

20160436  
FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
DECEMBER 30, 2016  
STATE OF NORTH DAKOTA



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December 30, 2016

Via email

[supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov)

Penny Miller  
Clerk of the Supreme Court  
600 E. Boulevard Ave.  
Bismark, ND

**Re: Supreme Court No. 20160436** (Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota)

Dear Ms. Miller:

As the Executive Director of the Uptown People's Law Center, I am writing in support of the petition (Sup. Ct. No. 20160436, "Petition") to permit out of state lawyers to assist in the representation of those charged with crimes in connection with the protests against the Dakota Access Pipeline ("DAPL").

The Uptown People's Law Center is a small not-for-profit legal clinic in Chicago, Illinois. Our mission is to provide legal assistance to poor and working people. Among other areas of law, we represent tenants facing unlawful eviction, disabled people wrongfully denied government benefits, and prisoners whose rights have been violated. In this latter area, we regularly deal with our client's underlying criminal charges. One of our attorneys has specific experience representing people facing criminal charges. She stands ready, willing and able to assist in representing the DAPL defendants, should the rules allow her to do so.

I understand from the Petition and media accounts that over 500 people were arrested and face charges ranging from misdemeanors to felonies. As of early December, about half of those arrested faced prosecution without the assistance of an attorney. This presents a danger to the rights of those arrested (and to the general public) to a speedy determination of the guilt or innocence of those arrested, in accordance with the fundamental principles of due process.

The right of counsel is fundamental to our system of justice in this country. *Gideon v. Wainwright*, 372 U.S. 335, 339 (1963). It is similarly well established that the right to counsel includes a right to an attorney who has the skill, time, and resources to provide effective representation. As this Court stated, the attorney must be “reasonably likely to render \*\*\* reasonably effective assistance.” *State v. Wolf*, 347 N.W.2d 573, 575 (N.D. 1984). See also, *State v. Peart*, 621 So. 2d 780, 789 (La. 1993).

The Petition describes in detail the difficulties those arrested have had in retaining local counsel willing to represent them—both because there are not enough attorneys who practice criminal law, but also because many qualified local attorneys have neither the interest nor the capacity to undertake this extensive work. Petition, ¶’s 29—34.

In contrast, there are hundreds of attorneys from out of state who are both qualified, and willing, to provide representation to these defendants. While ours is a small office, we are willing to send one of our experienced attorneys to assist in responding to this emergency situation. However, the current *pro hac vice* rules make it impossible for these volunteers to assist. The rule requires that a local attorney not only co-counsel with the out of state attorney, but that the local attorney appear at *every court appearance*. As a result, these rules do nothing to expand the availability of counsel. Instead, they simply require that every defendant have *two* lawyers.

The North Dakota Rules provide a ready solution to this problem. N.D. Sup. Ct. Admin. R. 57 permits this Court to declare a judicial emergency, as the rights of those arrested (and the public) to a speedy trial with adequate representation is in jeopardy. In the case of a judicial emergency, N.D. Sup. Ct. Admin. R. 3.2(B) of the Rules for Admission permits this Court to relax the procedures for temporary admission to practice law in North Dakota—for the limited purpose of responding to the declared emergency. Of course, quite aside from these rules, this Court also has the inherent authority to regulate admission to practice law in North Dakota Courts. *Lamb v. State Bd. of Law Examiners*, 2010 ND 11, 777 N.W.2d 343, 348 (“[T]his Court has the authority to admit attorneys to the Bar of North Dakota.”).

In conclusion, I reiterate that the legal crisis confronting North Dakota as a result of the massive number of arrests related to DAPL protests is virtually unprecedented in U.S. history. The scale of arrests would present a legal crisis in providing quality representation to all defendants anywhere in the country. North Dakota has historically led the nation in its protection of the rights of the accused. It should continue to do so, by granting the Petition and allowing out of state lawyers to practice on a temporary basis, solely for the purpose of resolving this crisis of due process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan Mills". The signature is fluid and cursive, with the first name "Alan" being more prominent than the last name "Mills".

Alan Mills,  
Executive Director