

1 Case Number 10197

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6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF LANDER

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9
10 MICHAEL MARKING
11 and
12 ELIZABETH FLEMING,
13 Plaintiffs

MOTION TO DISQUALIFY ATTORNEY

14 vs.

15
16 AUSTIN ROPING CLUB
17 Defendant

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20
21 COME NOW MICHAEL MARKING AND ELIZABETH FLEMING, in proper person, as Plaintiffs,
22 and hereby submit their MOTION TO DISQUALIFY ATTORNEY.

23
24 WHEREAS

25 Defendant (the Club) is obligated to comply with the Nevada Open Meeting Law
26 (POINTS & AUTHORITIES, page 4) and;

27 The Club has repeatedly conducted meetings in violation of the OML and its own By-
28 Laws (POINTS & AUTHORITIES, page 4); and

29 Actions taken at meetings in violation of the OML are void (POINTS & AUTHORITIES,
30 page 4); and

31 Plaintiffs have a right by contract to challenge Mr Forgeron's appearance (POINTS &
32 AUTHORITIES, page 5); and

33 Plaintiffs have a common law right to challenge Mr Forgeron's appearance. (POINTS &
34 AUTHORITIES, page 5); and

35 One of Plaintiff's main goals in this action is to compel the Club to comply with the
36 laws and statutes, and with its own By-Laws. (COMPLAINT, §§216 and 220) What better place to
37 start than with this action itself?

38
39 THEREFORE

40 Plaintiffs hereby pray to this Court for an order disallowing representation of the Club
41 by Hy Forgeron until a showing that he has been properly engaged, retained, or hired by the
42 Club to represent the Club in this action;

43 Said order further voiding all filings by Mr Forgeron, with leave to re-submit once he
44 is properly the Club's representative; and

45 Said order further giving the Club a limited period of time (say, twenty days) to
46 properly retain an attorney.

47
48 PLAINTIFFS NOTE that, had Mr Forgeron done a proper job of preparing his MOTION FOR MORE
49 DEFINITE STATEMENT (see OPPOSITION, P&A, §§22-25), and made reasonable inquiries of his
50 "client", then he would not be in this position. After all, the Complaint alleges extensive,
51 repetitive, and continuing violations of the OML. Did Mr Forgeron not think to ask if he had
52 been properly engaged by the Club? He knows better.

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IN SUPPORT OF THIS MOTION TO DISQUALIFY ATTORNEY, Plaintiffs have attached their
MEMORANDUM OF POINTS & AUTHORITIES.

DATED this Monday, 9 April 2012.

Michael Marking, Appellant
e-mail *marking@tatanka.com*

Elizabeth Fleming, Appellant
e-mail *ryuuz@tatanka.com*

both at General Delivery, Austin, Nevada 89310

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82 **1. Previous document incorporated.** To avoid duplication of material, Plaintiffs'
83 previous OPPOSITION TO MOTION FOR MORE DEFINITE STATEMENT (30 March 2012), along with its
84 exhibits, is hereby incorporated into this MOTION by reference, and is called the "OPPOSITION" in
85 this MOTION's text. The exhibits to the OPPOSITION are designated DS-1 to DS-6.
86

87 **2. Defendant is obligated to comply with the Nevada Open Meeting Law.** As set
88 for the the COMPLAINT (¶¶10-11), the Club is obligated to comply with Nevada's Open Meeting
89 Law (OML, or NRS 241). This is because of the By-Laws (OPPOSITION ¶9; OPPOSITION Exhibit
90 DS-5, Article IV, Rule 4), which constitute a binding contract between the Club and Plaintiffs
91 (OPPOSITION, ¶¶5-8). It is also because the Club is subsidized by Lander County (COMPLAINT
92 ¶¶9-10; NRS 241.015.3)
93

94 **3. Meetings have been conducted in violation of the OML.** Both meetings
95 conducted since the COMPLAINT was submitted to this Court were conducted in violation of the
96 OML. (OPPOSITION, ¶¶9-18)
97

98 **4. The Club failed completely to hold the scheduled April 2012 meeting.** (See MOTION
99 FOR ORDER VOIDING MEETINGS AND FOR PRELIMINARY INJUNCTION, 2012.04.05, Exhibit VP-1)
100

101 **5. Actions taken at meetings in violation are void.** Actions taken at meetings held in
102 violation of the OML are void. (NRS 241.036) Therefore, there has been no meeting since the
103 commencement of this action at which an attorney such as Mr Forgeron was retained, hired,
104 or engaged. As a consequence, neither Mr Forgeron nor any other person represents the Club.

105 **6. Plaintiffs have a right by contract to challenge Mr Forgeron’s appearance for**
106 **the Club.** This argument was previously made in the OPPOSITION of 30 March 2012, in its
107 MEMORANDUM OF POINTS & AUTHORITIES, ¶¶1-16, on its pages 4-7, to which this Court is referred.
108

109 **7. Plaintiffs have a common law right to challenge Mr Forgeron’s appearance.**
110 “Courts always presume, if nothing to the contrary is shown, that counsel who appear are
111 fully empowered to act in the case; but such presumption ceases if a showing is made by the
112 proper party to the contrary.” (*State of Nevada v. California Mining Co.*, 13 Nev. 203, (Nev.
113 12/31/1878))

114 **8.** It has been shown in the foregoing that Forgeron was not properly retained by the
115 Club. Therefore, there is no longer a presumption that Forgeron is the Club’s attorney.
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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served true and correct copies of the foregoing document by depositing them for mailing, in sealed envelopes, U.S. postage prepaid, at Austin, Nevada, addressed as follows:

Hy Forgeron; 168 South Reese Street; Post Office Box 1179; Battle Mountain, Nevada
89820

Dated Monday, 9 April 2012.

Michael Marking

Affirmation (Pursuant to NRS 239B.030)

I hereby affirm that the preceding document filed in the above-described manner does not contain the social security number of any person.

Dated Monday, 9 April 2012.

Michael Marking

(Plaintiffs' electronic document name: *mfvarc_motion_disqualify_attorney_20120409a*)