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STATE OF NORTH DAKOTA

North Dakota Association for Justice

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12-29-2016

The North Dakota Association of Justice appreciates the invitation of the Court to comment upon the Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota, Sup. Ct. # 20160436, Filed on December 14, 2016.

The North Dakota Association for Justice stands for ensuring that all persons are treated justly in the courts of North Dakota (Mission Statement, N. D. Association for Justice). The fundamental guarantee of trial by jury is key to protecting a person's liberty in a democratic society. (See, Mission Statement, North Dakota Association for Justice). An overarching goal of the Association is to protect that right to trial by jury, guaranteed by both the U.S. Constitution, Amendment 7, and the North Dakota Constitution, Article 1, Section 9. Representation by counsel is a critical component in protecting that fundamental right of trial by jury, and ensuring that the system works fairly and justly for the State and the person(s) accused. Gideon v. Wainwright, 372 U.S. 335, 344-345(1963). "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." Id. The Petition presents compelling evidence of an emergency situation with respect to limited resources for obtaining counsel for the staggering numbers of criminal defendants charged—all of whom need the advice and counsel of experienced and qualified attorneys in a very short period of time. (Petition, pp. 10-13). Overwhelmed, and overworked, attorneys are not a solution to that short-term problem (Petition, pp. 7-8). Neither is use of the pro hac vice system, both because of the lack of available "local counsel" with criminal law experience, and because of conflicts of interest created by the sheer number of arrests and due to the seriousness of the criminal charges filed (i.e. many felonies) growing out of singular incidents (Petition, pp. 9-10).

Out of state attorneys agreeing to represent any defendants will be subject to supervision by the State Bar Association of North Dakota, (Petition, p. 24), and

subject to the North Dakota Rules of Professional Conduct, and the established disciplinary system (N.D. Admission to Practice Rule 1.3.) See also, N.D. Admission to Practice Rule 3.2 (F)(setting forth a process that could be adapted for use here).

NDAJ agrees that there is a need for experienced and qualified counsel to represent people charged with crimes as a result of the matters described in the Petition, and that the limited number of criminal defense attorneys in North Dakota presents a substantial risk that adequate counsel will not be available, in a short timeframe, to represent those charged. In order to protect the integrity of our court system, to ensure a just result for the State and those charged with crimes, and implement the fundamental right of trial by jury, NDAJ respectfully supports the Petition.

Sincerely,



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