

National Lawyers Guild

*"An organization of lawyers, law students, legal workers, and jailhouse lawyers... in the service of the people,
to the end that human rights shall be regarded as more sacred than property interests."*

Preamble to the NLG Constitution

October 2, 2017

Ms. Penny Miller, Clerk North Dakota Supreme
600 E. Boulevard Ave.
Bismarck, ND 58505-0530 supclerkofcourt@ndcourts.gov

Court

Re: Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from
Outside North Dakota

Dear Ms. Miller:

On December 26, 2016, the National Lawyers Guild (NLG) submitted a letter in support of the Petition to Permit Temporary Provision of Legal Services by Qualified Attorneys from Outside North Dakota (Supreme Court No. 20160436). The NLG now submits this letter in opposition to the Petition submitted by at least some judges of the South Central Judicial District requesting termination of this program which was authorized by the North Dakota Supreme Court on January 18, 2017.

The National Lawyers Guild (NLG) was founded in 1937 as an association of progressive lawyers and jurists who believed that they had a major role to play in the reconstruction of legal values to emphasize human rights over property rights.

The NLG is the oldest and most extensive network of public interest and human rights activists working within the legal system. Since 1968 the NLG Mass Defense Committee has provided legal representation, usually at no cost, to people exercising their First Amendment rights to free speech and assembly.

The NLG has a long-standing commitment to progressive social change and, in particular, to the defense of individuals and groups charged with crimes for having been engaged in demonstrative activities in support thereof. In the 1960's NLG lawyers traveled to the South and set up offices to defend persons charged with crimes for being part of the Civil Rights Movement. Later in that decade the NLG represented individuals and groups protesting the United States' involvement in the Vietnam War.

The NLG's work of this nature continues to this date, for example, in defense of persons involved in and/or supporting the cause of the Black Lives Matter movement. The NLG has had and continues to have a special relationship throughout the world with those seeking to protect the environment and those endeavoring to respect the rights of indigenous peoples. The NLG also has a close relationship with the International Association of Democratic Lawyers, working to protect rights guaranteed to all peoples under the United National Charter of Human Rights.

The defense of persons charged with crimes that are intertwined with the exercise of First Amendment freedoms, and who are often arrested in mass arrest situations with charges based upon allegations of associational or collective guilt, present unique constitutional and legal issues. Many of the attorneys who have been admitted *pro hac vice* under the provisions of the

Order issued by this Court on January 18, 2017, are members of the National Lawyers Guild and the NLG Mass Defense Committee. Not only do they draw upon their own years of experience in the defense of charges of this nature, but they also have access to a network of attorneys with wide expertise in this area of the law.

Given the relative lack of large-scale protest related arrests in North Dakota prior to August 2016, there is a limited pool of North Dakota attorneys who have substantial experience in representing persons charged with crimes as a result of demonstrations and protests. We believe that continuation of the current program to allow for temporary admission of out of state lawyers to provide pro bono services for persons charged as a result of protests against the Dakota Access Pipeline (DAPL) is necessary.

We urge the North Dakota Supreme Court to deny the Petition pending before the Court that seeks to terminate the special *pro hac vice* rules implemented by this Court's order of January 17, 2017. Lawyers operating under this program have played a vital role in securing the dismissal of hundreds of charges and ensuring that the constitutional rights of defendants are fully and vigorously defended.

Essentially, the Petition seeks to reinstate the *pro hac vice* filing fee and the requirement that a fully licensed North Dakota attorney attend all court hearings.

The Petition, however, states no facts to support how reinstatement of these provisions would benefit the administration of justice. In particular, the Petition fails to cite even a single factual allegation that out of state attorneys operating under the special rules have impeded the administration of justice, failed to comply with local rules, or failed to adhere to the highest standards of the profession.

The filing of this Petition, by at least some of the South Central Judicial District Judges even if not granted, may create an appearance of impartiality with defendants and the public, as the jurists also hearing the DAPL cases.

The Petition only makes a conclusory allegation that “[t]here is no longer any justification for dispensing with the general rules for *pro hac vice* practice.” However, only prosecutors can say whether new cases will be filed. Prosecutors in the DAPL cases have publicly stated that they plan to recharge dismissed defendants.

Revoking these *pro hac vice* licenses from “inactive” cases would be a denial of right to counsel unless and until the prosecutors assured this Court of no further intent to prosecute, or the statute of limitations runs out.

There are several indications that local counsel remain unavailable. The original petition filed to relax the *pro hac vice* rules, granted by the the Supreme Court, provided ample evidence of the lack of local counsel. There has been no significant change.

Also, there is no evidence that the \$2.4 million the state just borrowed for DAPL related court costs and attorney fees is sufficient to cover the defense needs. Further, there is no evidence that the state's calculation included the cost of compensating local replacements for the *pro bono pro hac vice* lawyers. Each *pro hac vice* lawyer retained reduces the taxpayer burden of repaying the loan.

We urge you to continue to ensure that all persons arrested and charged in North Dakota have access to adequate and effective legal representation. The facts and circumstances which supported this Court's order of January 18, 2017, continue to exist and no showing has been made that this Court's order was improvident or is no longer necessary. Thank you for your consideration of this statement on behalf of the National Lawyers Guild.

Natasha Bannan
President, National Lawyers Guild

Pooja Gehi
Executive Director, National Lawyers Guild

King Downing,
Director, Mass Defense Program National Lawyers Guild