

FILED
IN THE OFFICE OF THE
CLERK OF THE SUPREME COURT
OCTOBER 2, 2017
STATE OF NORTH DAKOTA

Penny Miller, Clerk of Supreme Court
Supreme Court of North Dakota
600 E. Boulevard Ave.
Bismark, ND 58505-0530
VIA EMAIL: supclerkofcourt@ndcourts.gov

RE: In the Matter of a Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota, Supreme Court No. 20160436

October 2, 2017

Dear Clerk of Supreme Court:

This letter is in response to 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 Judicial District on or about September 11, 2017 (hereinafter the "Petition"). As one of the 11 attorneys of the 36 who are listed as not yet serving as attorney of record, the Petition is directed at me, and I write to oppose this Petition for the reasons below.

Just over eight months has passed since this Court recognized the "potential for delay or inconvenience for litigants due to the relatively large number of arrests and finite resources to handle the judicial proceedings related to those arrests." The Petition has not presented evidence sufficient to show that the circumstances that created the need for the special provisions no longer exist.

There is no harm in continuing the special *pro hac* provisions at this time, while the Constitutional risks of terminating their use are very high.

On one hand, the *pro hac* attorneys have provided high quality and necessary client representation to their clients, currently representing clients in 127 separate matters. There is no assertion by the Petitioners otherwise. The *pro hac* attorneys have alleviated the strain on local counsel and public defender resources, reduced the need for continuances and delay, provided Constitutional counsel of choice to defendants, and have saved the State of North Dakota significant costs and resources.


On the other hand, as of the filing of the Petition, September 11, 2017, there are still over 150 defendants still in need counsel. In addition, the Petition's claim that "new cases are no longer being filed" is inaccurate. The prosecutors have been systematically dropping cases on the eve of trial, and then informing the defendants that they intend to recharge them. Therefore new cases of unknown charges continue to be anticipated.

A great deal of thought, energy, and effort was placed into the limited and tailored *pro hac* waiver. The Constitutional risks to terminating the waiver, which is working as designed, far outweigh whatever inconvenience the Petitioners seem to perceive. See, 6th Amendment of the United States Constitution, Article I; §12 of the North Dakota Constitution; *State v. Jones*, 817 N.W.2d 313, 318 (North Dakota 2011).

I am a Harvard Law School graduate, a tribal member, licensed in South Dakota (as well as with Alaska, Colorado, Virginia, Washington, DC, the Cheyenne River Sioux Tribe, the Oglala Sioux Tribe, and the Puyallup Tribe), and a former Assistant U.S. Attorney with a great deal of criminal courtroom experience. To the best of my knowledge there are not many members of the North Dakota bar with a similar background that have made themselves available to defendants. I continue to be engaged, continue to be a resource, and may still serve as counsel of record in the future.

I respectfully request the Supreme Court deny the Petition, and allow *pro hac* attorneys to continue to practice under the conditions of the January 18, 2017 Order of the North Dakota Supreme Court.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Dawn Thompson", with a long horizontal flourish extending to the right.

Heather Dawn Thompson. Esq.
#P01802