

20210233
FILED AUGUST 24, 2021
CLERK OF THE SUPREME COURT
STATE OF NORTH DAKOTA



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STATE COURT ADMINISTRATOR

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TO: Chief Justice Jensen

FROM: Sally Holewa 

RE: Draft Rule to Implement Attorney Recruitment Program

DATE: August 23, 2021

N.D.C.C. 27-02.2 establishing a program to recruit attorneys to live and work in rural cities and counties was enacted this past legislative session and became effective August 1, 2021. For your convenience, I have attached an email Mike Hagburg wrote outlining the steps the Court will need to take to implement this program and a copy of the new section of law.

Mike has drafted a proposed rule for your review. Once we are sure of the direction the Court wants to take with the rule, he will begin drafting an application and contract.

RULE 62. RURAL ATTORNEY RECRUITMENT PROGRAM

Section 1. Authority and Purpose. Under N.D. Const. art. VI, § 3, and N.D.C.C. ch. 27-02.2, the Supreme Court through this rule establishes a Rural Attorney Recruitment Program to assist counties and municipalities in recruiting attorneys.

Section 2. County or Municipality Application. A county or municipality interested in participating in the program must submit an application to the Supreme Court. The application must include:

(a) An explanation of the county or municipality's need for an attorney and its ability to sustain and support an attorney.

(b) Detailed information on:

(1) The demographics of the county or municipality, including population;

(2) The age and number of the members of the county or local bar association;

(3) Economic development programs within the county or municipality.

(c) A written recommendation from the presiding judge of the judicial district in which the county or municipality is located.

The applicant county or municipality must agree that, if they are selected for participation in the program, they will pay their portion of the incentive payment as required under N.D.C.C. § 27-02.2-06.

Section 3. Assessment.

(a) On receipt of an application from a county or municipality desiring to

22 participate in the program, the Supreme Court will appoint a three-member temporary
23 committee to assess the application. The membership of the temporary committee will
24 consist of a district judge, an attorney and a court administrator.

25 (b) The committee must determine whether the county or municipality is eligible to
26 participate in the program based on the requirements listed in N.D.C.C. §§ 27-02.2-02
27 and 27-02.2-03.

28 (c) If the county or municipality is eligible, the committee will evaluate the
29 information in the application to assess whether the applicant needs an attorney and has
30 the ability to sustain and support an attorney.

31 (d) In its evaluation of the application, the committee must consider:

32 (1) The information provided by the applicant under subsection (2)(b);

33 (2) The presiding judge recommendation required under subsection (2)(c);

34 (3) The geographical location of the applicant in comparison to other
35 counties or municipalities participating in the program;

36 (4) Any prior participation in the program by the county or municipality.

37 (e) In assessing the information provided in the application, the committee may
38 conduct whatever outside research it considers appropriate. On completion of its
39 evaluation, the committee must transmit its recommendations in writing to the Supreme
40 Court.

41 (f) The Supreme Court may revise the assessment of any county or municipality or
42 appoint a temporary committee to conduct a new assessment.

43 Section 4. Attorney Application.

44 (a) An attorney selected for participation in the program must locate both their law
45 office and residence to the participating county or municipality and carry malpractice
46 insurance. The attorney applicant must agree to live and practice law full-time in the
47 participating county or municipality for at least five consecutive years. Participants in the
48 program will be required to make an annual declaration confirming their continued
49 practice and residence in the applicable county or municipality.

50 (b) An attorney interested in participating in the program must submit an
51 application to the Supreme Court. The application must include:

52 (1) A Certificate of Good Standing showing that the applicant is licensed to
53 practice law in the state of North Dakota;

54 (2) Proof that the applicant is a U.S. citizen, U.S. national or permanent resident of
55 the U.S.;

56 (3) A copy of the applicant's law school transcript;

57 (4) Information about the applicant's participation in any scholarship, loan
58 repayment or tuition reimbursement program that obligated the applicant to provide
59 attorney services within an underserved area;

60 (5) Information about whether the applicant was ever subject to an investigation or
61 disciplinary action by any bar association;

62 (6) Information about the applicant's criminal history, including any felony or
63 misdemeanor convictions.

64 Section 5. Administration.

65 (a) The Office of State Court Administrator must:

66 (1) maintain a list of counties and municipalities that have been assessed and
67 selected for participation in the program;

68 (2) inform the State Bar Association of North Dakota and the applicable county or
69 municipality when an applicant has been selected for participation in the program;

70 (3) inform program participants if one of the entities responsible for payment fails
71 to deposit their share of funding.

72 (b) Before July 1 of each year, the Supreme Court must submit a report on the
73 status of the program to legislative management.

74 EXPLANATORY NOTE

75 Rule 62 was adopted effective _____.

76 STATUTES AFFECTED:

77 CONSIDERED: N.D.C.C. ch. 27-02.2.

Holewa, Sally

From: Holewa, Sally
Sent: Friday, May 28, 2021 10:04 AM
To: McEvers, Justice Lisa
Subject: FW: attorney recruitment program
Attachments: Attorney Recruitment Statutes.pdf

Justice McEvers,

I am forwarding Mike's summary of what we need to do for the attorney recruitment program. It would be helpful if your law clerk would contact someone in South Dakota regarding their recruitment, application and selection process. I don't know if their program is run through the AOC (administrative office of the courts) or some other entity. I think the best starting point for an inquiry is with the staff attorney at the AOC. Her contact information is below.

Division of Policy and Legal Services
Suzanne Starr, Director
Ph. 605-773-3474
Fax. 605-773-8437

Thank you,

Sally

From: Hagburg, Mike <MHagburg@ndcourts.gov>
Sent: Friday, May 21, 2021 1:44 PM
To: Holewa, Sally <SHolewa@ndcourts.gov>
Subject: attorney recruitment program

You asked me to look at the attorney recruitment program legislation and let you know what steps the Court needs to take to implement it. The legislation is in SB 2233, ~~copy attached~~.

New 27-02.2-01 allows the Court to establish the recruitment program and to decide which counties or municipalities should be helped. The statute lays out what factors the Court needs to consider when choosing places to help. Once the Court has done its assessments it is required to put together a list of the places selected for participation in the program.

New 27-02.2-02 and 27-02.2-03 list the specific requirements for county and municipality eligibility for the program.

New 27-02.2-04 lists the attorney eligibility requirements, licensed to practice in North Dakota and whatever else the Court wants to require. So figuring out the additional attorney eligibility requirements would be something the Court needs to do. The Court could put the requirements in a rule, which it is authorized to do under new 27-02.2-12. Somewhat helpfully, new 27-02.2-11 sets out when an attorney would be ineligible for the program.

The next new code sections, 27-02.2-05 through 27-02.2-09, relate to the making the incentive payments and funding them. This is somewhat complicated and something the Finance Department no doubt will need to administer.

New 27-02.2-10 talks about the agreement that the chosen attorneys need to enter into. Drafting the agreement is something the Court would need to do.

Finally, new 27-02.2-13 requires the Court to prepare an annual report on the status of the program and submit it to legislative management.

There is no emergency clause so presumably this goes into effect August 1.

Let me know if you have any questions or need me to take any additional steps. Mike

CHAPTER 27-02.2
ATTORNEY RECRUITMENT PROGRAM

27-02.2-01. Attorney recruitment program - Participation - Assessment.

1. The supreme court may establish a program to assist rural counties and municipalities in recruiting attorneys.
2. A county or municipality interested in participating in the program shall apply to the supreme court. After determining eligibility, the supreme court shall conduct an assessment of the applicant to evaluate the applicant's need for an attorney and the ability of the applicant to sustain and support an attorney.
3. In making the selection of an eligible applicant, the supreme court shall consider the assessment and:
 - a. The demographic of the county or municipality;
 - b. The age and number of the members of the county or local bar association;
 - c. The recommendation of the presiding district court judge;
 - d. The economic development programs within the county or municipality;
 - e. The geographical location of the county or municipality in comparison to other counties or municipalities participating in the program; and
 - f. Any prior participation in the program by the county or municipality.
4. The supreme court shall maintain a list of counties and municipalities that have been assessed and are selected for participation in the recruitment assistance program.
5. The supreme court may revise the assessment of any county or municipality or conduct a new assessment as necessary to reflect a change in conditions.

27-02.2-02. County eligibility.

A county is eligible to participate in the recruitment assistance program if the county:

1. Has a population of sixteen thousand or fewer;
2. Agrees to provide the county's portion of the incentive payment as required under section 27-02.2-06; and
3. Is determined to be eligible by the supreme court.

27-02.2-03. Municipality eligibility.

A municipality is eligible to participate in the recruitment if the municipality:

1. Has a population of five thousand or fewer;
2. Agrees to provide the municipality's portion of the incentive payment as required under section 27-02.2-06; and
3. Is determined to be eligible by the supreme court.

27-02.2-04. Attorney eligibility.

An attorney licensed to practice in the state who meets all requirements set by the supreme court may participate in the recruitment assistance program. An attorney participating in the program shall practice in a supreme court-selected county or municipality for at least five consecutive years. No more than four attorneys may participate in the program at any given time.

27-02.2-05. Incentive payment to participating attorneys.

An attorney selected by the supreme court to participate in the recruitment assistance program is entitled to receive an incentive payment of forty-five thousand dollars to be paid in five equal annual installments.

27-02.2-06. Agreement for payment of recruitment assistance - Repayment.

1. An agreement for the payment of recruitment assistance under this chapter must require the county or municipality served by the attorney to provide thirty-five percent of the total amount of the incentive payment in five equal installments.

2. The state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota shall pay fifteen percent of the annual installment to the supreme court.
3. After the county or municipality certifies to the supreme court that the county or municipality has paid the attorney the annual amount and the state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota has paid its installment to the supreme court, the supreme court shall pay the attorney the remaining balance of the annual installment.
4. Subject to appropriation by the legislative assembly, the supreme court shall pay the required amount of funds pursuant to this chapter and the funds received from the state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota, as required under this chapter, to an attorney participating in the program.
5. If an attorney breaches the agreement, the attorney shall repay all funds received under this chapter and under the terms and conditions set by the supreme court. Failure to repay the funds is grounds for discipline by the supreme court.

27-02.2-07. County and municipal funding.

A county or municipality may appropriate funds for the purpose of carrying out this chapter. A county or municipality may enter an agreement with any other county, municipality, school district, or nonprofit entity to assist the county or municipality in carrying out this chapter.

27-02.2-08. Payments.

1. Notwithstanding any other provision of law, the supreme court may receive fifteen percent of the total amount of an incentive payment in five equal annual installments from the state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota as required under this chapter.
2. A county or municipality may prepay its portion of the incentive program to the supreme court at any time during the five-year period.

27-02.2-09. Attorney recruitment assistance program fund - Continuing appropriation.

The attorney recruitment assistance program fund is established in the state treasury. Payments collected under section 27-02.2-08 must be deposited in the attorney recruitment assistance program fund. The funds deposited in the attorney recruitment assistance program fund are appropriated to the judicial branch on a continuing basis for the purpose of making attorney payments under the recruitment assistance program.

27-02.2-10. Filing and approval of recruitment assistance agreement.

A recruitment assistance agreement entered under this chapter becomes effective when the agreement is filed with and approved by the supreme court. The agreement must require the attorney to practice law full-time in the eligible county or municipality for at least five consecutive years.

27-02.2-11. Ineligibility for participation in other program.

If an individual has previously participated in an attorney recruitment program under this chapter, or any other state or federal scholarship, loan repayment, or tuition reimbursement program requiring the individual to provide attorney services within an underserved area, the individual may not participate in another attorney recruitment program under this chapter.

27-02.2-12. Rulemaking authority.

The supreme court may adopt rules as necessary to implement this chapter.

27-02.2-13. Annual report.

Before July first of each year, the supreme court shall submit a report on the status of the program to the legislative management.