

David W. Randall
Flathead County Attorney's Office
820 South Main Street
Kalispell, MT 59901
(406) 758-5630
drandall@flathead.mt.gov
Attorneys for the Defendants and Appellees

IN THE SUPREME COURT OF THE STATE OF MONTANA

**Supreme Court Cause No.
DA 18-0366**

COMMUNITY ASSOCIATION FOR NORTH
SHORE CONSERVATION, INC., a Montana
Nonprofit Mutual Benefit Corporation,
Plaintiff, Appellee and Cross-Appellant,

v.

FLATHEAD COUNTY and its BOARD OF COUNTY
COMMISSIONERS, a Political Subdivision of
the State of Montana, Defendant and Appellee.

JOLENE DUGAN,
Intervenor and Appellant.

On Appeal from the District Court for the Eleventh Judicial District,
Flathead County, Montana
Cause No. DV-15-121B
Hon. Robert B. Allison

APPELLEE'S RESPONSE TO MOTION FOR LEAVE TO FILE OVER LENGTH BRIEF

David W. Randall, as counsel for the Defendant and Appellee

Flathead County and its Board of County Commissioners, hereby submits an
objection to Plaintiff/Cross-Appellant/Appellee's Motion for Leave to File

Over Length Brief. Defendant/Appellee (hereinafter “Flathead County”) agrees with the position and argument presented in the Response by Richard DeJana, filed on behalf of Intervenor/Appellant (hereinafter “Dugan”) November 19, 2018. Flathead County submits further argument on this issue as stated herein.

DISCUSSION

The Motion filed by Plaintiff/Cross-Appellant/Appellee (hereinafter “CANSC”) should be denied. Counsel for CANSC represented in his Motion he misunderstood the 10,000 word limit applied to *each his response brief and cross-appeal brief*. This position is completely unfounded and should not be used in justifying an exception to Mont. Rs. App. P. 11 and 12. Further, Mont. R. App. P. 12(4) clearly states the cross-appellant “shall file the cross-appeal brief combined in a single document with the answer brief.”

The nature of CANSC’s *combined* brief is well documented. Both the briefing schedule outlined in the Stipulation¹ signed by counsel and the Order² (adopting the briefing schedule) specify CANSC is to file a *combined* answer and cross-appeal brief. Rule 11(4) clearly restricts brief length to

¹ Filed October 18, 2018

² Filed October 19, 2018

10,000 words and provides no exception for a combined answer and cross-appeal brief.

Mont. R. of App. P. 12(10) states requests for over-length briefs will not be routinely granted, absent “extraordinary justification.” CANSC counsel cites to a number of characteristics of this matter which he believes justify that he alone should be entitled to file an over length brief. While these figures can shed some light on to the nature of the case, CANSC has failed to show specifically why these factors require additional briefing or are “extraordinary” as required by the rule. As this Court will observe in the docket for this case, and as pointed out by the District Court, this case involved numerous superfluous filings and previous attempts by counsel to operate outside the rules and obtain additional space for his arguments. CANSC has also stated two *amici* are now involved in the matter. Should the Court choose to allow *late* briefs from the *amici*, the Private Attorney General doctrine will be briefed even more thoroughly.

Granting CANSC an exception to the rules would be unfair to Dugan and Flathead County. Interestingly enough, counsel for CANSC cites fairness as a reason he should be permitted to file an over length brief. Fairness should rather dictate CANSC be held to the same standard as all cross-appellants in its position. Most importantly, presumably, Dugan and

Flathead County will still be held to the applicable word limits, yet both parties will be required to respond to up to a staggering *20,000 words* from CANSC. Moreover, CANSC is even having its position bolstered by two additional *amici* briefs (should the late *amici* briefs be accepted by the Court).

Based on the foregoing, Flathead County requests this Court deny the motion.

Respectfully submitted,

/s/ David Randall

David W. Randall

CERTIFICATE OF SERVICE

I, David William Randall, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 11-20-2018:

Donald R. Murray (Attorney)
136 First Avenue W
Kalispell MT 59901
Representing: Community Association for North Shore Conservation
Service Method: eService

Richard P. DeJana (Attorney)
120 4th Street West
P.O. Box 1757
Kalispell MT 59903
Representing: Jolene Dugan
Service Method: eService

CAITLIN Ann OVERLAND (Attorney)
820 S Main Street
Kalispell MT 59901
Representing: Flathead County Board of County Commissioners, Flathead, County of
Service Method: eService

Shiloh Silvan Hernandez (Attorney)
103 Reeder's Alley
Helena MT 59601
Representing: Montana Environmental Information Center
Service Method: eService

John F. Lacey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Montana Trial Lawyers Association
Service Method: eService

Tara Renee Fugina (Attorney)
820 South Main Street
Kalispell MT 59901
Representing: Flathead County Board of County Commissioners, Flathead, County of
Service Method: Conventional

Electronically Signed By: David William Randall
Dated: 11-20-2018