

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUBY DUNCAN, an individual; RABBI
MEL HECHT, an individual; *et al.*,

Appellants,

vs.

THE STATE OF NEVADA OFFICE OF
THE STATE TREASURER; THE STATE
OF NEVADA DEPARTMENT OF
EDUCATION; *et al.*,

Respondents,

and

AIMEE HAIRR, an individual, *et al.*,

Respondent-Intervenors.

Supreme Court Case No. 70648

District Court No. A1972973-C
Electronically Filed
Jul 20 2016 08:40 a.m.

RESPONDENT-INTERVENORS
MOTION TO ASSOCIATE COUNSEL
Tracie K. Lindeman
Clerk of Supreme Court

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
ERIC D. WALTHER, ESQ.
Nevada Bar No. 013611
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Attorneys for Respondent-Intervenors.

Timothy D. Keller* (AZ Bar No. 019844)
Keith E. Diggs* (WA Bar No. 48492)
INSTITUTE FOR JUSTICE
398 S. Mill Ave., Ste. 301
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kdiggs@ij.org
*Admitted *Pro Hac Vice* below;
applications forthcoming

Attorneys for Respondent-Intervenors.

RESPONDENT-INTERVENORS' MOTION TO ASSOCIATE COUNSEL

Memorandum of Points and Authorities

Respondent-Intervenors Lara Allen; Aurora Espinoza; Aimee Hairr; Elizabeth Robbins; and Jeffrey and Trina Smith, hereby move the Court for an order permitting Timothy D. Keller, Esq., an attorney with the Institute for Justice, to practice in Nevada pursuant to Nevada Supreme Court Rule 42 (“SCR 42”). This motion is supported by the attached Verified Application for Association of Counsel (attached as **Exhibit “A”**), Certificate of Good Standing from the State Bar of Arizona (attached as **Exhibit “B”**), and the “State Bar of Nevada Statement” (attached as **Exhibit “C”**). Also attached to this motion is a “[Proposed] Order Admitting to Practice” (attached as **Exhibit “D”**).

Respectfully submitted this 19th day of July, 2016 by:

KOLESAR & LEATHAM

/s/ Matthew T. Dushoff, Esq.

MATTHEW T. DUSHOFF, ESQ.

Nevada Bar No. 004975

ERIC D. WALTHER, ESQ.

Nevada Bar No. 013611

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-and-

Timothy D. Keller* (AZ Bar No. 019844)

Keith E. Diggs* (WA Bar No. 48492)

INSTITUTE FOR JUSTICE

398 S. Mill Ave., Ste. 301

Tempe, Arizona 85281

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*Admitted *Pro Hac Vice* below;

applications forthcoming

Attorneys for Respondent-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 19th day of July, 2016, I caused to be served a true and correct copy of the foregoing **Respondent-Intervenors' Motion to Associate Counsel** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system.

The following participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Attorney General of the State of Nevada

Adam Paul Laxalt
Lawrence VanDyke
Joseph Tartakovsky
Ketan D. Bhirud
lvandyke@ag.nv.gov
jtartakovsky@ag.nv.gov
kbhirud@ag.nv.gov
Attorneys for Respondents

Hutchison & Steffen, LLC

Mark A. Hutchison, Esq.
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jreynolds@hutchlegal.com
rstewart@hutchlegal.com
Attorneys for Respondents

American Civil Liberties Union of Nevada

Amy Rose, Esq.
rose@aclunv.org
Attorneys for Appellants

I further certify and affirm that I caused this document to be deposited via

USPS first class mail, the following parties:

Nitin Subhedar
Samuel Jacob Edwards
COVINGTON & BURLING LLP
One Front Street, 35th Floor
San Francisco, California 94111-5356
Attorneys for Appellants

Anupam Sharma
COVINGTON & BURLING LLP
333 Twin Dolphin Dr., Suite 700
Redwood Shores, CA 94065
Attorneys for Appellants

Daniel Mach
Heather L. Weaver
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street NW, Ste. 600
Washington, D.C. 20005
Attorneys for Appellants

Richard B. Katskee
AMERICANS UNITED FOR
SEPARATION OF CHURCH AND
STATE
1901 L Street NW, Suite 400
Washington, DC 20036
Attorneys for Appellants

/s/ Kristina R. Cole

An Employee of KOLESAR & LEATHAM

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

Ruby Duncan, an individual;
Rabbi Mel Hecht, an individual;) No. 70648
et al.,)
Appellants,)

v.)
The State of Nevada Office of the) VERIFIED APPLICATION FOR
State Treasurer; the State of Nevada) ASSOCIATION OF COUNSEL UNDER
Department of Education; et al.,) NEVADA SUPREME COURT RULE 42
Respondents,)

Timothy David Keller, Petitioner, respectfully represents:
First Middle Name Last

1. Petitioner resides at 2411 E. Coconino Dr.
Street Address
Chandler, Maricopa AZ
City County State
85249, (480) 250-7149
Zip Code Telephone

2. Petitioner is an attorney at law and a member of the law firm of
Institute for Justice
with offices at 398 S. Mill Ave. #301
Street Address
Tempe, Maricopa AZ
City County State
85281, (480) 557-8300, tkeller@ij.org
Zip Telephone Email

3. Petitioner has been retained personally or as a member of the above named law firm by Aimee Hairr; Aurora Espinoza; Elizabeth Robbins; Lara Allen; Jeffrey Smith; and Trina Smith to provide legal representation in connection with the above-entitled matter now pending before the above referenced court.

4. Since October of 1999, petitioner has been, and presently is, a member of good standing of the bar of the highest court of the State of Arizona where petitioner regularly practices law.

5. Petitioner was admitted to practice before the following United States District Courts, United States Circuit Courts of Appeal, the Supreme Court of the United States, and/or courts of other states on the dates indicated for each, and is presently a member in good standing of the bars of said Courts:

| | <u>DATE ADMITTED</u> |
|--|-----------------------|
| <u>U.S. Supreme Court</u> | <u>March 24, 2003</u> |
| <u>U.S. Court of Appeals for the Ninth Circuit</u> | <u>April 20, 2005</u> |
| <u>U.S. District Court of Arizona</u> | <u>June 16, 2003</u> |
| <u>U.S. Court of Appeals for the Tenth Circuit</u> | <u>June 28, 2016</u> |

6. Is Petitioner currently suspended or disbarred in any court? You must answer yes or no. If yes, give particulars; e.g., court, jurisdiction, date: No.

7. Is Petitioner currently subject to any disciplinary proceedings by any organization with authority at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No.

8. Has Petitioner ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No.

9. Has Petitioner ever had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked? You must answer yes or no. If yes, give particulars, e.g. date, administrative body, date of suspension or reinstatement: No.

10. Has Petitioner, either by resignation, withdrawal, or otherwise, ever terminated or attempted to terminate Petitioner's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings? You must answer yes or no. If yes, give particulars: No.

11. Petitioner has filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matters, if none, indicate so: *(do not include Federal Pro Hacs)*

| <u>Date of Application</u> | <u>Cause</u> | <u>Title of Court Administrative Body or Arbitrator</u> | <u>Was Application Granted or Denied?</u> |
|----------------------------|--|---|---|
| 9/11/15 | Duncan v. Nevada | Clark Cty. District Court | Granted |
| 9/15/16 | Lopez v. Schwartz | First Judicial District Court Carson City | Denied |
| | Hairr v. First Judicial District Court | Nevada Supreme Court | Denied |

(If necessary, please attach a statement of additional applications)

12. Nevada Counsel of Record for Petition in this matter is:

(must be the same as the signature on the Nevada Counsel consent page)

Matthew T Dushoff 004975
First Name Middle Name Last Name NV Bar #

who has offices at Kolesar & Leatham
Firm Name/Company

400 S. Rampart Blvd. #400 Las Vegas Clark
Street Address City County

89145 (702) 362-7800
Zip Code Phone Number

13. The following accurately represents the names and addresses of each party in this matter, WHETHER OR NOT REPRESENTED BY COUNSEL, and the names and addresses of each counsel of record who appeared for said parties: (You may attach as an Exhibit if necessary.)

| NAME | MAILING ADDRESS |
|------------------------------|-----------------|
| See attached Exhibit. | |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

14. Petitioner agrees to comply with the provisions of Nevada Supreme Court Rule 42(3) and (13) and Petitioner consents to the jurisdiction of the courts and disciplinary boards of the State of Nevada in accordance with provisions as set forth in SCR 42(3) and (13). Petitioner respectfully requests that Petitioner be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

15. Petitioner has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation.

I, Timothy D. Keller, do hereby swear/affirm under penalty of perjury that the assertions
Print Petitioner Name

of this application and the following statements are true:

- 1) That I am the Petitioner in the above entitled matter.
- 2) That I have read Supreme Court Rule (SCR) 42 and meet all requirements contained

therein, including, without limitation, the requirements set forth in SCR 42(2), as follows:

- (A) I am not a member of the State Bar of Nevada;
 - (B) I am not a resident of the State of Nevada;
 - (C) I am not regularly employed as a lawyer in the State of Nevada;
 - (D) I am not engaged in substantial business, professional, or other activities in the State of Nevada;
 - (E) I am a member in good standing and eligible to practice before the bar of any jurisdiction of the United States; and
 - (F) I have associated a lawyer who is an active member in good standing of the State Bar of Nevada as counsel of record in this action or proceeding.
- 2) That I have read the foregoing application and know the contents thereof; that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to the matter I believe them to be true.

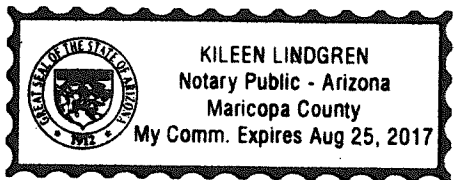
That I further certify that I am subject to the jurisdiction of the Courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada; that I understand and shall comply with the standards of professional conduct required by members of the State Bar of Nevada; and that I am subject to the disciplinary jurisdiction to the State Bar of Nevada with respect to any of my actions occurring in the course of such appearance.

DATED this 13th day of July, 2016

[Handwritten Signature]
Petitioner/Affiant (blue ink)

STATE OF Arizona)
COUNTY OF Maricopa) ss

Subscribed and sworn to before me
this 13th day of July, 20 16
[Handwritten Signature]
Notary Public



DESIGNATION, CERTIFICATION AND CONSENT OF NEVADA COUNSEL

SCR 42(14) Responsibilities of Nevada attorney of record.

(a) The Nevada attorney of record shall be responsible for and actively participate in the representation of a client in any proceeding that is subject to this rule.

(b) The Nevada attorney of record shall be present at all motions, pre-trials, or any matters in open court unless otherwise ordered by the court.

(c) The Nevada attorney of record shall be responsible to the court, arbitrator, mediator, or administrative agency or governmental body for the administration of any proceeding that is subject to this rule and for compliance with all state and local rules of practice. It is the responsibility of Nevada counsel to ensure that the proceeding is tried and managed in accordance with all applicable Nevada procedural and ethical rules.

I Matthew T. Dushoff hereby agree to associate with Petitioner referenced hereinabove

Print Nevada Counsel Name

and further agree to perform all of the duties and responsibilities as required by Nevada Supreme Court Rule 42.

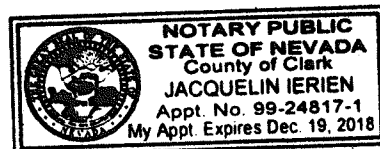
DATED this 15th day of July, 2016

[Signature]

Nevada Counsel of Record (blue ink)

STATE OF Nevada)
COUNTY OF Clark) ss

Subscribed and sworn to before me
this 15th day of July, 2016
[Signature]
Notary Public



Statement of Additional Applications

3/11/16 Schwartz v. Lopez (Amicus) First Judicial District Court Carson City Denied

In response to Section 13 above, to the best of our ability, the names and addresses of each party and associated counsel are provided below:

Appellants

Ruby Duncan
601 South Rancho Dr. Suite B-11
Las Vegas, NV 89101

Rabbi Mel Hecht
601 South Rancho Dr. Suite B-11
Las Vegas, NV 89101

Howard Watts, III
601 South Rancho Dr. Suite B-11
Las Vegas, NV 89101

Leora Olivas
601 South Rancho Dr. Suite B-11
Las Vegas, NV 89101

Adam Berger
601 South Rancho Dr. Suite B-11
Las Vegas, NV 89101

Amy Rose, Esq.
American Civil Liberties Union of Nevada
601 South Rancho Dr. Suite B-11
Las Vegas, NV 89101

Daniel Mach
Heather L. Weaver
American Civil Liberties Union Foundation
915 15th Street NW, Ste. 600
Washington, D.C. 20005

Richard B. Katskee
Americans United for the Separation of Church and State
1901 L Street NW, Suite 400
Washington, D.C. 20036

Nitin Subhedar
Samuel Jacob Edwards
Covington & Burling LLP
One Front Street, 35th Floor
San Francisco, California 94111-5356

Anupam Sharma
Covington & Burling LLP
333 Twin Dolphin Dr., Suite 700
Redwood Shores, CA 94065

Respondents

Office of the State Treasurer of Nevada
Dan Schwartz, Nevada State Treasurer
101 N. Carson Street, Suite 4
Carson City, NV 89701

Nevada Department of Education
Steve Canavero, Interim Superintendent
700 E. Fifth Street
Carson City, NV 89701

Adam Laxalt
Lawrence VanDyke
Joseph Tartakovsky
Ketan Bhirud
Office of the Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

Paul D. Clement
Bancroft PLLC
500 New Jersey Avenue, NW
Seventh Floor
Washington, DC 20001

Respondent-Intervenors

Aimee Hairr
398 S. Mill Ave. #301
Tempe, AZ 85281

Aurora Espinoza
398 S. Mill Ave. #301
Tempe, AZ 85281

Elizabeth Robbins
398 S. Mill Ave. #301
Tempe, AZ 85281

Lara Allen

398 S. Mill Ave. #301
Tempe, AZ 85281

Jeffrey Smith
398 S. Mill Ave. #301
Tempe, AZ 85281

Trina Smith
398 S. Mill Ave. #301
Tempe, AZ 85281

Timothy Keller
Keith Diggs
Institute for Justice
398 S. Mill Ave. #301
Tempe, AZ 85281

Matthew Dushoff
Kolesar & Leatham
400 N. Rampart Blvd. #400
Las Vegas, NV 89145

EXHIBIT B

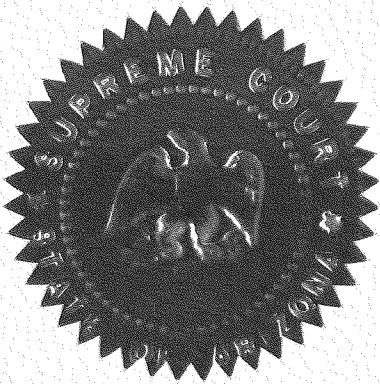
EXHIBIT B

**CERTIFICATE OF THE CLERK OF THE SUPREME COURT
OF THE
STATE OF ARIZONA**

I, Janet Johnson, Clerk of the Supreme Court of the State of Arizona, hereby certify that, according to the records of my office and upon the recommendation of the Disciplinary Clerk of the Supreme Court of Arizona

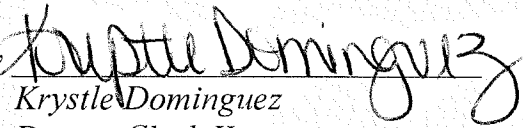
TIMOHTY DAVID KELLER

was on the 25th day of October, 1999 duly admitted to practice as an Attorney and Counselor at Law in all the courts of Arizona; that no disciplinary proceedings are pending against this attorney in the Arizona Supreme Court as of the date of this certificate; and that this name now appears on the Roll of Attorneys in this office as an active member of the Bar in good standing.



Given under my hand and the seal of said Court this 12th day of July, 2016.

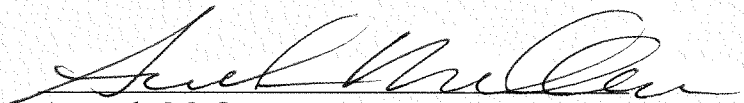
JANET JOHNSON, Clerk

By 
Krystle Dominguez
Deputy Clerk II

CERTIFICATE OF GOOD STANDING
ISSUED BY THE DISCIPLINARY CLERK
FOR AND ON BEHALF OF
THE SUPREME COURT OF ARIZONA

The Disciplinary Clerk pursuant to Rule 74, Rules of the Supreme Court of Arizona, hereby certifies that according to the records of the State Bar, **TIMOTHY DAVID KELLER** duly admitted to practice as an attorney and counselor at law in all courts of Arizona by the Supreme Court of Arizona on October 25, 1999 and is now, as of the date of this Certificate, an active member of the State Bar of Arizona in good standing.

Given under the seal of the Disciplinary
Clerk of the Supreme Court of Arizona
this July 8, 2016.



Amanda McQueen
Disciplinary Clerk

EXHIBIT C

EXHIBIT C

1 STAT

2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 Case No. 70648

4
5 Ruby Duncan

6 vs.

7
8 The State of Nevada Office
9 of the State Treasurer

10 _____ /
11 **STATE BAR OF NEVADA STATEMENT PURSUANT TO SUPREME COURT RULE**
12 **42 (3) (b)**

13 THE STATE BAR OF NEVADA, in response to the application of
14 Petitioner, submits the following statement pursuant to SCR42(3):

15 SCR42(6) **Discretion.** The granting or denial of a motion to associate
16 counsel pursuant to this rule by the court is discretionary. The
17 court, arbitrator, mediator, or administrative or governmental
18 hearing officer may revoke the authority of the person permitted to
19 appear under this rule. Absent special circumstances, repeated
20 appearances by any person or firm of attorneys pursuant to this rule
21 shall be cause for denial of the motion to associate such person.

19 (a) **Limitation.** It shall be presumed, absent special
20 circumstances, and only upon showing of good cause, that
21 more than 5 appearances by any attorney granted under
22 this rule in a 3-year period is excessive use of this
23 rule.

22 (b) **Burden on applicant.** The applicant shall have the
23 burden to establish special circumstances and good cause
24 for an appearance in excess of the limitation set forth
25 in subsection 6(a) of this rule. The applicant shall set
26 forth the special circumstances and good cause in an
27 affidavit attached to the original verified application.

25 1. DATE OF APPLICATION: July 19, 2016

26 2. APPLYING ATTORNEY: Timothy David Keller, Esq.

27 3. FIRM NAME AND ADDRESS: Institute for Justice, 398 S. Mill
28 Avenue, Suite 301, Tempe, AZ 85281

1 4. NEVADA COUNSEL OF RECORD: Matthew T. Dushoff, Esq., Kolesar &
2 Leatham, Chtd., 400 South Rampart Blvd., Suite 400, Las Vegas,
3 NV 89145

4 5. In addition to the present application, petitioner made the
5 following previous applications within the last three years:

6 9/11/2015 ADMISSION STATUS NOT REPORTED TO THE STATE BAR
7 9/15/2015 ADMISSION STATUS NOT REPORTED TO THE STATE BAR
8 3/11/2016 ADMISSION GRANTED

9 DATED this July 19, 2016

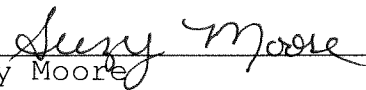
10 
11 Suzy Moore
12 Member Services Admin.
13 Pro Hac Vice Processor
14 STATE BAR OF NEVADA
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EXHIBIT D

EXHIBIT D

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUBY DUNCAN, an individual; RABBI
MEL HECHT, an individual; *et al.*,

Appellants,

vs.

THE STATE OF NEVADA OFFICE OF
THE STATE TREASURER; THE STATE
OF NEVADA DEPARTMENT OF
EDUCATION; *et al.*,

Respondents,

and

AIMEE HAIRR, an individual, *et al.*,

Respondent-Intervenors.

Supreme Court Case No. 70648

District Court No. A-15-723703-C

**[PROPOSED] ORDER ADMITTING
TO PRACTICE**

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
ERIC D. WALTHER, ESQ.
Nevada Bar No. 013611
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kdiggs@ij.org
*Admitted *Pro Hac Vice* below;
applications forthcoming

Attorneys for Respondent-Intervenors.

ORDER ADMITTING TO PRACTICE

TIMOTHY D. KELLER, ESQ., having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the state of Arizona, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and TIMOTHY D. KELLER, ESQ. is hereby admitted to practice in the above-entitled Court for the purposes of the above entitled matter only.

DATED this ____ day of _____, 2016.

SUPREME COURT JUDGE

Submitted by:

KOLESAR & LEATHAM

/s/ Matthew T. Dushoff, Esq.
MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
400 S. Rampart Blvd., Ste. 400
Las Vegas, Nevada 89145
Telephone: (702) 362-7800
Facsimile: (702) 362-9472
Attorneys for Respondent-Intervenors