

Supreme Court Clerk's Office - Keller, Heather

From: Lanny Sinkin <lanny.sinkin@gmail.com>
Sent: Thursday, December 22, 2016 2:28 PM
To: (SUP) Clerk of Court Office
Subject: Comment - Out-of-State Lawyers

Aloha,

On December 15, 2016, the North Dakota Supreme Court issued a notice requesting public comments on whether to allow out-of-state lawyers to represent Water Protectors for their trials. As an attorney licensed in Texas and admitted to the Fifth Circuit, I have litigated in other circuits, including the Ninth Circuit and the Eleventh Circuit. I am also admitted to Federal District Court in Hawai'i. I have offered my services to the legal team handling the cases arising from the Standing Rock controversy.

I believe it is constitutionally important that the North Dakota Supreme court permit out-of-state lawyers to participate in the trials of the Water Protectors. The sheer number of cases and the limited number of North Dakota lawyers available create a significant challenge to the right to counsel.

These trials arise from an extraordinary situation in which Native Americans are asserting sovereignty rights, significant potential ecological harm, and due process violations.

Those seeking to protect the water have been subject to human rights violations, including attempts to inflict bodily harm; desecration of sacred sites after their location was provided to the courts; and illegal use of military grade weapons, such as concussion grenades and sound cannons.

Of course, these violations are a continuation of more than 500 years of attempted genocide of the Native American people. This violation of international law particularly calls for the Court to act in an equitable fashion to prevent further contributions to that sordid history.

As far as involving multiple jurisdictions, the Governor of North Dakota triggered a process that brought law enforcement officers from 24 counties, 16 cities, and 10 states, including North Dakota, to the scene. Jurisdictional boundaries evaporated with the invocation of a federal law meant to address natural disasters and "community disorders, insurgency, and enemy attack." Emergency Management Assistance Compact. That the peaceful prayer gathering at Standing Rock did not fall into any of those categories did not prevent the Governor from inappropriately invoking that law.

While there is a reasonable limit on practicing law in a state based on passing some test, such as a bar exam, to demonstrate proficiency in the laws of the particular state, that parochial limitation should not prevent the North Dakota Supreme Court from responding to an extraordinary situation with major legal implications by opening the doors to out-of-state lawyers to help the courts address the situation.

Thank you for considering my views.

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