

David K. W. Wilson, Jr.
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Attorney for Appellant Amicus Curiae

IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO. DA 19-0357

CHERYL BRATTON,
INDIVIDUALLY AND ON BEHALF
OF A CLASS OF SIMILARY
SITUATED MONTANANS,

Appellants,

v.

SISTERS OF CHARITY OF
LEAVENWORTH HEALTH SYSTEM,
INC. D/B/A SCL HEALTH.,

Appellee.

District Court Cause No.: DV-18-1609

**MOTION AND PETITION OF
AMICI CURIAE MONTANA
LEGAL SERVICES, NATIONAL
CONSUMER LAW CENTER AND
NATIONAL ASSOCIATION OF
CONSUMER ADVOCATES FOR
ADMISSION OF PRO HAC VICE
COUNSEL**

On Appeal from the Montana Thirteenth Judicial District Court, Yellowstone
County, The Honorable Gregory Todd Presiding

Pursuant to Appellate Rule 16, Amici respectfully request that this Court grant pro hac vice admission to Professor Mark Elliot Budnitz as co-counsel in this case. David K. W. Wilson, Jr. of Morrison Sherwood Wilson & Deola, counsel for Amici, will be in-state counsel with Professor Budnitz.

As the Court is aware, Amici are three organizations whose work focuses in whole or in part in representing consumers. This appeal involves a consumer rights issue.

The Court's Rules for Admission VI (A) requires a lawyer applying for pro hac vice to, at the time, be "admitted and authorized to practice law in the highest court of another state." Professor Budnitz recently retired from teaching law at Georgia State University College of Law in Atlanta, Georgia. He is on Retired status with the Massachusetts Bar, and on Inactive status in the State of Georgia.

Amici and Professor Budnitz seek a waiver of the active bar membership requirement of Rule VI (A) for Professor Budnitz for the following reasons:

Professor Budnitz began representing low-income consumers soon after his graduation from Harvard Law School in 1969. From 1975 until 1979 he was the Executive Director of the National Consumer Law Center, one of the amicus in this case. He began his academic career at Emory School of Law from 1979 until 1984 when he became the Branch Chief for Bankruptcy Reorganization at the Atlanta Regional Office of the Securities and Exchange Commission.

In 1988 he returned to academia at Georgia State University College of Law. In 2005 he was the recipient of the Patricia T. Morgan Award for Outstanding Faculty Scholarship. In 2009 he became the Bobby Lee Cook Professor of Law, an endowed chair. He retired from full-time teaching in 2011 and from part-time

teaching in 2015. He is currently the Bobby Lee Cook Professor of Law Emeritus.

Professor Budnitz taught courses on bankruptcy, consumer protection and the Uniform Commercial Code at Emory School of Law. He taught the same courses as well as a course on the law of electronic commerce at Georgia State University.

Professor Budnitz co-authored Amicus briefs submitted to the United States Supreme Court in the following cases: *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Swarb v. Lennox*, 405 U.S. 191 (1972) *Mourning v. Family Publications*, 411 U.S. 356 (1973), and *Mitchell v. W.T. Grant*, 416 U.S. 600 (1974). He wrote Amicus briefs in cases before the Second and Ninth Circuit Courts of Appeal. In addition, he filed numerous briefs and statements on behalf of the Securities and Exchange Commission.

Professor Budnitz has co-authored four books including Consumer Banking and Payments Law, now in its sixth edition. He is currently a Contributing Author to that publication. He has written over 35 law journal articles, primarily about consumer payment issues.

Professor Budnitz has been a member of the American Law Institute since 2000 and an active participant in the ALI's current project to draft a Restatement of the Law of Consumer Contracts as a member of that project's Consultative Group.

He has been on the Board of Directors of the National Consumer Law Center since 2002. He was on the Board of the Atlanta Legal Aid Society from 1990 to 2009 and now serves on its Advisory Committee.

Appellants have consulted Defendant and it takes no position on the motion.

If this petition is granted, Professor Budnitz will complete and file the State Bar of Montana's Pro Hac Vice Application with the Bar Admissions Administrator, a draft of which accompanies this petition. The appropriate fee will be paid to the Administrator.

Dated this 17th day of September 2019.

Morrison, Sherwood, Wilson & Deola, PLLP

BY: /s/ David K.W. Wilson, Jr.
David K. W. Wilson, Jr.
Attorney for Amicus Curiae

<i>Atty Status</i>	<i>Jurisdiction(s)</i>
_____	_____
<i>Discipline</i>	_____
<i>Appearance: Applicant</i> _____ <i>Firm</i> _____	
<i>MT Attorney SBM</i> _____ <i>ODC</i> _____	

(Boxes for State Bar use only.)

<i>Application Number</i>	
<i>Date Received</i>	<i>Staff Initials</i>
<i>Fee Paid</i>	<i>Check No.</i>
<i>Date Sent to Court or Agency</i>	

STATE BAR OF MONTANA
P.O. Box 577, Helena, MT 59624
Street Address: 33 S. Last Chance Gulch, Suite 1B, Helena, MT 59601
Telephone: (406) 442-7660
Fax: (406) 442-7763

PRO HAC VICE APPLICATION

The original application must be submitted to the State Bar of Montana with a fee of \$495 for each *pro hac vice* appearance requested **and** a certificate of good standing from each state the attorney is a member of.

1.

Mark E. Budnitz	404-634-9182	mbudnitz@gsu.edu
Applicant's Name	Phone	E-Mail
2.

I am not associated with a law firm.			
Firm Name (List all firm(s) with which you are associated.)			
3.

N/A	Helena	Montana	59601
Office Address	City	State	Zip
	Atlanta	Georgia	30345
4.

1765 Morris Landers Dr.	Helena	Montana	59601
Residence Address	City	State	Zip
5. List the name, address, and telephone number of the active member of the State Bar of Montana who is the attorney of record in the case for which this application is being made.

David K.W. Wilson, Jr. Morrison, Sherwood, Wilson & Deola PLLP	406-442-3261
Attorney & Firm Name	Daytime Phone Number
401 Last Chance Gulch	Helena Montana 59601
Address	City State Zip
6. List all state and federal courts in which you have been admitted to practice and the dates of admission **and provide certification of good standing for each State only. Do not** include pro hac vice admissions.

A. State Courts: Massachusetts, 1970; Georgia 1985.	
_____	_____
_____	_____
B. Federal Courts: Massachusetts 1970; Northern District of Georgia 1985.	
_____	_____
_____	_____

7. Are you currently suspended, disbarred, or otherwise not licensed to practice in any of the above courts?
If so, attach copies of all relevant court documents or disciplinary documents. ☒ Yes ☐ No
Massachusetts - Retired status; Georgia - inactive status
8. Are you subject to pending disciplinary proceedings in any jurisdiction? ☐ Yes ☒ No
If so, attach a description of the nature and status of each pending disciplinary proceeding.
9. Do you maintain a residence in Montana? ☐ Yes ☒ No
10. Are you regularly employed in Montana? ☐ Yes ☒ No
11. Are you regularly engaged in the practice of law or in substantial business or professional activities in Montana? ☐ Yes ☒ No
12. Do you have an application for admission to the State Bar of Montana pending? ☐ Yes ☒ No
13. List the title of each state court and cause in Montana in which you **OR YOUR FIRM** have filed an application to appear as counsel pro hac vice, the date of each application, and whether it was granted or denied. (Do not list Federal court pro hac vice appearances.)

List the current title, court, and cause number for which you are applying.

Title, Court, Cause #	County	Date	Granted: (Yes, No)
A. Previous Cases: _____			

B. CURRENT Case: (please include County) <u>Bratton v. Sisters of Charity of Leavenworth</u>			
<u>Health Systems, Inc., Supreme Court of Montana, Case No. DA 19-0357.</u>			

14. I agree to comply with the applicable statutes, laws, and procedural rules of the State of Montana. I further agree to be bound by the Montana Rules of Professional Conduct (except as to Rules 6.1-6.4) and will submit to the jurisdiction of the Montana courts, the Montana disciplinary process, and the State Bar of Montana with respect to acts and omissions occurring during admission under this application.
15. I understand that a lawyer not admitted to practice in Montana is subject to the disciplinary authority of Montana for conduct that constitutes a violation of the Montana Rules of Professional Conduct and that: a) involves the practice of law in Montana by that lawyer; or b) involves that lawyer holding himself or herself out as practicing law in Montana; or c) involves the practice of law in Montana by another lawyer over whom this lawyer has the obligation of supervision or control.
16. I state that payment has been made to the State Bar of Montana in accordance with the requirements of Section IV of the Rules for Admission and in accordance with the requirements of Rule 6 of the Rules for Lawyer Disciplinary Enforcement.
17. I understand I have an on-going obligation to advise the State Bar of Montana and court/administrative agency if my standing or status changes in any of the jurisdictions in which I am admitted during the term of my pro hac vice admission.

18. I agree to provide the State Bar of Montana with the court or administrative agency's order to grant or deny this application. (All applications will be counted as an appearance unless the State Bar of Montana is advised the application was denied by the Court.)
19. I agree to notify the State Bar of Montana of any appeals if the case is referred to a higher court. (If the above action proceeds to a court of higher jurisdiction, I understand the appealed case will not be counted as an additional appearance.)
20. I agree to provide current certificates of good standing from the jurisdiction(s) in which I am admitted.
21. I understand that the \$495 assessment is an annual assessment and agree to promptly pay the assessment as long as this proceeding is pending before a Montana administrative agency or any Montana court (except federal court).

State of Georgia

County of Dekalb

The above statements are true based upon applicant's knowledge and belief. Further, I agree to submit to the pro hac vice rules, the Montana Rules of Professional Conduct, and the Montana Rules for Lawyer Disciplinary Enforcement.

Abdirahman Dair Kalif 9/17/2019
Signature of Applicant Date

Subscribed and sworn to (or affirmed) before me this 17th day of September, 2019.

Abdirahman Dair Kalif
(SEAL)
NOTARY PUBLIC
DeKalb County, GEORGIA
My Comm. Expires
01/27/2020

Notary Signature: [Signature]
Printed Name of Notary: ABDIRAHMAN Dair Kalif
Notary Public for the State of: GA
Residing in: 2725 CHAIRMAN RD NW, ATLANTA, GA 30328
My commission expires: 01/27/2020

ATTACH: Certificate(s) of Good Standing
\$495.00 Pro Hac Vice Fee

Rules and information about pro hac vice are available on the State Bar's website at www.montanabar.org. Please direct questions to Sean O'Connor: soconnor@montanabar.org or (406) 447-2204.

CERTIFICATE OF SERVICE

I, David Kim Wilson, hereby certify that I have served true and accurate copies of the foregoing Motion - Pro Hac Vice - State Bar Certification and Application to the following on 09-17-2019:

John C. Heenan (Attorney)
1631 Zimmerman Trail, Suite 1
Billings MT 59102
Representing: Cheryl Bratton
Service Method: eService

Robert C. Lukes (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: Sisters of Charity of Leavenworth Health Systems,
Service Method: eService

Michael Manning (Attorney)
175 N. 27th St., Suite 1206
Billings MT 59101
Representing: Cheryl Bratton
Service Method: eService

Kathryn Ann Reilly (Attorney)
370 Seventeenth Street, Ste 4500
Denver CO 80202-5647
Representing: Sisters of Charity of Leavenworth Health Systems,
Service Method: Conventional

Joseph Patrick Cook (Attorney)
1631 Zimmerman Trail, Suite 1
Billings MT 59102
Representing: Cheryl Bratton
Service Method: Conventional

Electronically Signed By: David Kim Wilson
Dated: 09-17-2019