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STATE OF NORTH DAKOTA

December 21, 2016

Ms. Penny Miller, Clerk of the Supreme Court
600 E. Boulevard Avenue
Bismarck, ND 58505-0530

RE: Attorney Comment on Pending Petition to Permit Temporary Provision of Legal Services by
Qualified Attorneys from Outside North Dakota, Supreme Court No. 20160436

Dear Ms. Miller:

In response to the North Dakota Supreme Court's Notice of Comment in the above-referenced matter, it is with utmost passion, honor, and sense of duty that I provide these comments.

I serve as Managing Partner for Lochen Law Offices, PLLC, a boutique law firm based out of Minneapolis, whose practice centers around providing representation to clients with significant ties to Indian Country nationwide. As an Attorney licensed in Minnesota and Wisconsin, among other Federal and Tribal jurisdictions, I stand ready, able, and capable of representing individuals in North Dakota should the honorable Court decide to grant the petition to permit qualified attorneys from outside North Dakota to provide legal services.

Although the issues affecting the defendants in the Standing Rock court matters are matters and issues I am committed to addressing on behalf of the defendants (and Tribes and Tribal members everywhere), the questions of whether a defendant facing jail time is entitled to competent legal counsel and/or legal counsel of his/her choice are fundamental, constitutional questions that all members of the bar, be it North Dakota or any other state, should take stock in.

The Fifth and Sixth Amendments of the United States Constitution, incorporated by way of the Fourteenth Amendment, guarantee all defendants the right to legal counsel in matters Standing Rock defendants presently face. The right to counsel is fundamental and essential to a fair trial, as the United States Supreme Court held in *Gideon v. Wainwright* back in 1963. Even for those defendants not requesting appointed counsel, the Sixth Amendment protects the ability of the defendant to retain counsel of the defendant's choice. In either instance, the shortage of North Dakota-licensed attorneys able and willing to represent Standing Rock defendants puts the State of North Dakota in a position whereby United States citizens risk denial of fundamental, constitutionally protected rights. As Martin Luther King, Jr., once said, "Injustice anywhere is a threat to justice everywhere."

But one need not look solely to the United States Supreme Court or travel to Alabama or Tennessee to recall Dr. King's struggles to gain a sense of the risk of injustice here. In fact, the great State of North Dakota similarly enshrines the right to counsel in its own Constitution. Article I, § 12 provides

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protections consistent with, and arguably even more stringent than, those of the United States Constitution. Under Section 12, an accused shall have the right “to appear and defend in person and with counsel.” Any counsel provided must be “reasonably likely to render and [currently] rendering reasonably effective assistance.” *State v. Wolf*, 347 N.W.2d 573, 575 (N.D. 1984). If ever this were true, it would be here and now, as parties to the Standing Rock matters in the State’s courts not only suffer injustice on lands and territory that pre-dates the United States, but they risk standing trial without equal footing in the adversarial forum to which they have been summoned.

In short, I submit that anyone who is subject to the State’s laws is also entitled to *all* protections under the State’s laws.

I stand ready to assist in these matters, along with other members of the Minnesota bar. The Minnesota American Indian Bar Association, of which I am a member, is well-established, and seeks to promote justice and the effective legal representation of all Indian people. I also serve as a Member of the Wisconsin Bar Association Indian Law Section Board of Directors, another organization with access to a network of attorneys interested in the Court’s consideration.

Although many “Indian” issues exist here, all attorneys certainly understand that another broad issue concerning right to counsel is a grave threat to justice everywhere: erosion of constitutional rights. Denying counsel to those afforded such rights does not alleviate the problem at hand. In fact, similar concerns with pipeline construction have arisen within the boundaries of at least one other Indian reservation within North Dakota, so even if the Standing Rock defendants could be adequately represented, the need for counsel for appellate matters and/or new matters in the future may still (and is likely to) arise.

As an Attorney with an interest in upholding fundamental protections like the right to counsel, I pray the Honorable Justices of the North Dakota Supreme Court grant the petition, for the sake of all citizens. I am ready, willing, and able to comport with any rules and guidelines established under such Order, and welcome further inquiry as to my qualifications to represent new client(s).

Thank you for the opportunity to provide comment in this critical matter.

Mitakuye Oyasin (Lakota: *we are all related*),

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