

In the Supreme Court of Nevada

Electronically Filed
Jul 21 2023 11:48 AM
Elizabeth A. Brown
Clerk of Supreme Court

SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC.,

Appellant,

v.

SANDRA L. ESKEW, as Special Administrator
of the Estate of William George Eskew,

Respondent.

On Appeal from the Eighth Judicial District Court, Clark County
the Honorable Nadia Krall, District Judge
District Court No. A-19-788630-C

MOTION TO ASSOCIATE COUNSEL

DANIEL T. HAYWARD (NV BAR NO. 5986)
Mark C. Wenzel (NV Bar No. 5820)
BRADLEY, DRENDEL & JEANNEY Ltd
6900 S. McCarran Blvd., Suite 2000
Reno, NV 89509
danhayward@bdjlw.com
mwenzel@bdjlw.com
(775) 335-9999

Agatha M. Cole
BEVERLY PLLC
43 West 43rd Street, Suite 159
New York, NY 10036
agatha@beverlypllc.com
(917) 524-8055
(pro hac vice pending)

*Counsel for Amicus Curiae,
National Association for Proton Therapy*

Proposed *Amicus Curiae*, National Association for Proton Therapy, by and through their counsel of record Mark C. Wenzel, Esq., and Daniel T. Hayward, Esq. of the law offices of Bradley, Drendel & Jeanney, Ltd., hereby move the Court for an order permitting Agatha Cole, Esq., of Beverly, PLLC, 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” (Exhibit 1), “Certificate of Good Standing” from New York (Exhibit 2), and the State Bar of Nevada Statement (Exhibit 3).

AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 20 day of July 2023.

BRADLEY DRENDEL & JEANNEY



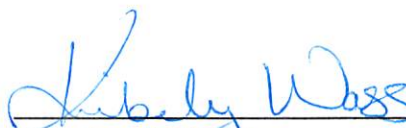
DANIEL T. HAYWARD (NV BAR No. 5986)
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*Counsel for Amicus Curiae,
National Association for Proton Therapy*

CERTIFICATE OF SERVICE

Pursuant to NRAP 31, I hereby certify that I am an employee of BRADLEY, DRENDEL & JEANNEY, and on this date, I electronically filed and served a true and correct copy of the foregoing **MOTION TO ASSOCIATE COUNSEL** as follows via eFlex Program, which will send a notice of electronic filing to the following:

Honorable Nadia Krall Regional Justice Center 200 Lewis Ave. Las Vegas, NV 89155	Thomas H. Dupree Jr., 1050 Connecticut Ave. NW, Washington, D.C. 20036
Matthew L. Sharp, Esq. MATTHEW L. SHARP, LTD. 432 Ridge Street Reno, NV 89501	D. Lee Roberts, Jr., Esq. Phillip N. Smith, Esq. Ryan T. Gormley, Esq. 6385 S. Rainbow Blvd., Ste. 400, Las Vegas, NV 89118
Kelly H. Dove Snell & Wilmer 50 W. Liberty St., #510 Reno, NV 89501	Douglas A. Terry Doug Terry Law, PLLC 200 E. 10 th St. Plaza, Suite 200 Edmond, OK 73018
Deepak Gupta Gupta Wessler PLLC 2001 K St NW, Washington, DC 20006	

Dated this 21 day of July, 2023.



Kimberly Wass

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Sierra Health and Life Insurance
Company, Inc.,

Appellant,

v.

Sandra L. Eskew, as Special
Administrator of the Estate of
William George Eskew,

Respondent.

No. 85369

VERIFIED APPLICATION FOR
ASSOCIATION OF COUNSEL UNDER
NEVADA SUPREME COURT RULE 42

Agatha Marie Cole, Petitioner, respectfully represents:
First Middle Name Last

1. Petitioner resides at 108 Conselyea Street
Street Address

Brooklyn (New York City), Kings County, NY
City County State

11211, (828) 773-2628
Zip Code Telephone

2. Petitioner is an attorney at law and a member of the law firm of

BEVERLY PLLC

with offices at 43 West 43rd Street, Suite 159
Street Address

New York City, Manhattan, NY
City County State

10036 (917) 524-8055 agatha@beverlypllc.co
Zip Telephone Email

3. Petitioner has been retained personally or as a member of the above named law firm by _____
The National Association of Proton Therapists to provide legal representation in

connection with the above-entitled matter now pending before the above referenced court.

4. Since February 25 of 2015, petitioner has been, and presently is, a member of good standing of the bar of the highest court of the State of New York 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:

DATE ADMITTED

Supreme Court of the United States

November 15, 2021

U.S. Court of Appeals for the Federal Circuit

April 20, 2021

U.S. Court of Appeals for the Second, Fifth, Sixth and Ninth Circuits

U.S. District Courts (SDNY, EDNY, ILND, WDTN, MDTN)

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, or any member of petitioner's firm, has/have filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matter(s), if none, indicate so: *(do not include Federal Pro Hacs)*

<u>Date of</u> <u>Application</u>	<u>Cause</u>	<u>Title of Court</u> <u>Administrative Body</u> <u>or Arbitrator</u>	<u>Was Application</u> <u>Granted or</u> <u>Denied?</u>
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None

(If more space is needed, you may list previous applications on a separate attachment.)

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

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

Daniel T. Hayward 5986
First Name Middle Name Last Name NV Bar #

who has offices at Bradley, Drendel & Jeanney, Ltd.
Firm Name/Company

6900 S. McCarran Blvd., Suite 2000, Reno, NV 89509, Washoe County
Street Address City County

89509 , (775) 335-9999
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

Mark C. Wenzel, 6900 S. McCarran, Blvd., Ste 2000, Reno, NV 89509

Daniel T. Hayward, 6900 S. McCarran Blvd., Ste. 2000, Reno, NV 89509

D. Lee Roberts, Jr., 6385 S. Rainbow Blvd., Ste. 400, Las Vegas, NV 89118

Phillip N. Smith, 6385 S. Rainbow Blvd., Ste. 400, Las Vegas, NV 89118

Ryan T. Gormley, 6385 S. Rainbow Blvd., Ste. 400, Las Vegas, NV 89118

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.

CREED

1. We will strive to find harmony in our responsibilities as a representative of clients, as officers of the legal system, and as public citizens.
2. We will treat all participants of the legal system in a civil and courteous manner, not only in court, but also in all other written and oral communications.
3. We will never permit zealous advocacy to carry us beyond sobriety and decorum to disparaging personal remarks or acrimony.
4. We will demonstrate civility, professional integrity, personal dignity, respect, courtesy, and cooperation because they are essential to the fair administration of justice and conflict resolution.
5. We will not encourage or knowingly authorize any person under our control to engage in uncivil conduct.
6. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.
7. We will avoid ex parte communications with the court or tribunal, including the judge's staff, on pending matters, except when permitted by law.
8. Honesty and fair dealing are integral components of civility. We will adhere to promises and agreements fairly reached, whether orally or in writing, in good faith. When reiterating oral promises or agreements in writing, we will fairly, completely, and in good faith, restate all elements of the parties' oral agreement.
9. We will confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement to adjourn discovery or to delay trial.
10. We will stipulate to undisputed matters unless we have a good-faith basis not to stipulate.
11. We will try in good faith to resolve our objections with opposing counsel.
12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.
13. We will not request an extension of time without just cause.
14. We will consult other counsel regarding scheduling matters in a good-faith effort to avoid scheduling conflicts.
15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions of other counsel.
16. We will explain to our clients that cooperation is the professional norm. We will explain how procedural agreements do not compromise the clients' interests.
17. We will draft document requests and interrogatories without placing an undue burden or expense on any party.
18. We will ensure that our clients respond to document requests and interrogatories without strained interpretation. We will not produce documents or answer interrogatories in a manner designed to hide or obscure the existence of documents or information.
19. We will be punctual and prepared for all Court appearances so that all hearings, conferences, and trials may commence on time.
20. We will not engage in conduct that brings disorder or disruption to the legal proceeding. We will advise our clients and witnesses of the proper conduct expected and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

Creed of Professionalism and Civility

PREAMBLE

A lawyer should always show personal courtesy and professional integrity in the fullest sense of those terms.

In fulfilling our duty to represent a client vigorously as lawyers, we will honor our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We remain committed to the rule of law as the foundation for a just and peaceful society.

Uncivil, abrasive, abusive, hostile, or obstructive conduct impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Incivility tends to delay, and often deny, justice.

Lawyers should exhibit courtesy, candor, and cooperation when participating in the legal system and dealing with the public. These standards encourage lawyers to fulfill obligations to each other, to litigants, and to justice. These honorable actions achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

While these standards are voluntary and not a basis for litigation or sanctions, violations of these standards may trigger sanctions under Rules 4.4, 8.4(b), or others. Ethical problems arise from the conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interests. The Rules of Professional Conduct resolve such conflicts. The Rules, however, cannot address every conflict that may arise. These standards honor the spirit of the Rules by balancing a lawyer's obligation to protect and pursue a client's legitimate interests zealously, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons in the legal system.

The Court expects lawyers to commit to the spirit and letter of these standards, affirming that these guidelines do not denigrate the lawyer's duty of zealous representation. Law schools and continuing legal education courses should incorporate these standards when teaching professionalism to law students and practicing lawyers alike. Lawyers should make copies available to clients and adjudicators should reinforce these standards in the courtroom to reinforce our obligation to maintain and foster these standards and to make it clear that incivility may hurt the client's case.

I, Agatha M. Cole, do hereby swear/affirm under penalty of perjury that the assertions of this application and the following statements are true:

- 1) That I am the Petitioner in the above-entitled matter.
- 2) That I have received a copy of, read, and will adhere to the Nevada Creed of Professionalism and Civility.
- 3) 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.
- 4) 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 10 day of July, 2023

Augustine Cole

Petitioner/Affiant (blue ink)

STATE OF New York)
COUNTY OF New York) ss

Subscribed and sworn to before me

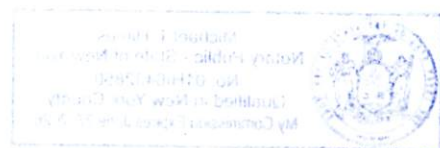
this 10th day of July, 2023

Michael T. Himes

Notary Public



Michael T. Himes
Notary Public - State of New York
No. 01HI6432850
Qualified in New York County
My Commission Expires June 27, 2026



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 Daniel T. Hayward hereby agree to associate with Petitioner referenced hereinabove and further agree to perform all the duties and responsibilities as required by Nevada Supreme Court Rule 42.

Dated this 5 day of July, 2023.



Nevada Counsel of Records (blue ink)

STATE OF NEVADA)
)
COUNTY OF WASHOE)

Subscribed and sworn to before me

this 5th day of July, 2023.


Notary Public

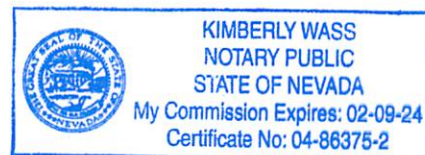


EXHIBIT 1
Question 13

Honorable Nadia Krall
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Thomas H. Dupree Jr.,
1050 Connecticut Ave. NW,
Washington, D.C. 20036

Kelly H. Dove
Snell & Wilmer
50 W. Liberty St., #510
Reno, NV 89501

Deepak Gupta
Gupta Wessler PLLC
2001 K St NW,
Washington, DC 20006

Matthew L. Sharp
Matthew L. Sharp, Ltd.
432 Ridge Street
Reno, NV 89501

Douglas A. Terry
Doug Terry Law, PLLC
200 E. 10th St. Plaza, Suite 200
Edmond, OK 73018

EXHIBIT 2

EXHIBIT 2



*Appellate Division of the Supreme Court
of the State of New York
Second Judicial Department*

*I, Maria T. Fasulo, Clerk of the Appellate Division of the
Supreme Court of the State of New York, Second Judicial
Department, do hereby certify that*

Agatha Marie Cole

*was duly licensed and admitted to practice as an Attorney and
Counselor at Law in all the courts of this State on February 25,
2015, has duly taken and subscribed the oath of office prescribed
by law, has been enrolled in the Roll of Attorneys and Counselors
at Law on file in this office, is duly registered with the
Administration Office of the Courts, and according to the records
of this Court is currently in good standing as an Attorney and
Counselor-at-Law.*

*In Witness Whereof, I have hereunto set
my hand in the City of Brooklyn on
June 30, 2023.*



Maria T. Fasulo

Clerk of the Court

EXHIBIT 3

EXHIBIT 3

1 STAT

2
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4 Case No. 85369

5 Sierra Health & Life Insurance
6 Company, Inc.

7 vs.

8 Sandra L. Eskew, as Special
9 Administrator of the Estate
10 of William George Eskew

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.

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

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

1. DATE OF APPLICATION: 7/6/2023

2. APPLYING ATTORNEY: Agatha Marie Cole, Esq.

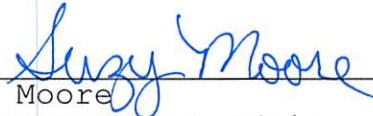
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1 3. FIRM NAME AND ADDRESS: Beverly, PLLC, 43 West 43rd Street,
2 Suite 159, New York City, NY 10036

3 4. NEVADA COUNSEL OF RECORD: Daniel T Hayward, Esq., Bradley,
4 Drendel & Jeanney, 6900 S. McCarran Blvd., Suite 2000, Reno, NV
5 89509

6 5. There is no record of previous applications for appearance by
7 petitioner within the past three (3) years.

8 DATED this July 18, 2023

9
10 
11 Suzy Moore
12 Member Services Admin.
13 Pro Hac Vice Processor
14 STATE BAR OF NEVADA
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