

IN THE SUPREME COURT OF THE STATE OF MONTANA

CASE No. OP 21-0395

L.B.,
PLAINTIFF-APPELLANT,

V.

UNITED STATES OF AMERICA,
DEFENDANT-APPELLEE.

CERTIFIED QUESTIONS FROM NINTH CIRCUIT COURT OF APPEALS
CAUSE No. 20-35514

**APPELLEE’S UNOPPOSED MOTION TO AUTHORIZE ATTORNEY TO
PRESENT ORAL ARGUMENT**

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Pursuant to Rules 16(1) and 15(8) of the Montana Rules of Appellate Procedure, Appellee United States of America hereby respectfully moves this Court to authorize Timothy A. Tatarka to present oral argument on behalf of the United States during the argument set for April 15, 2022, in Missoula, Montana. John Heenan, counsel for Appellant, has indicated that Appellant does not oppose the requested relief. The reasons for this motion are set forth below.

1. This case originated in the United States District Court for the District of Montana, and jurisdiction was based on the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b). After appeal, the United States Court of Appeals for the Ninth Circuit certified questions of Montana state law to this Court. This Court has authority to answer the certified questions pursuant to Mont. R. App. P. 15(3).

2. Timothy A. Tatarka, Assistant United States Attorney for the District of Montana, has been primarily responsible for handling this case throughout the district court and appellate proceedings, including briefing and argument of the appeal to the United States Court of Appeals for the Ninth Circuit, which certified the questions of state law to this Court, as well as briefing before this Court.¹ As set forth in the attached affidavit, Timothy Tatarka has extensive experience in appellate court and currently serves as the District of Montana's Appellate Chief.

¹ Victoria L. Francis, Assistant United States Attorney, is counsel of record.

3. Counsel for the United States is aware of the Montana State Bar Rules, including the limitations on pro hac vice appearances by attorneys. For the following reasons, the United States respectfully requests that this Court conclude that those provisions do not apply here or should be waived pursuant to Rule XI.A.

First, the limitations on out-of-state practitioners in the bar rules should not be read to restrict the practice of attorneys representing the United States or its agencies, officers, or employees. Pursuant to 28 U.S.C. § 517, the Attorney General can send any attorney in the Department of Justice “to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State.”

Second, this case arose in federal court, not state court, and the federal appellate court has certified questions of state law to this Court in aid of the jurisdiction of the federal courts. This case does not invoke the independent jurisdiction of the Montana state courts, and the rules governing appearances before the state courts need not be implicated by resolution of the narrow questions presented in this dispute, which arises under federal statutory law.

4. Timothy Tatarka, counsel for the United States, has contacted John Heenan, counsel for Appellant, and Mr. Heenan indicated that the Appellant does not object to this motion.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that Timothy Tatarka be authorized to present oral argument before this Court on April 15, 2022.

DATED this 7th day of April, 2022.

Respectfully submitted,

Leif M. Johnson
United States Attorney

/s/ Victoria L. Francis
Victoria L. Francis
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Victoria Laeder Francis, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 04-07-2022:

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