

DECEMBER 30, 2016

STATE OF NORTH DAKOTA

Hulm, Petra

From: Josef Houska <jhouska@vallemakoff.com>
Sent: Friday, December 30, 2016 1:20 AM
To: (SUP) Clerk of Court Office
Subject: Those prosecuted for protesting the DAPL should be allowed pro hac vice counsel

SUMMARY

The defendants being prosecuted for alleged crimes who were arrested protesting the DAPL should be allowed *pro hac vice* counsel because:

1. The ND and US Constitutions ensures that the accused be afforded due process.
2. Equity requires they be allowed to use counsel from out of state.
 - a. The police had assistance from at least six other states.
 - b. DAPL crosses many state lines.
 - c. The Standing Rock protest was trying to stop DAPL's crossing of navigable water subject to federal jurisdiction.
3. Local defense attorneys are being swamped by the influx of DAPL cases.
4. The accused should have access to the best representation, the best of which *tends to be* concentrated in large metropolitan areas.
5. The world is watching.
6. North Dakota's reputation will likely be tainted if *pro hac vice* counsel are not allowed.

To the Honorable Supreme Court Justices of North Dakota:**Will North Dakota, which used police from six other states, prevent the arrested DAPL protesters from using counsel from other states?**

The world is carefully watching North Dakota's prosecution of defendants accused of criminal acts in association with their actions regarding their efforts to protect clean water in relation to Dakota Access Pipeline (DAPL). Their adamant insistence that they are prayerfully and peacefully protecting water struck a chord, not only of indigenous people all over the world, but also those from all walks of life from including United States veterans, who showed up by the thousands in the face of one of the worst impending storms in the region in many years.

Equity, justice and North Dakota's long term interests are best served by ensuring that the due process rights of the accused be undeniably protected by allowed them access to *pro hac vice* counsel.

I The North Dakota Supreme Court has repeatedly confirmed that the Constitutions of both North Dakota and the United States mandate that the accused be afforded due process

The Supreme Court of North Dakota has repeatedly confirmed the right to counsel is required under the Constitutions of both North Dakota and the United States.

"The right to counsel in a criminal case is mandated both by the North Dakota Constitution and the Sixth Amendment of the United States Constitution. *State v. DuPaul*, 527 N.W.2d 238, 240 (N.D.1995); N.D. Const. art. I, § 12 ("In criminal prosecutions in any court whatever, the party accused shall have the right to ... appear and defend in person and with counsel."); U.S. Const. amend. VI ("In all criminal

prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense.”)”
State v. Schneeweiss (N.D. 2001) 630 N.W.2d 482, 486.

The accused should have the right to the best duly-licensed attorneys in our nation. While North Dakota undoubtedly has many excellent attorneys, it is well known that financial incentives concentrate the brightest and best trained attorneys in the very largest metropolitan areas, not one of which is in North Dakota. If out-of-state attorneys are precluded, the State of North Dakota will likely be accused of a double standard employed to force the accused to accept less-qualified attorneys. If these prosecutions cause an unusually high workload for North Dakota’s criminal defense attorneys, there will likely also be accusations that forcing the accused to use North Dakota attorneys also prevented those overworked attorneys from providing their normal level of representation.

II North Dakota received assistance from police from the states of Wisconsin, Indiana, South Dakota, Minnesota, Wyoming, and Nebraska. Equity requires that the DAPL protestors enjoy assistance from other states.

The protest mainly focused on DAPL’s intended crossing of navigable waters under federal jurisdiction. DAPL is intended to cross numerous state lines. North Dakota received assistance with the Standing Rock protests from police from the states of Wisconsin, Indiana, South Dakota, Minnesota, Wyoming, and Nebraska. (See Morton County Sheriff Department’s October 23, 2016 press release.)

Equity mandates that those accused of protesting this multi-state pipeline and more specifically its crossing of navigable water subject to federal jurisdiction, who faced police from seven different states be allowed assistance from other states.

III North Dakota’s Pro Hac Vice Rules Should be Relaxed, Especially Because They Favor Corporate Attorneys

Out of state counsel, known as “*pro hac vice*,” normally have to comply with Rule 3 of the North Dakota Rules of Admission within the North Dakota State Court Rules. Within Rule 3, corporate counsel from out of state get preferential treatment by not having to post fees. Cf. Rule 3.A.1(4) (fee requirement) with Rule 3.B.6 (fee waived for appearance by in-house counsel).

Further, Rule 3 of the Rules of Admission, governing *pro hac vice* appearances should be relaxed and streamlined for these unusual cases. The North Dakota judiciary is respectfully urged to adopt temporary emergency modifications to Rule 3 of the Rules of Admission to facilitate these registrations and ensure that the accused are not denied the right to competent counsel because of procedural difficulties.

IV Forcing the Accused to Use North Dakota Attorneys Will Foreseeably Result in Numerous Accusations that Will Severely Taint North Dakota’s Reputation

The arrested are seeking representation by duly licensed attorneys in good standing from the other 49 states and the District of Columbia. It is well known that financial incentives for the best trained attorneys cause them end up in the largest metropolitan areas. While North Dakota has many excellent attorneys, if out-of-state attorneys are precluded, the State of North Dakota will likely be accused of a double standard employed to force the accused to accept less-qualified attorneys. If these prosecutions cause an unusually high workload for North Dakota’s criminal defense attorneys, there will likely also be accusations that forcing the accused to use North Dakota attorneys also prevented those overworked attorneys from providing their normal level of representation. Finally, there would likely be claims that North Dakota was also focused on helping, not only the oil corporations and their affiliated banks, but trying to feather the nests of their home state legal industry.

Conclusion

For numerous reasons, equity, justice and North Dakota's long term interests are best served by ensuring that those accused of crimes regarding the DAPL protests be allowed *pro hac vice* counsel.

Respectfully submitted,

/s/

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