

From: Patricia Hammel
To: [Miller, Penny](mailto:Miller.Penny)
Cc: WPCriminalDefense@protonmail.com
Subject: Emergency attorney practice under ND Supreme Court Rule
Date: Monday, October 2, 2017 3:41:19 PM

Dear Ms. Miller and Honorable Justices of the Court;

I was one of the out of state attorneys who helped submit a petition to the North Dakota Supreme Court last winter in support of relaxing the requirements for attorneys not licensed in North Dakota to represent individuals arrested at the Dakota Access Pipeline in August 2016-February 2017. I have been practicing law in Wisconsin since 1981.

I have not practiced in criminal law much since I stopped taking public defender appointments when my son was born 28 years ago. The rates of compensation for appointed counsel in Wisconsin is even lower than it is in North Dakota. I have friends who take SPD appointments here but it is very difficult to maintain an office at the contract rate, so all of them do other work as well.

I am not one of the lawyers who sought permission to represent defendants in North Dakota. There were other, more qualified lawyers who did.

However, I was in North Dakota for several weeks last fall providing legal advice and support to people who came to exercise their civil rights to resist the construction of the pipeline. And one of my friends was arrested October 10 while acting as a legal observer (filming the police, who included a large number of officers from Wisconsin). She was charged with participating in a riot, resisting/obstructing an officer and tampering with evidence. I don't believe she was doing any of those things, and her charges were dismissed by Judge Schmalenberger at the end of March (a week before she was scheduled to go to trial).

My friend requested a public defender, as did most of the people arrested with her that day. She was appointed a private attorney from Bismarck. We later learned that he was paid a flat fee under contract with the state public defender of less than \$400 for representing her on three misdemeanor charges. She found that he was slow to respond to her contacts and when I suggested he file a motion to dismiss, he seemed reluctant to do it, although that motion was ultimately granted by the court.

I don't fault the Bismarck attorney. I understand the pressure on a private practitioner to make a living, and most criminal cases result in plea bargains, taking up a minimal amount of the lawyer's time. But these were not typical criminal cases, and many people were overcharged by the State's Attorney, who later dismissed the charges or had them dismissed by the judge because there was no actual evidence of criminal conduct.

Other arrestees were frustrated by lack of contact with their public defenders and hostility to their personal beliefs, and some were denied representation because they had left spaces blank on the application form. Many were young people with no experience in the criminal justice system. The local bar was completely overwhelmed by the hundreds of cases being filed last fall, and it was

necessary and right to bring in lawyers from out of state.

The Native American tribal members who came from Wyoming, Colorado, South Dakota, Minnesota, Wisconsin and elsewhere across the country have a long history of biased treatment in the U.S. courts. I both saw people who were injured by the private security dogs, and police water cannons and concussion grenades, and heard stories from a young Lakota couple who were driving back from Fargo when they were stopped by a county sheriff on the flimsiest pretext and treated in an unbelievable manner over what should have been a routine traffic stop—in a blizzard. Having an attorney the client can trust is an essential part of our legal system.

There are still people who do not have counsel, who are being recharged, and having attorneys licensed in the state who do not live here is a relatively common occurrence around the country. I regularly have opposing counsel based in Illinois and Minnesota. If there are instances of misconduct by a particular lawyer, I presume you have a process to deal with it.

There is no basis for terminating the special rule until these cases have all been concluded.

Attorney Patricia K (PK) Hammel
Herrick & Kasdorf LLP
16 N Carroll Street #500
Madison WI 53703
(608) 257-1369 ext. 226
(608) 250-4370 (facsimile)

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