

1 Case Number 10197

2 Department 1

3  
4  
5  
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF LANDER

8  
9  
10 MICHAEL MARKING  
11 and  
12 ELIZABETH FLEMING,  
13 Plaintiffs

14 vs.

15  
16 AUSTIN ROPING CLUB  
17 Defendant

MOTION FOR ORDER VOIDING MEETINGS  
AND FOR PRELIMINARY INJUNCTION

18  
19  
20  
21 COME NOW MICHAEL MARKING AND ELIZABETH FLEMING, in proper person, as Plaintiffs,  
22 and hereby submit their MOTION FOR ORDER VOIDING MEETINGS AND FOR PRELIMINARY INJUNCTION.

23  
24 WHEREAS

25 Defendant (the Club) is obligated to comply with the Nevada Open Meeting Law  
26 (POINTS & AUTHORITIES, page 3) 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 are entitled to an injunction prohibiting future conduct of such meetings in  
32 violation of the OML (POINTS & AUTHORITIES, page 4); and

33 Standards for a preliminary injunction have been met (POINTS & AUTHORITIES, page 6);  
34

35 THEREFORE

36 Plaintiffs hereby pray to this Court for an order voiding all actions taken at Defendants  
37 meetings since November 2011; and

38 Plaintiffs further move for a temporary injunction, effective until a final determination  
39 of the merits of this case, prohibiting Defendant from conducting meetings in violation of the  
40 OML and the Club's own By-Laws.  
41

42 IN SUPPORT OF THIS MOTION FOR ORDER VOIDING MEETINGS AND FOR PRELIMINARY INJUNCTION,

43 Plaintiffs have attached their MEMORANDUM OF POINTS & AUTHORITIES. and their EXHIBIT VP-1.  
44  
45

46 DATED this Thursday, 5 April 2012.  
47  
48  
49

50 \_\_\_\_\_  
51 Michael Marking, Appellant

52 e-mail *marking@tatanka.com*

53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78

---

Elizabeth Fleming, Appellant  
e-mail *ryuuzat@tatanka.com*  
  
both at General Delivery, Austin, Nevada 89310

CONTENTS

MEMORANDUM OF POINTS & AUTHORITIES  
APRIL 2012 MEETING CANCELLATION NOTICE

Page 3  
EXHIBIT VP-1

MEMORANDUM OF POINTS & AUTHORITIES

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

**2. Defendant is obligated to comply with the Nevada Open Meeting Law.** As set for the the COMPLAINT (¶¶10-11), the Club is obligated to comply with Nevada’s Open Meeting Law (OML, or NRS 241). This is because of the By-Laws (OPPOSITION ¶9; OPPOSITION Exhibit

79 DS-5, Article IV, Rule 4), which constitute a binding contract between the Club and Plaintiffs  
80 (OPPOSITION, ¶¶5-8). It is also because the Club is subsidized by Lander County (COMPLAINT  
81 ¶¶9-10; NRS 241.015.3)

82  
83 **3. Meetings have been conducted in violation of the OML.** Both meetings  
84 conducted since the COMPLAINT was submitted to this Court were conducted in violation of the  
85 OML. (OPPOSITION, ¶¶9-18)

86 **4.** Moreover, the January 2012 meeting was also in violation of the OML. Among  
87 other things, the Club failed to record that meeting as required by 241.035.4 (Exhibit VP-2)

88 **5.** The Club failed completely to hold the scheduled April 2012 meeting. (Exhibit VP-  
89 1)

90  
91 **6. Actions taken at meetings in violation are void.** Actions taken at meetings held in  
92 violation of the OML are void. (NRS 241.036)

93 **7.** Plaintiffs have a right to bring an action to declare actions taken at violative  
94 meetings void. (NRS 241.037.2) Such actions must be brought within 60 days of the action.  
95 (NRS 241.037.3) The COMPLAINT makes such a request at ¶227, less than 60 days after the  
96 January meeting. This MOTION makes the same request for the February and March meetings,  
97 both less than 60 days ago. Thus, timely petition has been made to this Court to declare the  
98 actions taken at the January, February, and March meetings void.

99  
100 **8. Plaintiffs are entitled to an order enjoining future violations.** Plaintiffs are  
101 entitled to an injunction prohibiting future violations of the OML by the Club. (NRS  
102 241.037.2) An action brought to seek such an injunction must be made within 120 days of the  
103 violations to be enjoined in the future. (NRS 241.037.3)

104 **9.** While a court may not issue a blanket injunction prohibiting the violation of a

105 statute, it may issue a restrictive order prohibiting the violation of those portions of the statute  
106 already violated. “Since the district court had jurisdiction of the issue addressed in the motion  
107 and order to show cause, we must next determine whether the district court erred in enjoining  
108 future conduct that would be in violation of the Open Meeting Law. The answer to this  
109 question is given by the Supreme Court of Florida's interpretation of a similar statute. In *Board*  
110 *of Public Instruction of Broward Co. v. Doran*, 224 So.2d 693 (Fla. 1969), the court stated:  
111 While it is well established that courts may not issue a blanket order enjoining any violation  
112 of a statute upon a showing that the statute has been violated in some particular respects (see  
113 *Moore v. City Dry Cleaners & Laundry*, 41 So.2d 865 (Fla. 1949)), nevertheless they do  
114 possess authority to restrain violations similar to those already committed. See *Interstate*  
115 *Commerce Commission v. Keeshin Motor Express*, 134 F.2d 228 (C.C.A.III. 1943). This Court  
116 may enjoin violations of a statute where one violation has been found if it appears that the  
117 future violations bear some resemblance to the past violation or that danger of violations in  
118 the future is to be anticipated from the course of conduct in the past. See *National Labor*  
119 *Relations Board v. Express Publishing Company*, 312 U.S. 426, 437, 61 S.Ct. 693, 700, 85  
120 L.Ed. 930 (1941).Id. at 699, 700. The district court had a clear indication that the City of Reno  
121 had violated Nevada's Open Meeting Law. Coupled with the Council's stipulation to a  
122 judgment that would enjoin it from violating the Open Meeting Law in the future selection of  
123 public officers, this provided sufficient specificity and basis for entering the permanent  
124 injunction.” (*City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 784 P.2d 974 (Nev.  
125 12/28/1989))

126 **10.** Since the Club has failed to hold a legitimate meeting in at least four or five years,  
127 and since the violations are wilful (OPPOSITION ¶17), there is a a likelihood that such violations  
128 will continue. This is a basis for an order enjoining the violations enumerated in the  
129 OPPOSITION.

131           **11. Requirements for preliminary injunction satisfied.** A preliminary injunction  
132 requires certain conditions: the petitioner must show a likelihood of success on the merits,  
133 irreparable harm in the absence of the injunction, little or no harm to the other party to be  
134 caused by the preliminary injunction, and minimal or no harm to public interests. (See  
135 *Dangberg Holdings Nevada, L.L.C. v. Douglas County*, 115 Nev. 129, 978 P.2d 311 (Nev.  
136 06/07/1999); *Dep't of Conservation and Natural Resources v. Foley*, 109 P.3d 760, 121 Nev. 77  
137 (Nev. 04/14/2005); *Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens,*  
138 *Inc.*, 88 Nev 1 (1972); *Ottenheimer v. Real Estate Division*, 91 Nev. 338 (1975); *Planned*  
139 *Parenthood Ass'n v. Cincinnati*, 822 F. 2d 1390, 1400 (6<sup>th</sup> Cir., 1987)).

140           **12.** The Legislature has simplified the requirements in cases involving the OML.  
141 First, no showing of irreparable harm is required. (NRS 241.037.1(a)) Second, the Legislature  
142 has declared that open meetings are in the public interest. (NRS 241.010)

143           **13.** There remain a showing that Plaintiffs will likely prevail on the merits, and that  
144 there will be little harm to the Club by the requirement to comply.

145           **14.** The right to an injunction is statutory, and there is little or no question that the  
146 OML has been violated. It is clear that Plaintiffs, as former members whose rights were  
147 injured by the violations, and as members of the public, have a right to enforce the statute.  
148 Thus, the likelihood of prevailing on the merits is great, at least with respect to the OML  
149 claims.

150           **15.** On the other hand, how can the Club claim harm from being asked to operate in  
151 accordance with the law and its own rules? The Club cannot reasonably argue that an  
152 injunction would be harmful to it.

153           **16.** Thus, the requirements for a preliminary injunction are met.  
154  
155  
156

157  
158 CERTIFICATE OF SERVICE  
159

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

163 Hy Forgeron; 168 South Reese Street; Post Office Box 1179; Battle Mountain, Nevada  
164 89820

165 Dated Thursday, 5 April 2012.  
166

167 \_\_\_\_\_  
168 Michael Marking  
169

170 Affirmation (Pursuant to NRS 239B.030)

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

173 Dated Thursday, 5 April 2012.  
174

175 \_\_\_\_\_  
176 Michael Marking  
177  
178  
179  
180  
181

182 (Plaintiffs' electronic document name: *mfvarc\_motion\_void\_mtgs\_prelim\_injunction\_20120405a*)