

# Native American Rights Fund

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December 30, 2016

Ms. Penny Miller  
Clerk of the Supreme Court  
State of North Dakota  
600 E. Boulevard Ave.  
Bismarck, ND 58505-0530

Re: Response to Notice of Comment, Supreme Court No. 20160436

Ms. Miller:

The Native American Rights Fund (NARF) submits these comments in response to the Notice of Comment issued on December 15, 2016. NARF strongly supports the proposed amendments to allow easier access to North Dakota state courts for those defending those criminally charged in the DAPL protests.

Founded in 1970, NARF is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide. For more than 40 years, NARF has provided legal assistance to Indian tribes, organizations, and individuals nationwide who may have otherwise gone without adequate representation. NARF has successfully asserted and defended the most important rights of Indians and tribes in hundreds of major cases, and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, natural resource protection, and Indian education. NARF is a non-profit 501c(3) organization that focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations.


Recently, as part of our work in voting rights, several of our attorneys have appeared in federal court in North Dakota. The process of admission to federal court took very little time, perhaps one hour to fill out paperwork and less than a week or two until admission, and proved no hurdle. In contrast, when we inquired about the process for admission to North Dakota state courts, we learned that the process took a significant amount of time, often more than six months to achieve. This burdensome process is one of the major contributing factors to the need for some emergency accommodation here. Were it more streamlined and efficient, those attorneys who want to assist would have undergone the procedure for admission already. Having encountered both systems first hand, NARF strongly supports the amendments in the proposed order, although we see no need to develop another admission application as described in paragraph 2 of the proposed order; instead, the state courts should simply allow those who are admitted through the federal court system to practice in this emergency situation.

We have reviewed the December 14, 2016 Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota. In it the petitioners describe the alarming number of criminal defendants without counsel. While we do recognize the incredible strain these many arrests have created for the court system, any attorney should also recognize that this situation violates the very core of our Constitutional system. To allow prosecutions to proceed in obvious violation of federal and state Constitutional principles is not justified by practical limitations, particularly when they can be remedied by a rule change, as is the case here. But providing these defendants counsel is not just the right thing to do, it also is necessary as any and all convictions secured in violation of these principles are extremely vulnerable to reversal. In other words, rushing these cases through without counsel only means a significant waste of judicial resources when the same convictions are overturned later.

Finally, we add that this situation has been exacerbated by the prosecutors who have routinely overcharged defendants, only to see those charges dismissed later for want of sufficient facts. This unjustified practice has increased the intensity and need for resources in each and every case. Those who have made these cases more burdensome and more difficult for all involved should not be permitted to then oppose the provision of defense counsel when they have only increased the need for it.

For the foregoing reasons and those detailed in the December 14 Petition itself, we strongly support the proposed amendments, although we also support an even simpler process of allowing those admitted to federal court to also temporarily practice in these state court cases.

Thank you for your consideration.

  
John Echohawk  
Executive Director