

From: [\(SUP\) Clerk of Court Office](#)
To: [Miller, Penny](#)
Subject: FW: Petition to Terminate relaxed Pro Hac Vice rules
Date: Wednesday, September 27, 2017 3:14:29 PM

Heather Keller

Deputy Clerk | North Dakota Supreme Court
600 E Boulevard Ave. | Judicial Wing, First Floor
Bismarck, ND 58505-0530
Phone: 701.328.4202

This email and any transmitted files attached are intended solely for the use of the individual or entity to which they are addressed, and may be confidential under the law. If you have received this email in error please notify the originator of the message.

From: Brian Fitzpatrick [mailto:brifitz1@protonmail.com]
Sent: Wednesday, September 27, 2017 3:12 PM
To: (SUP) Clerk of Court Office <SupClerkofCourt@ndcourts.gov>
Subject: Petition to Terminate relaxed Pro Hac Vice rules

To the Supreme Court Justices of North Dakota,

My name is Brian Fitzpatrick, Pro Hac attorney, No. P01895. My 30+ year legal career in California, and now here in North Dakota has been almost exclusively in criminal defense.

I've been here for just over 3 months, living and working in Mandan under the auspices of the Water Protector Legal Collective. My initial North Dakota barred associate attorney was Amanda Harris, and now is Bruce Nestor.

While practicing here **pro bono**, I have personally entered into 8 DAPL cases. 7 of those cases were dismissed. I reviewed the discovery provided and found little to no factual support for the cases. No identifiable arresting officers were found in most of them, and there was lacking any law enforcement narrative specific to my clients. As such, I contacted the State Attorney and urged dismissal based on the above. The State Attorney had to agree, knowing I was prepared to try the cases, and ultimately dismissed them, often at the 11th hour. Given the plea deals executed by local counsel prior to and since the Pro Hac rule change, I can only wonder if my clients would have received the justice they did without my work.

In addition, I frequently reached out to local counsel to share information, and received several appreciative responses suggesting that my review of their clients' cases confirmed their opinions. In legal practice I've always welcomed a second opinion! One case in particular also comes to mind. Looking at the court docket I saw a case that was heading towards a "plea deal". I spoke to and emailed the Fargo attorney the only 4 documents with no narrative or identifiable arresting officer, that could be found in the "discovery dump" which was massive and not organized in any coherent manner. The Collective had created a search tool that could search all documents by client name. The end result is that the plea deal turned into a dismissal. Less court time and administration resulted, thus less money expended. I can only speculate as to why local Fargo counsel was prepared to advise a deal. It was clear from my

conversation that the attorney had a negative opinion of the client. The attorney said about the client that "this kid came here looking for trouble and found it" (paraphrased) and other unflattering characterizations. Given the posture of the evidence, it's not unreasonable to think that at least in part, attorney hostility and convenience (avoiding a 6+ hour round trip drive) was part of the equation in the earlier decision to advise a deal.

The bottom line is that the work done by myself and other Pro Hac attorneys, has likely resulted in tremendous cost savings to the state by way of the efficient administration of justice. Also, justice and fairness has been served in that cases lacking proof were dismissed as the law and Constitution requires. My cases represent almost 1% of anti DAPL arrestees. I'll also note that proper procedures were always followed in the handling of my cases.

With the large numbers of cases remaining in the system I'd suggest it would be an error to change the rules midstream. The last of the DAPL cases are set for the first week of July, not so far into the future. In my view, the original rationale of the Court's temporary modification of Pro Hac Vice rules still exists and I urge the Court to keep them in place.

Respectfully submitted,
Brian Fitzpatrick, attorney no. P01895
(805) 320-3943

Sent with [ProtonMail](#) Secure Email.