

FILED  
IN THE OFFICE OF THE  
CLERK OF THE SUPREME COURT  
SEPTEMBER 29, 2017  
STATE OF NORTH DAKOTA



***North Dakota Commission on Legal Counsel for Indigents***

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H. Jean Delaney, Executive Director

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September 29, 2017

Penny Miller  
Clerk of the ND Supreme Court  
via email only

Dear Ms. Miller:

The North Dakota Commission on Legal Counsel for Indigents submits this comment and report regarding the Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota filed by the Judges of the South Central District in Supreme Court File No. 20160436.

In December, 2016, a petition was filed with the Supreme Court seeking to permit non-North Dakota licensed lawyers to represent criminal defendants who were charged as a result of protest activities connected to the Dakota Access Pipeline. The Commission did not support or oppose the petition, but submitted written comments outlining how indigent defense was impacted by the DAPL protestor cases. On January 18, 2017, the Supreme Court entered an order on the petition. The court noted a significant increase in case load due to the DAPL protest matters, and determined that the “Court in its discretion will allow temporary streamlining of our procedures for temporary admission of lawyers to provide pro bono services” and set some requirements, processes and procedures. On September 11, the South Central Judicial District Judges filed a petition to terminate the special provision of legal services by qualified attorneys from outside North Dakota. The Judges request that only attorneys actively representing a client and listed as attorney of record on the date of the filing of the petition be allowed to continue under the special provisions, asserting that there is no longer any justification for dispensing with the general rules for pro hac vice admission.

While there have been extraordinary costs associated with the large number of DAPL assignments, the Commission’s employees and contractors have risen to the challenges of providing quality representation to all eligible clients in the DAPL cases, and other cases.

As of September 27, 2017, statistical records kept by or available to the Commission reveal the following:

There have been 833 court cases filed in district court in the South Central Judicial District resulting from the DAPL protest.

The South Central Judicial District is the busiest judicial district for the Commission, and even prior to the DAPL protests, our case numbers were significantly increasing in the district. Our most recent numbers show that case assignments have increased from 2905 in Fiscal Year 2012 to 4184 in FY16 to 4442 in FY17.

There have been 435 DAPL case assignments made by the Commission overall, with 432 of the assignments being made in FY2017, and only three in FY2018, none of which were made after July 13, 2017.

An attorney has been assigned in all cases in which someone has been found eligible to have indigent defense services provided by the Commission, and in which a notice of eligibility was sent to the Bismarck–Mandan Public Defender office directing the assignment of an attorney.

The Commission assigned the DAPL matters to 98 attorneys. All four attorneys in the Bismarck-Mandan Public Defender Office have taken some assignments; eight public defenders from other public defender offices have been assigned cases; twenty monthly contractors in the SCJD have been assigned; and 66 hourly/conflict contractors from across the state and NW Minnesota have each taken at least one assignment.

The great majority of the assignments were made to attorneys who already had monthly or conflict/hourly contracts with the Commission. When these attorneys were called and asked if the attorney would be willing to take one or more of these assignments, the majority of our contractors from other districts said yes. Former contractors and other attorneys who were known to specialize in criminal law were called and asked to sign a conflict contract and provide representation in one or more DAPL cases. Many said yes. Many of the attorneys who were unable to say yes to taking DAPL assignments indicated their willingness to take other regular criminal assignments in the SCJD if needed, either as a conflict contractor or a monthly contractor.

The DAPL case assignments added significant work volume and contributed to a record-breaking year. However, the protests appear to have concluded, and there haven't been any additional assignments since July. The Commission and its employees and contractors are dedicated to their mission of providing high quality, professional, and effective defense services to those in need and we are confident in our ability to fulfill our mission.

As it appears that the exceptional circumstances that existed while the protests were active have passed, the Commission has voted to support the Petition filed by the SCJD Judges.

Sincerely,



H. Jean Delaney  
Executive Director, NDCLCI  
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