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### Summary of Imperial Credit v. Eighth Judicial District Court, 130 Nev. Adv. Op. 59

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MISCELLANEOUS: ASSOCIATION OF COUNSEL

**Summary**

The Court determined whether a district court may deny a motion to associate out-of-state counsel who satisfy all of requirements of Nevada Supreme Court Rule 42.

**Disposition**

In general, a district court reviewing a motion to associate out-of-state counsel should typically limit its analysis to the requirements for admission set forth in SCR 42. Accordingly, a district court should not consider whether the out-of-state counsel would be more capable of handling the case than local counsel, or whether trial might be delayed if the motion is granted.

**Factual and Procedural History**

Petitioners Imperial Credit Corporation and Thomas Vail were initially represented by Andrea Babero of Black & Lobello in the defense of a lawsuit filed by real parties in interest Leerad LP, Virginia Belt, and Patricia McGill. A newly hired attorney was assigned to Imperial Credit's case when Babero resigned his employment with Black & Lobello several months before the trial. Imperial Credit retained out-of-state attorneys Cynthia G. Burnside and A. Andre Hendrick, who had previously handled similar cases for the company. Burnside and Hendrick complied with SCR 42(3), (4)'s procedural requirements for out-of-state attorneys seeking admission to practice in Nevada courts, and Imperial Credit's local counsel accordingly filed a district court motion to associate them.

However, the district court denied the motion without a hearing, citing only SCR 42(6), which gives district court's the discretion to grant or deny a motion. Reconsideration of the decision was denied, resulting in the emergency writ petition. The Nevada Supreme Court granted extraordinary relief through an unpublished order; this decision explains that holding.

**Discussion**

*Standard of Review*

An arbitrary or capricious exercise of a district court's discretion can be controlled by a writ of mandamus.<sup>2</sup> The Nevada Supreme Court may address a petition's merits to clarify important issues.<sup>3</sup> Here, a district court denying a motion to associate out-of-state counsel who satisfies all of SCR 42's admission requirements constitutes an important legal issue needing clarification. Thus, the Supreme Court considered the merits of the petition.

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<sup>1</sup> By Danielle Barraza.

<sup>2</sup> *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); NEV. REV. STAT. § 34.160.

<sup>3</sup> *Mineral Cnty. v. State, Dep't of Conservation & Natural Res.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001).

## *The Practice of Attorneys Not Admitted in Nevada*

Imperial Credit argued that because out-of-state counsel met all the requirements for pro hac vice admission set forth in SCR 42, denying the motion to associate was improper. The district court judge contended that Imperial Credit failed to prove that the out-of-state counsel would better represent it than would local counsel, and noted that allowing Imperial Credit to assert new counsel so soon before the trial would delay the trial.

SCR 42 authorizes out-of-state counsel to practice in Nevada's courts through pro hac vice admission. Attorneys licensed to practice law in a state other than Nevada can apply to the State Bar of Nevada for a limited admission to practice in a particular action pending in Nevada state courts. The attorney must provide certificates of good standing from where the attorney has been admitted; information regarding the attorney's disciplinary history; and whether the attorney has applied for pro hac vice admission in Nevada within the last three years.<sup>4</sup>

Although district courts have discretion to grant or deny motions to associate out-of-state counsel,<sup>5</sup> importance is placed on allowing parties to be represented by the counsel of their choice.<sup>6</sup> Thus, this case questions whether the district court may properly deny a motion to associate out-of-state counsel who has met all of the SCR 42 requirements.

The Court adopted the holding in *THI Holdings*, a Florida District Court of Appeals decision that addressed a trial court's reliance on criteria not contained in Florida's rule governing pro hac vice admission to deny a motion.<sup>7</sup> In that case, the court noted that while district court judges have discretion to deny the motion, the ruling should still be based on matters appearing in the record before the court, such as information that calls into question the applicant's admission to practice in other states or good standing.<sup>8</sup> Therefore, extraordinary relief is warranted to rectify the district court's denial of a motion to admit counsel to practice if the out-of-state counsel meets all the rule-based requirements for admission.<sup>9</sup>

The Court noted that in Nevada, the district court's discretion is still subject to the test of reasonableness, requiring logic and justification for the result.<sup>10</sup> Arbitrary, fanciful, or unreasonable discretion is improper and an abuse of discretion. Thus, applying *THI* to this case, the Imperial Credit out-of-state attorneys met all of SCR 42's admission requirements, were in good standing with their local state bars, had no disciplinary issues, and had not previously applied for pro hac vice admission in this state.<sup>11</sup> However, the district court still denied Imperial Credit's motion to associate the attorneys, citing a concern that granting the motion shortly before trial would delay resolution of the underlying case.<sup>12</sup> The district court also

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<sup>4</sup> SCR 42(3)-(4).

<sup>5</sup> SCR 42(6).

<sup>6</sup> See *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 53, 152 P.3d 737, 743 (2007) (holding that a party's interest in being represented by counsel of its choice must be considered before disqualifying a party's attorney); *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1257, 148 P.3d 694, 702 (2006) (holding that when a party's right to counsel of its choice conflicts with a judge's duty to sit, the party's right generally prevails).

<sup>7</sup> See *THI Holdings, L.L.C. v. Shattuck*, 93 So. 3d 419 (Fla. Dist. Ct. App. 2012).

<sup>8</sup> *Id.* at 423.

<sup>9</sup> *Id.* at 424-25.

<sup>10</sup> *THI Holdings*, 93 So. 3d at 423.

<sup>11</sup> See generally SCR 42 (setting forth the requirements and procedures for requesting and obtaining pro hac vice admission); SCR 42(6)(a).

<sup>12</sup> This was a weak argument because the district court itself has the power to prevent any delay of trial through the exercise of its discretion to deny any such request. See *Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006) (noting that the grant or denial of a trial continuance rests within the district court's discretion).

asserted that Imperial Credit had failed to demonstrate that out-of-state counsel was more capable of handling its case than local counsel. These positions were misplaced, as they inserted reliance on factors outside SCR 42's requirements, thus constituting an arbitrary and capricious exercise of the district court's discretion.

### **Conclusion**

The district court should have allowed Imperial Credit to associate its pro hac vice counsel, as counsel met all of the requirements for admission. Accordingly, denial of the motion was an arbitrary and capricious exercise of discretion. The Nevada Supreme Court granted the petition, and issued a writ of mandamus directing the district court to vacate its order and instead enter an order granting the motion to associate pro hac vice counsel.