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**Supreme Court No. 20160436**

**TO:** The Honorable Supreme Court of North Dakota  
Penny Miller, Clerk of Court

**FROM:** Philip H. Tinker, Attorney at Law  
Kanji & Katzen. PLLC

**DATE:** December 30, 2016

**RE:** Comment in the Matter of a Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota

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Please permit me to humbly submit this letter in support of a Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota.

For many months now, North Dakota has been the site of a gathering of activists known as Water Protectors. These Water Protectors came from across the United States and from many corners of the globe in the hopes of bringing attention to a matter over which they felt a deep concern and a compelling need to act. Some were motivated by concerns over tribal sovereignty, treaty rights, and the obligations of the United States to actively consult with tribal nations prior to taking actions that may significantly impact the tribes' property, resources, or cultural heritage. Some were motivated by concerns for the environment, access to clean drinking water, or environmental justice. All were hoping to raise public awareness, in order to motivate the federal government or the private actors to reconsider the Dakota Access Pipeline project or engage in further review and consultation before moving forward.

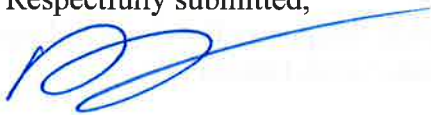
Their actions have not been without controversy. News reports and social media accounts proclaiming harassment and unwarranted violence and aggression by law enforcement and private security contractors are countered by accounts of trespass, destruction of property, and fraud on the part of some of the Water Protectors. We do not now know where the truth in these accounts lies, because the allegations have yet to be tested in court.

Yet it appears that Water Protectors who have been criminally charged in connection with their activism are facing a significant obstacle to presenting their defense. The unusual number of arrests and the complexity of the facts and circumstances appear to have strained the resources of North Dakota's criminal defense bar, particularly with respect to those Water Protectors who cannot afford private counsel. At the same time, many qualified out-of-state attorneys say that they would defend these Water Protectors, but have been unable to do so in light of North Dakota's stringent *pro hac vici* attorney approval process.

These Water Protectors have been charged with crimes arising out of their attempts to exercise First Amendment protected speech and assembly rights, and amidst a swirl of public and political controversy involving, amongst other things, allegations of police misconduct. Again, where the truth in these allegations lies, and whether any Water Protectors can be found guilty of the charged offenses, must be determined in court on a case-by-case basis. Within that system, the accused is entitled to representation by a competent attorney in order to challenge the factual and legal basis of the charges and to ensure due process. This Court can help ensure that these fundamental constitutional rights are carried out in this case, by ensuring that out-of-state attorneys are permitted to defend the Water Protectors in these matters, under conditions that are reasonably calibrated to ensure the quality and competence of counsel yet not so onerous as to prevent willing and capable attorneys from being approved under these extraordinary circumstances.

For the foregoing reasons, I support the Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota.

Respectfully submitted,



Philip H. Tinker