence Defendants submitted to the District Court failed to establish reasonableness since it consisted of two almost identical affidavits containing a total of three sentences testimony only from two of GLA's counsel as unproductive, excessive, or redundant.

Brown Law Firm's costs & fees for the motion at 36.5 hours or almost \$5,000 is five times higher than the highest law firm estimate for a typical 6 1/2 page motion to quash; which showed anything more than a \$1,000 is unreasonable (not necessary). But also this discrepancy in "fees billed" shows Cunningham overcharged by \$2,468.50; which discrepancy is also unproductive, excessive, or unreasonable (not necessary) as contrary to the Orders allowing only "reasonable fees and costs." In fact, attached affidavit & documents from other law firms show a typical motion to quash only cost from \$500 to \$1,000 or up to seven hours. Notice that Defendants fail to say that their claimed fees & costs were reasonable (necessary), and obviously two attorneys charging different fees to file one motion is obviously unreasonable. Therefore, Plaintiffs object to all attorney fees & costs; especially over \$1,000 as being unreasonable (not necessary); as contrary to the Orders that required "reasonable attorney fees & costs..."

- C. **Orders did not say that such fees and costs include "review of documents, communication with clients, research, drafting, and revising" the Motion were allowable costs, & Orders allowed only "attorney fees and costs in bringing and briefing this Motion."**

Nowhere does Brown's affidavits say that these Brown Law Firm costs were for "bringing and briefing this Motion." It is unfair, and harmfully prejudicial to Plaintiffs to assume these Brown Law Firm costs were for "bringing and briefing this Motion." Yet Brown claims fees & costs (for "review of documents, communication with clients, research, drafting, and revising" the Motion) are the only costs claimed by Brown Law Firm.

All such costs and fees claimed by Brown Law Firm are unreasonable as contrary to Orders, and for failing to show that their fees & costs were the same thing as "bringing and briefing this Motion." In fact, Plaintiffs refute all such fees and costs by claiming the following:

1. Defendants falsely claimed fees & costs for "review of documents," but did not say if these "documents" had to do with "bringing & briefing the Motion" itself.

The only documents attached to the Motion had to do with a handful of email/letters between Plaintiffs and Brown Law Firm. Such review of these documents have no relation to proving “undue burden” as required for a motion to quash. These documents thus only relate to the lack of service or notice claims; which claim the Orders failed to grant. The Court must first consider the rule 60 motion refuting these claims,* since Orders failed to grant the lack of service or notice claim.

(*See rule 60 motion reply page 4 that shows, “Defendant August 14, 2014 letter states” If we do not hear back from you, we will move to quash the subpoenas because they are defective.” This Defendant letter (& contract) was not part of the motion to quash, yet seemed to show that if Plaintiffs give notice to Defendants to change deposition dates this would eliminate and fix any lack of pre-discovery notice;” which was a contract agreement violated by Defendants.)

Therefore they failed to show fees & costs for “review of documents,” were reasonable (necessary) & the same thing as “bringing and briefing this Motion” as contrary to this Order.

2. Defendants falsely claimed fees & costs for “communication with clients,” but did not say if these “communication with clients,” had to do with “bringing & briefing the Motion” itself; which is contrary to Orders.

In fact Orders failed to grant Defendants claims for subpoena lack of service; which very well could have been the sole reason for such “communication with clients.”

There would have been no reason to communicate with clients on “bringing and briefing this Motion” which is a legal skill. Thus it is not reasonable (or necessary) for both attorney to “communication with clients” for “briefing this Motion” much less to get their approval which at most was a 5 minute conversation having nothing to do with “bringing this motion.”

Therefore they failed to show that their fees & costs for “communication with clients,” were reasonable (necessary) & the same thing as “bringing and briefing this Motion” as contrary to Orders.

3. Defendants falsely claimed fees & costs for "research," but did not say if this so called "research" was reasonable (necessary) having to do with "bringing & briefing the Motion" itself; which is contrary to Orders.

Brown fails to identify what, if any, research was reasonable (necessary) to file a motion to quash. Surely Brown's experience in filing such motion precludes research of motions to quash, and Brown failed to cite any legal cases as the only possible reasonable research needed. Thus there is no proof in the motion itself or in the affidavit that such "research" had anything to do with or reasonable (necessary) to "bringing and briefing" the motion to quash. Therefore they failed to show that their fees & costs for "research" were reasonable (necessary) to "bringing and briefing this Motion" as contrary to this Order.

4. Defendants falsely claimed fees & costs for "drafting and revising," but did not say if this so called "drafting and revising" was reasonable (necessary) as having to do with "bringing & briefing the Motion" itself; which is contrary to Orders.

"Drafting and revising" basically mean the same thing, yet both Brown attorneys claim to do the same thing for one motion filed. This is unproductive, excessive, or redundant for two attorneys to draft one motion, and certainly not reasonable for two attorneys do the same work as their affidavit claims. If one attorney drafted and the other revised the motion would make more sense, yet both sword in affidavits to both 'draft and revise' the motion as unproductive, excessive, or redundant as un reasonable (unnecessary) to "bringing and briefing this Motion."

CONCLUSION

If this court can not deny all claimed attorney fees & costs, then for all the reasons above and six valid reasons within Plaintiffs' rule 60 pleading,* hereby show this motion is warranted requesting delay of Orders (dated September 8th) until after their Rule 60 Motion has been fully adjudicated showing the motion to quash and attorney fees/cost was meritless.

(* Note: Rule 60 pleading said: Brown's unreasonable fees & costs submitted September 2014 are contrary to the Orders, & contrary to local court rule 15; which fatally harmed Plaintiffs chances to

defend against such fees & costs absent being filed with the motion pleading. Not to mention the fact that Defendants motion to quash several times misrepresented the facts, because Defendants seem to agree to notice given and only threatened to quash for "defective subpoena;" which was a contract agreement violated by Defendants;" & they only afterwards claim subpoenas were lacking a statement under the rules, but Orders failed to find any lack of statement under rule 45 or rule 6, or lack of service requirements; Orders are absent any finding of "undue burden" especially since Defendants claimed Allen was available for depositions; which one or all 6 reasons precludes Orders to quash both subpoenas.)

This Court first would have to make unfair assumptions that Brown unproductive, excessive, or redundant fees & costs of 36.5 hours & almost \$5,000 are reasonable AND (necessary) to "bringing and briefing this [one] Motion." To make all these assumptions is fatally harmful to Plaintiffs, and would instead allow Defendants costs & fees for all these other things that are NOT reasonable to "bringing and briefing this Motion." Montana Supreme Court concluded in *Saizan* (cited above), "Reasonable fees do not include [Defendants'] fees that were "unproductive, excessive, or redundant," and the fee claimant must establish reasonableness by the presentation of evidence;" but Defendants lack such time and billing document evidence. Therefore Defendants alleged attorney costs and fees must be denied.

Respectfully submitted this 14th day of October, 2014,

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

By: 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

~~Alannah 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
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))	

**AFFIDAVIT IN SUPPORT OF DELAY OF ORDERS PENDING RULE 60 MOTION
OUTCOME & RESPONSE AGAINST ATTORNEY FEES & COSTS**

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 & belief, information herein is true, correct, & 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: including Plaintiffs first hand competent evidence attached to the pleading concluding Defendants' attorney fees and costs are NOT reasonable & contrary to Orders.
- (b) GLA budget report shows Defendants since January through September 2014 have only incurred \$175.00 for "1310 - Legal Costs - O'Connell." Defendants have only incurred \$175.00 since January, none of which had to do with the Motion to Quash This is because Defendants have stated to O'Connells and other members that the GLA has insurance that covered the cost of all Brown's services including bringing the Motion to Quash. GLA insurance company is the only party that actually incurred attorney fees & costs for the motion to quash.
- (c) Not only is 32.5 hours total an unreasonable amount of hours taken for this motion to quash; but also notice the \$2,468.50 discrepancy between Heringer & Cunningham costs and fees for the same services are redundant AND unreasonable (not necessary) as contrary to the Orders allowing only "reasonable fees and costs."

- (d) This is also because Brown's alleged costs and fees for "review of documents, communication with clients, research, drafting, and revising" the motion have little or nothing to do with "bringing and briefing this Motion" as Orders required & Brown's costs & fees for the motion at 36.5 hours or almost \$5,000 is five times higher than the highest law firm estimate for a typical 6 1/2 page motion to quash; which showed anything more than a \$1,000 is unreasonable (not necessary).
- (e) This is also because on October 13, 2014, Plaintiffs (via email) asked Antonelli Law Firm, "how much do you charge to write a typical six page motion to quash (civil case)?" Antonelli Law Firm (email) answer to this question was "between \$750 to \$1,000." Other attached web-based documents show a typical motion only cost from \$500 to \$1,000.
- (f) Plaintiffs pleading shows all costs and fees claimed by Brown Law Firm (for "review of documents, communication with clients, research, drafting, and revising" the Motion) are **unproductive, excessive, or redundant & unreasonable** as contrary to Orders, and for failing to show that their fees & costs were the same thing as "bringing and briefing this Motion." Because the Browns fees & costs lack these reasonable elements, the Court (to comply with its own Orders) first would have to make unfair assumptions that Brown redundant fees & costs are reasonable AND (necessary) to "bringing and briefing this Motion." It is fatally harmful to Plaintiffs to make all these assumptions, and appears the court would instead allow Defendants costs & fees for all these other things that are NOT reasonable to "bringing and briefing this Motion."
- (g) Brown's unreasonable fees & costs submitted September 2014 are contrary to the Orders, & contrary to local court rule 15; which fatally harmed Plaintiffs chances to defend against such fees & costs absent being filed with the motion pleading; especially since Orders are absent any finding of "undue burden" as Defendants claimed Allen was available for depositions; and other six reasons in the rule 60 motion precludes Orders to quash both subpoenas.
- (h) If this court can not deny all claimed attorney fees & costs, then for all the reasons above and within Plaintiffs' rule 60 pleading show this motion is warranted to delay Orders (September 8th) until after the Rule 60 Motion has been fully adjudicated.

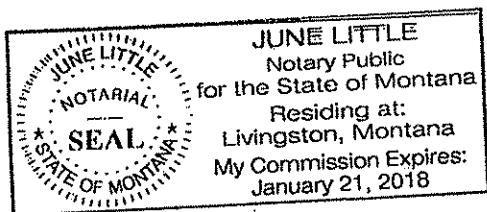
FURTHER AFFIANT SAYETH NAUGHT. Dated OCTOBER 14th, 2014.

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 10/14, 2014.
(SEAL)

Daniel K. O'Connell
Valery O'Connell
June Little





From: Daniel OConnell dko@mac.com
Subject: Re: quote please
Date: October 13, 2014 at 4:44 PM
To: Jeffrey@antonelli-law.com



Thanks Mr. Antonelli.

On Oct 13, 2014, at 1:59 PM, Jeffrey@antonelli-law.com wrote:

The motions to quash we've filed have been comprehensive.

Our flat fee to settle these cases out of court are between \$750 to \$1,000.

Jeffrey Antonelli
Antonelli Law Ltd.
100 North La Salle Street
Suite 2400
Chicago, IL 60602
Tel 312-201-8310
Antonelli-Law.com

Practice concentrated in Drone/UAS Law, Civil Litigation, and Business Advice

View my profile on LinkedIn

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-----Original Message-----

From: Daniel OConnell [mailto:dko@mac.com]
Sent: Monday, October 13, 2014 2:33 PM
To: Jeffrey@antonelli-law.com
Subject: Re: quote please

Lets assume it is a good idea. How much do you charge to write a typical six page motion to quash (civil case)?

On Oct 13, 2014, at 1:01 PM, Jeffrey@antonelli-law.com wrote:

Dear Val,

Filing a motion to quash is probably not a good idea, but I'd like you to call us - its free - to see if that's what you really need to do.

Take a look at our page discussing motions to quash:
http://www.antonelli-law.com/Motions_to_Quash.php

and then call us at 312-201-8310 for an in-depth, free consultation.

Jeffrey Antonelli
Antonelli Law Ltd.
100 North La Salle Street
Suite 2400
Chicago, IL 60602
Tel 312-201-8310
Antonelli-Law.com

Practice concentrated in Drone/UAS Law, Civil Litigation, and Business

Advice View my profile on LinkedIn

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-----Original Message-----

From: Daniel OConnell [mailto:dko@mac.com]
Sent: Monday, October 13, 2014 1:54 PM
To: Jeffrey@antonelli-law.com
Subject: quote please

How much do you charge to write a typical six page motion to quash?

Thanks,

Val O'Connell

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Are there any lawyers that charge less than \$600 to file a motion to quash warrant? 15 Answers as of November 02, 2012

Missed a court date and really need assistance.



The Law Offices of John J. Carney Esq. | John J. Carney

You can have the lawyer that is handling the case ask that the warrant be withdrawn. You will still have a bench warrant on your record and need a lawyer to handle the case, and that would probably be more than \$600. You can get Legal Aid if you are indigent.

Answer Applies to: New York
Replied: 11/2/2012

Contact Me



James M. Osak, P.C. | James M. Osak

That depends on the lawyer. You have to negotiate with them. Or do it yourself.

Answer Applies to: Michigan
Replied: 10/28/2012

Contact Me



Law Office of Brendan M. Kelly | Brendan M. Kelly

We can help, it does depend on the nature of the FTA, but generally it is less then \$600.00.

Answer Applies to: Nebraska
Replied: 10/27/2012

Contact Me

Related Questions

What can I expect if my felony got dropped to a misdemeanor petty larceny?

If I was arrested at DMV on an open felony in one state but they never came will this interfere with me obtaining a license in another state?

Is it illegal for me to kiss a minor (i.g. she's 14 and I'm 18 this year)?

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(97 answers)

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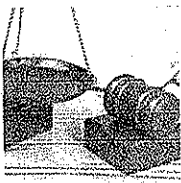
Ex: What can happen if I refuse a breathalyzer?

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Hamblin Law Office | Sally Hamblin

You should be able to find one if you keep looking.

Answer Applies to: Michigan

Replied: 10/26/2012

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Meyer & Kiss, LLC | Louis J. Meyer

Depends where it is at. But we charge \$500.00 for cases in Cook County, Illinois.

Answer Applies to: Illinois

Replied: 10/26/2012

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Glastonbury Landowners Association Profit & Loss Budget Variance Report September 2014

	Jan - Sep 14	Budget	% of Budget
1210 · Utilities for Rec Center	299.03	500.00	59.81%
1230 · Lawn Mowing/Gas	0.00	150.00	0.0%
1240 · Mower Maintenance	0.00	250.00	0.0%
Total 1200 · Parkland/Recreation Center	299.03	900.00	33.23%
1300 · Litigation			
1310 · Legal Costs - O'Connell	175.00	13,300.00	1.32%
1311 · Document Production	966.45		
Total 1300 · Litigation	1,141.45	13,300.00	8.58%
1400 · Community Complaints			
1410 · Community Complaints Costs	0.00	725.00	0.0%
Total 1400 · Community Complaints	0.00	725.00	0.0%
2000 · Overhead/Admin Costs			
2005 · Accountant's Fees	966.00	1,571.00	61.49%
2010 · Administration Costs - Contracted	119.93		
2011 · Bank Charges	34.00		
2012 · Credit Card Fees	129.25		
2013 · Collection Costs	1,092.40		
2016 · Insurance - Board Liability	1,609.20	3,000.00	53.64%
2017 · Legal Fees-General Advice	3,727.50	1,000.00	372.75%
2018 · Licenses & Annual Reporting	85.00	70.00	121.43%
2019 · Lien Filing Costs	289.00		
2020 · Management Expense	13,095.30	22,629.00	57.87%
2025 · Miscellaneous	736.24	500.00	147.25%
2030 · Newsletter Costs	277.92	0.00	100.0%
2050 · Office Supplies	457.89	1,400.00	32.71%
2051 · Procedures & Documents	0.00		
2052 · Postage & Shipping	1,710.97	1,200.00	142.58%
2055 · Printing & Copies	1,157.89	850.00	136.22%
2060 · Rent - Facilities	884.00	630.00	140.32%
2062 · Rent - PO Box & Safe Dep Box	157.50	60.00	262.5%
2065 · Software - SharePoint	17.90	20.00	89.5%
2066 · Software - Dropbox	89.91		
2070 · Taxes - Property	0.00	325.00	0.0%
2080 · Telephone & Messaging	139.55	180.00	77.53%
2090 · Website Costs			
2091 · Website Contractor Develop&Maint	0.00	450.00	0.0%
2092 · URL & Domain Fees	55.61	140.00	39.72%
Total 2090 · Website Costs	55.61	590.00	9.43%
Total 2000 · Overhead/Admin Costs	26,832.96	34,025.00	78.86%