

Supreme Court Clerk's Office - Keller, Heather

From: Seth Pearman <seth.pearman@fsst.org>
Sent: Wednesday, December 21, 2016 2:36 PM
To: (SUP) Clerk of Court Office
Cc: Heather Dawn Thompson
Subject: Comments on Petition to Permit Temporary Provision of Legal Services
Attachments: SDICBA Letter to NDSC - 12212016.pdf

Ms. Miller –

Please find the attached comments submitted on behalf of the South Dakota Indian Country Bar Association. Please feel free to forward me any questions or concerns regarding this submittal.

Respectfully Submitted,

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

**COMMENTS SUBMITTED BY
THE SOUTH DAKOTA INDIAN COUNTRY BAR ASSOCIATION (SDICBA)**

**In the Matter of a Petition to Permit Temporary Provision of Legal Services
by Qualified Attorneys From Outside North Dakota**

On December 14, 2016, a Petition to Permit Temporary Provision of Legal Services by Attorneys from Outside North Dakota was filed. The Court ordered that any person wishing to comment on the proposed amendments may do so in writing by Friday, December 30, 2016. Please accept these comments on behalf of the South Dakota Indian Country Bar Association (“SDICBA”) in support of the petition.

SDICBA is a professional association of legal practitioners who work with and in Indian Country in South Dakota. Our membership works in areas as diverse as federal Indian law, tribal law and courts, in-house tribal counsel, state tribal relations, criminal justice, and rural and tribal economic development. Our purpose is to provide professional opportunities, development, and support for those in the field, provide educational opportunities to those outside the field, and increase legal resources available in Indian Country, which is historically underserved.

SDICBA takes no position on the pipeline or the protests, but we take a very strong position on the criminal justice process being afforded, including but not limited to protections of the Fifth and Sixth Amendments of the United States Constitution, the right to counsel and the right to counsel of choice.

Many of the defendants from this controversy are our constituents, citizens of South Dakota and Indian Country. Dozens of those arrested are from the Standing Rock Sioux Reservation (of which half is located within South Dakota), Cheyenne River Sioux Reservation, Crow Creek Sioux Reservation, Rosebud Sioux Reservation, Pine Ridge Reservation (Oglala Sioux), Rapid City and other many other nations and communities throughout South Dakota.

Many of the arrestees have reached out to our membership for representation. They have expressed concern with the process in North Dakota, particularly the wide-spread denial of court-appointed counsel and the inability for them to find local counsel to hire.

In addition, many of our members who have been requested to provide representation have not been able to find local counsel for *pro hac vice*. Local counsel willing to serve in this capacity already seem to be over whelmed, many of the remaining local counsel have not minced words in their unwillingness to serve in such capacity, and those few still willing to do so have been asking for usurious rates.

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We have also looked into the reciprocity process for our membership, but the process is very lengthy and expensive would likely not result in bar acceptance until significantly past the ripeness of the cases of our constituents.

Because of the unexpectedly large docket, due to the large number of defendants charged and the severity and stacking of the charges, combined with the small size of the state bar membership, and impediments to entry, we believe a Constitutional crisis of counsel is brewing in North Dakota.

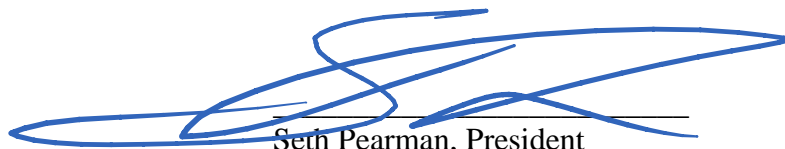
In addition, in an exacerbating factor, we have watched with concern as the government attorneys have seemingly grazed professional boundaries, stepping outside the government's role as advocate for justice, into advocacy for personal positions. Examples include the newspaper opinion article from the North Dakota U.S. Attorney Chris Myers clearly taking a position on police actions while civil rights complaints against those actions were still pending in his office; and Morton County State's Attorney Ladd Erickson charging well over hundred different cases and several different fact patterns without requisite probable cause.

We appreciate the unprecedented nature of events in North Dakota and the difficult challenges the government is facing. However, we hope the Supreme Court recognizes, as we do, that it is precisely in these tumultuous times, when opinions vary greatly and positions are the most heated, that the protections of the Constitution are the most sacred and sacrosanct.

Like the State Bar Association of North Dakota, the State Bar of South Dakota is also quite small. We appreciate the strain on resources and the difficulties being experienced. However, the protections of the Constitution were not created for easy times, to the contrary, they were created to protect us all in the most difficult times. The SDICBA strongly supports an expedited process so that our members, and others, may assist North Dakota in its efforts to ensure the sanctity of those constitutional protections.

Respectfully submitted on behalf of the South Dakota Indian Country Bar Association:

Dated December 21, 2016.



Seth Pearman, President
SDICBA