RURAL ATTORNEY RECRUITMENT PROGRAM

**CONTRACT FOR SERVICES BETWEEN**

**North Dakota Court System**

**600 E. Boulevard Avenue**

**Bismarck, ND 58505**

**(ATTORNEY) (COURT)**

**State Bar Association of North Dakota**

**P.O. Box 2136**

**Bismarck, ND 58502**

**(SBAND) (LOCALITY)**

The North Dakota Court System (COURT), State Bar Association of North Dakota (SBAND), \_\_\_\_\_\_\_\_\_\_\_\_ (LOCALITY) and \_\_\_\_\_\_\_\_\_\_\_ (ATTORNEY) enter into a contract for participation in the North Dakota Rural Attorney Recruitment Program (PROGRAM).

# OBLIGATIONS OF THE ATTORNEY:

* 1. The ATTORNEY agrees to practice law in the LOCALITY a minimum of 35 hours per week for a minimum of 49 weeks per year, for a period of 5 continuous years, commencing and concluding . If ATTORNEY fails to comply with these terms, COURT, SBAND and LOCALITY can withhold payments for nonperformance.
  2. The ATTORNEY must locate their residence in close proximity to the LOCALITY.
  3. The ATTORNEY attests that he or she has not previously participated in this or any other state or federal scholarship, loan repayment, or tuition reimbursement program which obligates ATTORNEY to provide legal services within an underserved area.
  4. The ATTORNEY must remain licensed as an attorney by the North Dakota Supreme Court throughout the period of this contract. The ATTORNEY further agrees to provide a Certificate of Good Standing to the COURT, SBAND and LOCALITY prior to beginning work under to this contract.
  5. ATTORNEY attests that he or she has never been disbarred, suspended or publicly censured from the practice of law in any jurisdiction.
  6. Unless employed by a self-insured political subdivision, the ATTORNEY must procure and maintain professional malpractice insurance. The ATTORNEY agrees to provide a properly executed Certificate of Insurance which clearly evidences the malpractice insurance required in this contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, ATTORNEY agrees to provide immediate notice to the COURT and provide a new Certificate of Insurance showing continuous coverage in the amounts required. ATTORNEY must furnish copies of insurance policies if requested by COURT. Loss of malpractice insurance will nullify this contract.
  7. The ATTORNEY must give written notice to COURT, SBAND and LOCALITY within 30 days after any of the following events: 1. ATTORNEY’S name and/or address changes; 2. ATTORNEY intends to not fulfill his or her service obligation; or 3. ATTORNEY ceases to practice law as an attorney.
  8. The ATTORNEY must provide COURT with notice of any disciplinary complaints or lawsuits filed against him or her.
  9. The ATTORNEY must abide by all state and federal laws. Minor traffic offenses will be evaluated on a case-by- case basis.
  10. The ATTORNEY agrees to hold harmless and indemnify the State of North Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services under this contract. This section does not require the ATTORNEY to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.
  11. Unless employed by the LOCALITY itself, the ATTORNEY agrees he/she is an independent attorney and neither he/she nor any employee or agent will hold him or herself out as or claim to be an officer or employee of the COURT, SBAND or LOCALITY and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COURT, SBAND or LOCALITY including, but not limited to, workers’ compensation, health, life, malpractice insurance, unemployment insurance and retirement benefits. This contract is not a waiver of sovereign immunity or any other type of immunity by the State of North Dakota or any of its political subdivisions either in litigation against a party to this contract or any third party.

# OBLIGATIONS OF THE LOCALITY:

* 1. The LOCALITY attests that COURT has determined it to be eligible for participation in the PROGRAM.
  2. The LOCALITY must pay, directly to the ATTORNEY, 35% of the total amount of the incentive payment, payable in five equal annual payments. The LOCALITY may prepay, to the ATTORNEY, its portion of the incentive payment at any time during the five year period. The specific total amount the LOCALITY is obligated to pay the ATTORNEY is $ 15,750. If, however, ATTORNEY fails to comply with the terms of this contract, LOCALITY can withhold payment for nonperformance.
  3. The LOCALITY must provide COURT with written notice certifying the ATTORNEY has been paid the LOCALITY’S financial obligation under this contract.
  4. The LOCALITY agrees, after the initial assessment, to report to the COURT any substantial change in the LOCALITY’S demographics or the age and number of current attorneys residing and practicing law within the LOCALITY. The LOCALITY agrees to actively participate in any subsequent review / assessment as determined necessary by the COURT to reflect any change in conditions within a LOCALITY.
  5. The LOCALITY agrees to hold harmless and indemnify the COURT, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the LOCALITY to be responsible for or defend against claims or damages arising solely from errors or omissions of the COURT, its officers, agents or employees.

# OBLIGATIONS OF THE STATE BAR ASSOCIATION OF NORTH DAKOTA:

* 1. Once the LOCALITY certifies payment to the ATTORNEY, SBAND must pay to the COURT 15% of the total amount of the incentive payment, payable in five equal annual payments. The COURT must forward this amount to the ATTORNEY, under the terms and conditions of this contract. SBAND may prepay, to the COURT, its portion of the incentive payment at any time during the five year period. The specific total amount SBAND is obligated to pay for the ATTORNEY’S service is $ 6,750. If, however, ATTORNEY fails to comply with the terms of this contract, then SBAND can withhold payment for nonperformance.
  2. SBAND must provide the COURT with written notice certifying that the LOCALITY has paid its financial obligation under this contract.
  3. SBAND agrees to hold harmless and indemnify the COURT, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services under this contract. This section does not require SBAND to be responsible for or defend against claims or damages arising solely from errors or omissions of the COURT, its officers, agents or employees.

# OBLIGATIONS OF THE NORTH DAKOTA COURT SYSTEM:

* 1. After the LOCALITY and SBAND meet their financial obligations, as described above, the COURT agrees to pay the ATTORNEY 50% of the total amount of the incentive payment, payable in five equal annual payments. The specific total amount the COURT is obligated to pay the ATTORNEY is $ 22,500. The COURT must also forward to ATTORNEY the amount due from SBAND to ATTORNEY under the terms of this contract. If, however, ATTORNEY fails to comply with the terms of this contract, then the COURT can withhold payment for nonperformance.
  2. Only full performance by SBAND, LOCALITY and ATTORNEY binds COURT to pay the amount set forth in section 4.A. Incomplete performance by SBAND, LOCALITY or ATTORNEY, as determined by the COURT, constitutes a material breach of this contract and excuses the COURT from any commitment to pay.

# CANCELLATION, SUSPENSION AND WAIVER OF OBLIGATION:

* 1. If ATTORNEY dies prior to the completion of his or her service obligation, the obligation will be cancelled in its entirety. No liability will be transferred to ATTORNEY’S heirs.
  2. The LOCALITY requires ATTORNEY to fulfill this contract without excessive absences or significant interruptions in service. The LOCALITY may, under certain circumstances, suspend or waive the obligated service or payment obligation.
     1. **Suspension.** A suspension of the service commitment may be granted if compliance with the commitment by the ATTORNEY: (i) is temporarily impossible or (ii) would involve a temporary extreme hardship such that enforcement of the commitment would be unconscionable. Periods of approved suspension of service will extend the ATTORNEY’S service commitment end date. The major categories of suspension are set forth below.
        1. **Leave of Absence for Medical or Personal Reasons**. A suspension may be granted for up to one year, if the ATTORNEY provides independent medical documentation of a physical or mental health disability, or personal circumstances, including a terminal illness of an immediate family member, which results in the ATTORNEY’S temporary inability to perform the service obligation.
        2. **Maternity/Paternity/Adoption**. A suspension may be granted for maternity/paternity/adoption. The ATTORNEY must notify the LOCALITY of the pending event and provide appropriate documentation. A maternity/paternity/adoption suspension of 12 weeks or less will be automatically approved, if properly documented. If the ATTORNEY’S maternity/paternity/adoption suspension will exceed 12 weeks during a service year, the ATTORNEY must request a medical suspension, which may or may not be approved by the LOCALITY.
        3. **Call to Active Duty in the Armed Forces.** If ATTORNEY is also a military reservist and is called to active duty, he or she will be granted a suspension, for up to one year, beginning on the activation date described in the reservist’s call to active duty order. In addition to the written request for a suspension, a copy of the order to active duty must be submitted to the LOCALITY. The suspension will be extended if the applicable Armed Forces entity continues the period of active duty. The period of active military duty will not be credited toward the service obligation but will not be considered a breach of this contract.
     2. **Waiver.** A waiver permanently relieves the ATTORNEY of all or part of the service commitment. A waiver may be granted only if the ATTORNEY demonstrates that compliance with his or her commitment is permanently impossible or would involve an extreme hardship such that enforcement of the commitment would be unconscionable. A timely waiver request must be submitted to the LOCALITY, which must include the reason(s) the waiver is being sought and any necessary medical and financial documentation necessary to support the waiver request.

# CONTRACT EXTENSION:

If the ATTORNEY is granted a suspension during a contract year, the ATTORNEY must extend this contract for the length of time ATTORNEY was absent, beyond any allowable absences under this contract.

# FUNDING TERMINATION:

This contract depends upon the continued availability of appropriated funds and expenditure authority for this purpose. This contract will be terminated for cause by COURT if funds are not appropriated, if funding is terminated, or if expenditure authority is not granted. Funding termination is not a default by COURT nor does it give rise to a claim against COURT.

# FEDERAL AND STATE LAWS:

ATTORNEY and LOCALITY agree that they will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract.

# RETENTION AND INSPECTION OF RECORDS:

The parties agree to maintain or supervise the maintenance of all records that are pertinent to this contract for a period of 3 years following the final payment against the contract. If such records are under pending audit, the parties agree to hold such records for a longer period upon notification from any party. The parties, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this contract.

# AMENDMENT PROVISIONS:

This contract may not be assigned without the express prior written consent of the COURT. This contract may not be amended except in writing, which writing must be expressly identified as an amendment to this contract, and be signed by an authorized representative of each of the parties to it.

# SUBCONTRACT PROVISIONS:

ATTORNEYmay not use subcontractors to perform the services described in this contract without the express prior written consent of the COURT, SBAND and LOCALITY. ATTORNEY’S efforts to assign or subcontract this contract, or any portion of it, without the express written consent of COURT, SBAND and LOCALITY constitutes a material breach of contract. In the event such consent is obtained, ATTORNEY will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this contract, to indemnify the COURT, SBAND and LOCALITY. ATTORNEY will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

# SUPERCESSION:

All other prior agreements, discussions, communications and representations concerning the subject matter of this contract are superseded by the terms of this contract, and except as specifically provided, this contract constitutes the entire agreement of the parties with respect to the subject matter of the contract.

# SEVERABILITY:

In the event that any provision of this contract is held unenforceable or invalid by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision in the contract.

# NOTICE:

Any notice or other communication required under this contract must be in writing. Notices must be given by and to the designated contact person listed below or such authorized designees as any party may from time to time designate in writing. Notices or communications to or between any of the parties are considered to have been delivered 3 days after mailing by First Class US Mail service, provided that notices of default or termination must be sent by registered or certified mail. Any notices or communications personally delivered to another party are considered to have been delivered when received by such party.

# PERSONNEL:

Neither the ATTORNEY nor any employee or agent will hold him or herself out as or claim to be an officer or employee of COURT, SBAND and LOCALITY and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of COURT, SBAND and LOCALITY including, but not limited to, workers’ compensation, unemployment benefits, health, dental or life insurance, and retirement membership.

# CHOICE OF LAW:

The terms and conditions of this contract are subject to and will be construed under the laws of the State of North Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the South Central Judicial District Court, Burleigh County, North Dakota.

# FORCE MAJEURE:

The parties agree that none of them are liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure.” As used in this contract, “force majeure” means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

**This contract is not effective until it is fully executed by all parties.**

**In witness hereto the parties signify their agreement by signatures affixed below:**

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| --- | --- | --- |
| **North Dakota Court System, State Court Administrator Sally Holewa** |  | **Date** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ – Authorized Agent** |  | **Date** |
| **State Bar Association of North Dakota – Authorized Agent** |  | **Date** |
| **Attorney** |  | **Date** |