

CHAIRMAN

Harold C. Frazier

SECRETARY

EvAnn White Feather

TREASURER

Benita Clark

VICE-CHAIRMAN

Robert Chasing Hawk, Sr.



P.O. Box 590
Eagle Butte, South Dakota 57625
Phone: (605) 964-4155
Fax: (605) 964-4151

TRIBAL COUNCIL MEMBERS**DISTRICT 1**

Bernita In The Woods
Bryce In The Woods

DISTRICT 2

Theodore Knife, Jr.

DISTRICT 3

Edward Widow
John C. Kessler

DISTRICT 4

James L. Pearman
Kevin Keckler
Merrie Miller
Mark J. Knight

DISTRICT 5

Ryman LeBeau
Raymond Uses The Knife
Robert Chasing Hawk, Sr.
Derek Bartlett

DISTRICT 6

Tuffy Thompson
Wade Tater Ward

September 21, 2017

To The North Dakota Supreme Court,

I am writing to oppose the petition to terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota. This crucial provision was created to protect the constitutional rights of criminal defendants and that is still of utmost importance. Revoking this provision would infringe on the 5th, 6th, and 14th amendments and cost taxpayer money.

The need for this program remains immense. As of September 11, 2017, there were still 159 cases without representation or any appointed counsel. This vast need is indicative that Pro Hac Vice attorneys are necessary to supplement capacity of the local bar. These Pro Hac attorneys do not supplant North Dakota attorneys, but rather fill gaps and unmet needs. From August to December, there were nearly 20 cases that went ahead without any representation in court. This is an egregious violation of fundamental rights that this provision seeks to alleviate.

This program saves North Dakota taxpayer money because the state does not have to provide indigent defense for those who have out of state attorneys. These cases are extremely time consuming with terabytes of discovery. Pro Hac attorneys can provide the constitutionally required adequate representation without consuming local resources.

The Supreme Court of North Dakota originally granted this provision to ensure access to counsel and ensure fundamental fairness in their criminal cases and said “We nevertheless recognize 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.” These concerns remain true.

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

The nature of these mass arrests is unlike anything local counsel has dealt with in court, while Pro Hac attorneys have decades of experience with similar cases. These attorneys have provided their logistical, legal, and research resources to local attorneys by skill sharing and cocounseling on cases.

Water Protectors have repeatedly communicated that local counsel has been hard to reach and data from 10/22 and 10/27 mass arrest dates indicate that criminal defendants represented by local attorneys were more likely to take pleas of cases even when co-defendants' cases were getting dismissed on the exact same facts. There were 13 guilty pleas to 10/22 cases and all but one had North Dakota court appointed lawyers. These people plead guilty to charges where people with exact facts were getting dismissed or acquitted. For 10/27 arrests there have been 7 guilty pleas, all of which were represented by local counsel, while the rest of the cases were dismissed.

Respectfully,

A handwritten signature in black ink, appearing to read 'H.C. Frazier', with a long horizontal flourish extending to the right.

Harold C. Frazier, Chairman
Cheyenne River Sioux Tribe