

1 Case No. 1C-CV-002

2 Dept. No. 01

3 The undersigned hereby affirms this document  
4 does not contain a social security number.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE JUSTICE COURT OF AUSTIN TOWNSHIP  
COUNTY OF LANDER, STATE OF NEVADA

RUBEN GALLEGOS and  
VIRGINIA (Sissie) GALLEGOS,  
Plaintiffs,

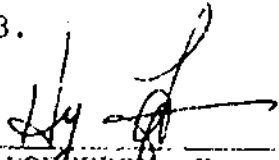
-vs-

**RESPONSE TO MOTION  
TO DISQUALIFY ATTORNEY**

MICHAEL MARKING and  
ELIZABETH FLEMING,  
Defendants.

COMES NOW, HY FORGERON, Esq., Attorney at Law, and responds  
to Defendants' Motion To Disqualify Attorney. This Response is  
made and based on the Points And Authorities annexed hereto.

Dated this 17<sup>th</sup> day of March, 2013.

  
HY FORGERON, Esq. #355  
Attorney at Law  
PO Box 1179  
Battle Mountain, NV 89820  
775-635-8100  
FAX: 775-635-3118

1 I. POINTS AND AUTHORITIES

2 A. BACKGROUND

3 This is a civil action in Austin Township Justice Court  
4 apparently filed by Plaintiff against Defendants in 2010.  
5 Plaintiffs loaned a large sum of money to Defendants which has not  
6 been paid back and Plaintiffs, having obtained judgment, are  
7 currently seeking to enforce that judgment against Defendants.

8 A debtor's examination was scheduled for February 7, 2013.  
9 At the hearing, the undersigned attorney<sup>1</sup> offered to assist  
10 Plaintiffs. Defendants objected to counsel's role in the  
11 proceeding and thus the instant Motion and Response.

12 B. ARGUMENT

13 Much of Defendants' "legal" argument is misplaced, irrelevant  
14 or just plain untrue. Those portions which deserve response are  
15 treated below and numbered as in Defendants' Motion for easy  
16 reference.

17 **1 through 3.** Agreed.

18 **4.** I was a Deputy District Attorney and District Attorney  
19 for Lander County for more than 25 years. During that time, I  
20 gave free legal advice to literally hundreds of people who were  
21 not County officers or employees. I have always believed that  
22 doing so was a responsibility that went with public office.  
23

24  
25 <sup>1</sup> Defendant Marking has a long history of making his arguments personal, doing  
26 so in this case as well as in other cases in which he represents himself or  
some other party as a "ghost attorney". For the sake of clarity, and since I  
am making this Response on my behalf and not as an attorney for Plaintiffs, I  
will use the nominative singular pronoun "I" rather than the more cumbersome  
"the undersigned attorney".

1 In fact, Nevada Rules of Professional Conduct Rule 6.1  
2 provides, in pertinent part: "A lawyer should aspire to render at  
3 least 20 hours of pro bono publico legal services per year."

4 I recall speaking to Ruben Gallegos about Defendants'  
5 defalcation on a large personal debt and the appropriate means by  
6 which to institute collection proceedings. It was the same type  
7 of free advice I would have given to anyone seeking assistance in  
8 that area, even Defendants. In so doing, I did not ask for nor  
9 accept any retainer nor become "engaged" by Plaintiffs.

10 **5. Relevance?**

11 **6 through 8.** I have no idea what the references to acting as  
12 a "special master" mean. I was never contacted by Judge Dory, or  
13 anyone else, for such a purpose. The first time I was even aware  
14 that such a proposal existed (if it ever did) was when I read  
15 Defendants' instant Motion.

16 **9.** In typical Marking fashion, he slanders Judge Dory with  
17 no facts to back up the accusation. Judge Dory never requested  
18 any ex parte legal advice from me in any matter concerning traffic  
19 tickets or other misdemeanors to which the State was a party, nor  
20 would I have engaged in any such action.

21 **10 through 12.** I recall Judge Dory mentioning the instant  
22 case to me in passing. My recollection is that he thought  
23 Plaintiffs needed an attorney and had suggested to them that they  
24 contact either me or Theodore Herrera for advice.

25 **11 through 16.** Relevance?  
26

1           **17 and 18.** Defendants allege a violation of the Nevada Code  
2 of Judicial Conduct Canon 2.9 by Judge Dory, apparently in the  
3 mistaken belief that the Judge was seeking ex parte contact to  
4 obtain legal advice about the merits of the case. No such  
5 conversation ever took place. Plaintiffs then seek to bootstrap  
6 Judge Dory's alleged misconduct into an ethical violation by me.  
7 Since no such even occurred, I decline to be tarred by Defendants'  
8 unsupported allegations.

9           **19.** Once again, Mr. Marking stoops to personal attack,  
10 branding Judge Dory as arrogant.

11           Since I have never been in possession of any evidence that  
12 Judge Dory violated the rules, I have had no occasion, or  
13 obligation, to act under Nevada Rules of Professional Conduct Rule  
14 3.4(b). (Hereinafter referred to as "RPC" with the appropriate  
15 Rule section immediately following.)

16           **20 and 21.** Again, Mr. Marking stoops to personal attack,  
17 labeling Judge Dory as having little regard for the ethical rules.

18           I never gave Judge Dory any ex parte legal advice about the  
19 merits of the instant case. Contrary to Defendants' assertion  
20 that I had access to "confidential information from the mediation  
21 process", I never knew Judge Dory acted or attempted to act as a  
22 mediator in this case (if in fact he did) until I read Defendants'  
23 instant Motion. I have never reviewed the Court file in this case  
24 for any purpose. Since I have never participated personally and  
25 substantially in this case, I fail to see any violation of RPC  
26 1.12(a).

1           **22.** The purpose of this Paragraph appears to be Mr. Marking  
2 further venting against Judge Dory: "reputation of this Court is  
3 . . . quite low"; this Court has a "tattered reputation"; and has  
4 committed "past abuses".

5           **23.** ???

6           **24.** I never gave Judge Dory any ex parte legal advice about  
7 the merits of the instant case. There was simply no no violation  
8 and Defendants' excoriations don't make it so.

9           **25.** Try as I might, I cannot connect the dots between the  
10 first sentence in this Paragraph and the remainder thereof.

11           **26 and 27.** Since no violations occurred, these Paragraphs  
12 are inapplicable.

13           **28.** ???

14           **29 through 31.** Perhaps the only prejudice Plaintiffs will  
15 suffer is the continuing and seemingly perpetual delay by  
16 Defendants in paying their just debts.

17           **32.** Simply not true. At best, a bit of puffery by  
18 Defendants.

19           **33.** ???

20           **34 and 35.** As to Defendants' assertions that there is a  
21 history of ethical violations in this case, Joseph Goebbels once  
22 said, "If you tell a lie big enough and keep repeating it, people  
23 will eventually come to believe it." Additionally, he is reputed  
24 to have bolstered his statement thusly, "The most brilliant  
25 propagandist technique will yield no success unless one  
26

1 fundamental principle is borne in mind constantly - it must  
2 confine itself to a few points and repeat them over and over."

3 It may just be that the Defendants have managed to create,  
4 out of whole cloth, the hint of an appearance of impropriety.

5 **C. CONCLUSION**

6 I am a member in good standing of the State Bar of Nevada and  
7 have been admitted to practice before the United States Supreme  
8 Court, the Ninth Circuit Court Of Appeals, the United States  
9 District Court (Nevada), the United States Court of Military  
10 Appeals, the United States Tax Court, the Nevada Supreme Court and  
11 all Nevada lower courts and several Tribal Courts. I have never  
12 had my license to practice law suspended or revoked in any  
13 jurisdiction for any reason. I have never been fined or otherwise  
14 sanctioned or held in contempt by any court or judicial officer  
15 for any reason.

16 In all my years of practice, I cannot recall having ever been  
17 referred to in any pleading by any other attorney as unethical or  
18 in violation of the Rules of Professional Conduct.

19 Leave it to Mr. Marking. I believe him to be the "ghost  
20 attorney" for the Plaintiff in at least two Sixth Judicial  
21 District Court civil cases as well as another case in which he is  
22 the pro per Plaintiff. In all of these actions, Mr. Marking makes  
23 it a habit to impugn the reputation and conduct of just about  
24 anyone on the other side, whether attorney or party. It is my  
25 understanding that at least one District Judge has instructed the  
26

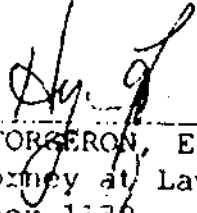
1 Court Clerk not to allow Mr. Marking to file any further pleadings  
2 without prior express permission of the Court.

3 As I said at the commencement of this Response, I was a  
4 Deputy District Attorney and District Attorney for Lander County  
5 for more than 25 years. During that time, I gave free legal  
6 advice to literally hundreds of people who were not County  
7 officers or employees. I have always believed that doing so was a  
8 responsibility that went with public office. Apparently because  
9 of this practice and belief, now I have to respond to the  
10 allegations spewed forth by the Defendants herein wholly without  
11 basis.

12 This year marks the 40<sup>th</sup> anniversary of my admission to the  
13 practice of law in my home state of Nevada. While any occupation  
14 must have its good days and not-so-good days, I can truthfully say  
15 that I have enjoyed the run from the beginning. Having to deal  
16 with such a rude and vexatious litigant as Mr. Marking is  
17 beginning to make even the good days much less enjoyable.

18 For these reasons, I respectfully withdraw from any further  
19 participation in this action.

20 Respectfully submitted this 17<sup>th</sup> day of March, 2013.

21  
22  
23   
24 HY FORGERON, Esq. #355  
25 Attorney at Law  
26 PO Box 1179  
Battle Mountain, NV 89820  
775-635-8100  
FAX: 775-635-3118