

Donald M. Falk
Schaerr Jaffe LLP
Four Embarcadero Center, Suite 1400
San Francisco, California 94111
Telephone: 415 562 4942
Email: dfalk@schaerr-jaffe.com

Bryan C. Tipp
Sarah M. Lockwood
Tipp Coburn & Associates, PC
P.O. Box 3778
Missoula, Montana 59806
Telephone: 406 549 5186
Email: bryan@tcsattorneys.com

Attorneys for the National Association of Criminal Defense Lawyers

IN THE SUPREME COURT OF THE STATE OF MONTANA

SHANDOR S. BADARUDDIN, Appellant, v. THE STATE OF MONTANA, and the NINETEENTH JUDICIAL DISTRICT COURT, HONORABLE MATTHEW CUFFE, Presiding. Appellees.	Supreme Court Cause No.: OP 22-0054 Nineteenth Judicial District Court Cause No. DC-19-75 MOTION & BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS TO FILE BRIEF OF AMICUS CURIAE
--	---

COMES NOW, the National Association of Criminal Defense Lawyers,
(NACDL) pursuant to Montana Rule of Appellate Procedure Rule 12(7) and 16(1)
and moves for leave to file a Brief of Amicus Curiae. In support of this Motion,
Movant states as follows:

1. Pursuant to Mont. R. App. P. 16(1) and 12(7), counsel for parties were contacted regarding this Motion prior to the time that it was filed, and Movant states as follows:
 - a. Appellant Shandor S. Badaruddin does not object to this Motion.
 - b. Appellees State of Montana and the Nineteenth Judicial District Court, were contacted and neither object to NACDL filing its Amicus Brief in this case.
2. Pursuant to Mont. R. App. P. 12(7), Movant states as follows:
 - a. The movant/applicant is the National Association of Criminal Defense Lawyers, “NACDL.”
 - b. The National Association of Criminal Defense Lawyers (NACDL), founded in 1958, is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.¹ The NACDL has thousands of members nationwide and, when its affiliates’ members are included, total membership amounts to approximately 40,000 attorneys. The NACDL’s

¹ In seeking to appear in this case, the NACDL does not represent the interests of either any individual or other stakeholder in this case, except insofar as it represents the interests of criminal defense attorneys in general, such as Appellant, Shandor Badaruddin.

members include criminal defense lawyers, public defenders, U.S. military defense counsel, law professors, and judges.

- c. NACDL and its members are acutely interested in this case because this Court will decide both the legal standard justifying monetary sanctions against defense attorneys and the scope of any permissible sanctions. The decision has the potential to gravely affect the criminal defense profession both directly, by deterring defense lawyers from vigorously representing their clients, and indirectly, by deterring attorneys from joining or remaining in the profession given the increased personal monetary risks. NACDL's most significant concern is that such decision could deter vigorous advocacy.
- d. This case involves the imposition of significant monetary sanctions against a criminal defense lawyer for purportedly wasting court time and resources by exceeding the time limit placed on each party's presentation by the trial court. In part, the purported excess time used resulted from the defendant's decision to testify after counsel necessarily used most of his allotted time cross-examining prosecution witnesses without objection by the State for such cross examination being irrelevant or cumulative.

- e. The imposition of monetary sanctions on counsel under such circumstances implicates the right to counsel and the right of confrontation guaranteed by the Sixth Amendment to the United States Constitution (as incorporated into the Fourteenth Amendment and thus applicable in state courts), and the due process protections explicitly provided by the Fourteenth Amendment.²
- f. A practice forcing counsel must pay from his or her own pocket for vigorous advocacy created negative incentives thereby establishing a conflict between a lawyer's professional duties and his or her client's constitutional rights.
- g. NACDL respectfully moves for leave to file the accompanying brief as *amicus curiae* supporting the plaintiff-appellant. In the brief, NACDL provides the practical perspective of criminal defense attorneys throughout the United States. NACDL will explain in its proposed brief the constitutional interests implicated by sanctions of this kind, and will argue that monetary sanctions should not be imposed on criminal defense counsel unless:

² The related rights under Montana Constitution, Article II, §§24 & 17 (respectively) are similarly implicated.

- i. the attorney was properly warned that monetary sanctions might be imposed for the conduct in question;
 - ii. the sanctioned conduct was carried out in subjective bad faith, and
 - iii. the trial court has inquired into and established counsel's ability to pay monetary sanctions.
3. A copy of the *Amicus Curiae Brief of the National Association of Criminal Defense Lawyers (NACDL)* is filed simultaneously herewith for filing as directed by the Court..
4. Pursuant to Mont. R. App. P. 16(1) and 12(7) NACDL requests leave to file an Amicus Brief on or before a date required by the Court.

Dated this 4th day of October, 2022.

/s/ Donald M. Falk
Donald M. Falk
Attorney for Amicus National Association of Criminal Defense Lawyers

/s/ Bryan Charles Tipp
Bryan Charles Tipp
Attorney for Amicus National Association of Criminal Defense Lawyers

/s/ Sarah M. Lockwood
Sarah M. Lockwood
Attorney for Amicus National Association of Criminal Defense Lawyers

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 12(5) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is 921 words, excluding table of contents, table of citations, certificate of service, certificate of compliance and the appendices per M. R. App. P. 11(4)(d).

So certified this the 4th day of October, 2022.

/s/ Bryan Charles Tipp

Bryan Charles Tipp
*Attorney for Amicus National Association of
Criminal Defense Lawyers*

CERTIFICATE OF SERVICE

I, Bryan Charles Tipp, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 10-04-2022:

Peter Francis Lacny (Attorney)
201 W Main, Ste 201
MT
Missoula MT 59802
Representing: Shandor Badaruddin
Service Method: eService

Colin M. Stephens (Attorney)
315 W. Pine
Missoula MT 59802
Representing: Shandor Badaruddin
Service Method: eService

William Adam Duerk (Govt Attorney)
283 W Front, Ste 203
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Kirsten Madsen (Govt Attorney)
840 Helena Avenue
Helena MT 59601
Representing: State of Montana
Service Method: eService

David Ole Olson (Govt Attorney)
840 Helena Ave.
Helena MT 59601
Representing: State of Montana
Service Method: eService

Sarah Marie Lockwood (Attorney)
2200 Brooks St
Missoula MT 59801
Representing: National Association of Criminal Defense Lawyers
Service Method: eService

Matthew Cuffe (Appellee)
512 California
Libby MT 59923
Service Method: Conventional

Marcia Jean Boris (Attorney)
Lincoln County Attorney
512 California Avenue
Libby MT 59923
Representing: State of Montana
Service Method: Conventional

Donald Manwell Falk (Attorney)
Four Embarcadero Center, Suite 1400
San Francisco CA 94111
Representing: National Association of Criminal Defense Lawyers
Service Method: Conventional

Electronically Signed By: Bryan Charles Tipp
Dated: 10-04-2022