

IN THE SUPREME COURT OF THE STATE OF NEVADA

FLOR MORENCY; KEYSHA NEWELL;
BONNIE YBARRA; AAA
SCHOLARSHIP FOUNDATION, INC.;
SKLAR WILLIAMS PLLC;
ENVIRONMENTAL DESIGN GROUP,
LLC,

Plaintiffs-Appellants,

vs.

STATE OF NEVADA *ex rel.* the
DEPARTMENT OF EDUCATION;
JHONE EBERT, in her official capacity as
executive head of the Department of
Education; the DEPARTMENT OF
TAXATION; JAMES DEVOLLD, in his
official capacity as a member of the Nevada
Tax Commission; SHARON RIGBY, in
her official capacity as a member of the
Nevada Tax Commission; CRAIG WITT,
in his official capacity as a member of the
Nevada Tax Commission; GEORGE
KELESIS, in his official capacity as a
member of the Nevada Tax Commission;
ANN BERSI, in her official capacity as a
member of the Nevada Tax Commission;
RANDY BROWN, in his official capacity
as a member of the Nevada Tax
Commission; FRANCINE LIPMAN, in her
official capacity as a member of the Nevada
Tax Commission; ANTHONY WREN, in
his official capacity as a member of the
Nevada Tax Commission; MELANIE
YOUNG, in her official capacity as the
Executive Director and Chief
Administrative Officer of the Department
of Taxation,

Electronically Filed
Case No. 81281
Aug 16 2021 12:40 p.m.
Elizabeth A. Brown
District Court Case No. A-19-800267-C
Clerk of Supreme Court
Dept. No. 32

**MOTION TO WITHDRAW
COUNSEL WHO HAS LEFT FIRM**

Defendants-Respondents,

and

The LEGISLATURE OF THE STATE OF
NEVADA,

Intervenor-Defendants-Respondents.

MOTION TO WITHDRAW COUNSEL WHO HAS LEFT FIRM

Plaintiffs-Appellants' counsel, the Institute for Justice, moves this Court for leave to withdraw Timothy D. Keller as counsel for Plaintiffs-Appellants FLOR MORENCY; KEYSHA NEWELL; BONNIE YBARRA; AAA SCHOLARSHIP FOUNDATION, INC.; SKLAR WILLIAMS PLLC; and ENVIRONMENTAL DESIGN GROUP, LLC in the above-entitled action because Mr. Keller has left the firm. This Motion is made and based upon the following Memorandum of Points and Authorities as well as the attached Declaration of Timothy D. Keller.

DATED this 16th day of August, 2021.

INSTITUTE FOR JUSTICE

By: /s/ Joshua A. House

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Attorneys for Plaintiffs-Appellants

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

After serving as counsel for Plaintiffs-Appellants as an attorney at the Institute for Justice, Timothy D. Keller no longer works for the Institute for Justice.

II. Factual Summary

In August 2019, Plaintiffs-Appellants retained Joshua A. House and Timothy D. Keller of the Institute for Justice, and Matthew T. Dushoff of Saltzman Mugan Dushoff, for representation in this case. In January 2021, Mr. Keller ended his employment with the Institute for Justice. Rather than renew his annual *pro hac vice* status, Mr. Keller has decided to withdraw from this case. Plaintiffs-Appellants continue to receive sufficient representation from the Institute for Justice and Saltzman Mugan Dushoff.

III. Argument

The legal basis for setting withdrawal from an action is set forth in Nevada Rule of Appellate Procedure 46(e) as follows:

NRAP 46(e) Withdrawal, Substitution, or Discharge of Attorney in Civil Appeals. The withdrawal, substitution or discharge of an attorney in a civil appeal pending before the Supreme Court or Court of Appeals shall be governed by this Rule.

(1) In General. After the filing of a notice of appeal, any stipulation or motion that effects a change in the representation of a party to the appeal must be filed with the clerk of the Supreme Court.

...

(3) Withdrawal. A withdrawal of counsel may be effected only by filing a motion in the court. The withdrawing attorney shall serve a copy of the motion on the attorney's client and any adverse party. The motion shall clearly state the reasons for the attorney's withdrawal consistent with SCR 46 and RPC 1.16. A motion that is filed after judgment or final determination as provided in SCR 46 will only be granted if the Supreme Court or Court of Appeals has issued a final decision in the matter and the time for filing a petition for rehearing has expired.

The substantive grounds for a proper withdrawal of counsel are found at Nevada Rule of Professional Conduct 1.16 as follows:

Nevada RPC, Rule 1.16. Declining or Terminating Representation.

...

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

...

(7) Other good cause for withdrawal exists.

In the present case, granting this Motion will not adversely affect the clients because they continue to have sufficient representation by the Institute for Justice and Saltzman Mugan Dushoff. Accordingly, Plaintiffs-Appellants' remaining counsel respectfully requests that this Court allow Timothy D. Keller to withdraw as counsel for Plaintiffs-Appellants in this appeal.

A copy of the Motion will be mailed to Plaintiffs-Appellants simultaneously with the filing of this Motion with the Court.

DATED this 16th day of August, 2021.

INSTITUTE FOR JUSTICE

By: /s/ Joshua A. House

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Attorneys for Plaintiffs-Appellants

DECLARATION OF TIMOTHY D. KELLER

I, Timothy D. Keller, hereby declare and state as follows:

1. I am over the age of 18 years, a resident of Maricopa County, Arizona, a citizen of the United States of America, and competent to testify and be a witness as to the facts stated herein.

2. I have personal knowledge of the matters asserted herein except for those matters stated upon information and belief, which I believe to be true.

3. I am an attorney at law licensed to practice in the State of Arizona.

4. In August 2019, Plaintiffs-Appellants retained Joshua A. House, Matthew T. Dushoff, and myself to represent them before the District Court and in the instant appeal.

5. Since that time, I have left the Institute for Justice and am now employed by Generation Justice.

6. On August 3, 2021, I received my annual *pro hac vice* renewal notice from the State Bar of Nevada instructing me to either renew my yearly fees or advise of my withdrawal from the case.

7. I would like to withdraw my representation of Plaintiffs-Appellants instead of renewing my yearly fees.

8. Withdrawal from this action will not result in prejudice to the Plaintiffs-Appellants as they have sufficient representation from the Institute for Justice and Saltzman Mugan Dushoff.

9. Plaintiffs-Appellants' current mailing addresses as last communicated to counsel are: Flor Morency, 4166 Pecan Pie Ct., Las Vegas, NV 89115; Keysha Newell, 1237 W. Alexander Rd, Apt. 123, Las Vegas, NV 89032; Bonnie Ybarra, 3150 S. Nellis Blvd., Apt. 1187, Las Vegas, NV 89121; AAA Scholarship Foundation, LLC, P.O. Box 15719, Tampa, FL 33684-0719; Sklar Williams PLLC, 410 S. Rampart Blvd., Ste. 350, Las Vegas, NV 89145; and Environmental Design Group, LLC, 450 Fremont St., Ste. 233, Las Vegas, NV 89101.

10. A copy of the instant Motion will be mailed to counsel for Defendants-Respondents simultaneously with the filing of this Motion with the Court.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 16th day of August, 2021, at Phoenix, Arizona.


TIMOTHY D. KELLER

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 16th day of August, 2021, I caused a true and correct copy of the foregoing ***Motion to Withdraw Counsel Who Has Left the Firm*** to be served via the Court's electronic filing service upon the following counsel of record:

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Attorneys for Respondent Legislature of the State of Nevada

I further certify that on the 16th day of August, 2021, I caused a true and correct copy of the foregoing Motion to be sent via United States First-Class Mail, postage prepaid, to the last-known address of the below listed parties:

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Plaintiffs-Appellants

/s/ Claire Purple

An Employee of the Institute for Justice