

ELECTRONICALLY FILED      FEB 15, 2019      CLERK OF SUPREME COURT

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**Tama County Case Numbers SMSM013023  
And STA0021728**

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## Resistance to Application for Discretionary Review and Omnibus Request

1. The undersigned has never been directly notified of the Application filed by the Iowa Attorney General and only learned of its filing via a third party.
2. All allegations contained in the Application contrary to the decision of the undersigned on January 1, 2019, are denied.
3. The undersigned should be afforded appointed counsel to represent the interests of the undersigned and to provide for a full exposition of all case law and other authority for the position of the undersigned as evidenced by his decision of January 1, 2019. The undersigned has not directly been involved in an appeal or application for discretionary review in more than twenty (20) years.

and appellate work is outside of his area of practice as an attorney and as a Magistrate.

4. The Court should appoint counsel for the Defendant in this case to represent her interests in this Application.
5. The Decision of the undersigned on January 1, 2019, is not a proper matter for discretionary review since Rule of Appellate Procedure 6.106(1) only applies to "certain orders specified by statute which are not subject to appeal as a matter of right". The ruling at issue in the Application could have been appealed by either the State of Iowa through the Tama County Attorney or the Defendant. Neither party chose to file an appeal.
6. The issue raised by the Application is moot since, in this case where the offenses charged were simple misdemeanors, pursuant to Rule 2.33 (1), Iowa Rules of Criminal Procedure, the January 1, 2019 dismissals are a bar to additional prosecutions for the same offenses.
7. The Iowa Attorney General has a conflict of interest in filing the Application for Discretionary Review in light of the fact that on February 16, 2018, he accepted a substantial political campaign contribution from the Sac and Fox Tribe whose interests he is representing in the pending Application. See Exhibit "1".

8. With regard to the merits of the Application, the Court should be aware that the *McBratney* case relied upon the Attorney General was decided in 1885, some 10 or more years prior to the time when the federal government accepted trust responsibilities from the State of Iowa for Settlement land in Tama County.
9. The statement in the Attorney General's Application at paragraph nine (9) that "The State's traditional jurisdiction granted in 1846 thus endured beyond the 1948 Act, and endures beyond the 2018 Act" is absurd in light of the fact that the Settlement did not come into existence until the 1850's and 1860's.
10. The undersigned has not been able to discover any Iowa statute granting the State of Iowa criminal jurisdiction over the Meskwaki Settlement other than the 1948 act repealed by Public Law 115-301.
11. The Attorney General's claim that the three offenses Defendant Stanton was charged with committing are not committed against the tribe's members is without merit. Most significantly, the trespass charge filed due to the Defendant's presence at the Casino, is obviously committed against the tribe's members.
12. The Attorney General's claim at paragraph ten (10) of the Application that there is or will be a law enforcement vacuum on the Settlement is erroneous. The federal government retains

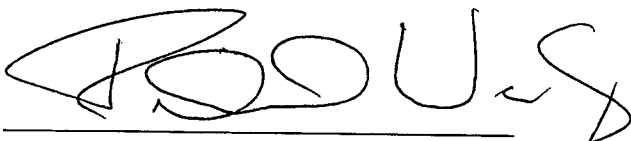
jurisdiction to prosecute certain "major crimes" in Indian country. Also, the federal government has at its disposal numerous other criminal law provisions making illegal a wide variety of conduct and behavior.

13. If the position advocated by the Iowa Attorney General is followed, the result will be that the Iowa Supreme Court will be, in effect, approving race based prosecutions wherein the race of a Defendant will determine whether he or she is subject to state prosecution. Moreover, the punishments meted out to Native Americans in tribal court will vary significantly from punishments imposed upon non- Native persons in state court.
14. If the State of Iowa wishes to appeal any future orders of the undersigned, the County Attorney can always appeal any such decision as a matter of right.
15. It is the understanding of the undersigned that appeals of all Magistrate Court decisions are first heard by the District Court as opposed to being brought directly to the Iowa Supreme Court.
16. The issues involved in the application of state, federal and Indian law are not as simple and straightforward as the Attorney General would have the Supreme Court believe. For example, the undersigned has previously found that the Iowa Courts have jurisdiction over small claims arising on the Meskwaki

Settlements only to have those decisions successfully appealed by the Tribe in the Tama County District Court. The Iowa Supreme Court should take note of those decision which, of course, are not binding on the Supreme Court but are illustrative of the complexities in this area of the law.

17. Judicial review of decisions is not the only way to resolve legal issues related to the Meskwaki Settlement. The Iowa legislature along with the U.S. Congress should be the authority for how laws are enforced and the interests of Natives and non-Natives protected on the Settlement.

18. If the points made in this pleading are inappropriate due to the fact that the undersigned is attempting to participate in the pending matter and explain a portion of his rationale, then I apologize to the Court. As indicated earlier, I believe that the Iowa Supreme Court should appoint counsel to represent the Magistrate Court in bringing about a full and complete study of the matter in the event that the Application for Discretionary Review is granted.

A handwritten signature in black ink, appearing to read 'R. Vander Mey', written over a horizontal line.

Richard Vander Mey, Tama County Magistrate

# Schedule A: Contributions

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Sch-A

<b>Iowans For Miller</b>		<b>Status:</b>		<b>Filed</b>
<b>Committee Type:</b> Attorney General		<b>Statutory Due Date</b>	5/19/2018	
<b>County:</b> _NA		<b>Adjusted Due Date</b>	5/21/2018	
<b>District:</b> 0		<b>Filed Date</b>	5/20/2018 11:17:31 AM	
<b>Committee Code:</b> 5064		<b>Postmark Date</b>		
<b>Political Party:</b> Democratic		<b>Amendment Date</b>		

Contribution Date	Contribution Committee ID	Name and Address of Contributor	Relationship To Candidate	Contribution Amount	Fund-Raiser
2/16/2018	Check #	Boccella, John 4613 Clemens Blvd Ames, IA 50014	None	\$300.00	
2/16/2018	Check #	Deming, Richard 300 Walnut St., Unit 148 Des Moines, IA 50309	None	\$2,500.00	
2/16/2018	Check #	Hagen, Howard 1150 28th Street West Des Moines, IA 50266	None	\$500.00	
2/16/2018	Check #	Hung, Clarke 3910 Irving St. Philadelphia, PA 19104	None	\$1.00	
2/16/2018	Check #	Riley, Sean 2011 Edgeland Ave. Louisville, KY 40204	None	\$500.00	
2/16/2018	Check #	Hunter and Williams, LLP 951 East Byrd Street Richmond, VA 23219-4074	None	\$1,000.00	
2/16/2018	Check #	Orrick, Herrington, and Sutcliffe, LLP 405 Howard St. San Francisco, CA 94105	None	\$2,500.00	
2/16/2018	Check #	Sac and Fox Tribe 349 Meskwaki Road Tama, IA 52339-9634	None	\$1,000.00	
4/10/2018	Check #	Appleby, George 10163 NW 102nd St Clive, IA 50325	None	\$100.00	
4/10/2018	Check #	Baudino, Robert 5410 Shriver Ave Des Moines, IA 50312	None	\$2,500.00	
4/10/2018	Check #	Baustian, Teresa 2804 44th St. Des Moines, IA 50310	None	\$50.00	
4/10/2018	Check #	Brammer, Robert 1717 Mar Ella Trail Des Moines, IA 50310	None	\$150.00	
4/10/2018	Check #	Burnett Jr, Robert 300 Walnut St Suite 270 Des Moines, IA 50309	None	\$100.00	