

Report to House Judiciary Committee Regarding Rural Attorney Recruitment Program

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Introduction

The Attorney Recruitment Program was established under N.D.C.C. 27-02.2 in the 2021 legislative session (SB 2233). The primary sponsor of the bill was Sen. Bekkedahl, who introduced it at the request of a group of lawyers that included Judge Michael Hurly from Rugby and Williston city attorney Taylor Olson. It is modeled after a successful South Dakota program that has been in effect since 2013. The goal of the program is to encourage attorneys to live and work in rural communities. The method to do this is an incentive payment of \$45,000 paid in equal annual installments over the course of five years. Funding provided for the program limits payments to a maximum of 4 attorneys in any given year. The program was placed within the judicial branch for implementation and fiscal responsibility purposes. The court has adopted North Dakota Court System Administrative Rule 62 to guide implementation of the program.

Slightly more than half of the 3,070 attorneys licensed to practice law in North Dakota in 2021 live in the state. I have attached a map that shows the number of attorneys by county. With 87% of the in-state attorneys living in the 7 most populous counties, it is clear that there is a shortage of attorneys serving in the more rural areas of the state.

Attorneys in rural areas provide the same type of services as their urban counterparts. They may serve as a district court, municipal court or tribal court judge, state's attorney, city attorney, public defender or legal services attorney. They may serve as court-appointed counsel in juvenile, mental health or civil commitment of dangerous sex offender cases. They may serve as counsel for a school board, church or business. They may have a private law practice that deals with adoption, agricultural law, criminal law, divorce, estate planning, guardianship, probate, real estate or any of the other legal issues that may crop up in a person's life.

Eligibility Requirements and Recruitment Process

The program matches eligible attorneys with eligible communities. All attorneys in good standing with the North Dakota Board of Bar Examiners are automatically eligible for the program upon receipt of their application for the program. Because there is no review of the applications required, there is an open recruitment process for them, meaning they can apply at any time.

Only cities with a population of 5,000 or less or counties with a population of 16,000 or less are eligible to apply for the program. Their applications are reviewed by an ad hoc committee of 3 appointed by the Chief Justice. The ad hoc committee may accept an application as filed, request the applicant provide further information or reject the application if it is incomplete or does not meet the qualifications for participation in the program. Following its review, the ad hoc committee forwards a recommendation to the supreme court on whether to approve or deny the communities participation in the program. Because community applications must be reviewed by a committee, the application process for them is limited to a specified 2-month period. The initial recruitment process ran from February 1 - March 31, 2022. There will be a second recruitment period in this first year which will begin in October. In future years, we anticipate a single recruitment period in the fall months to coincide with the city and county budget planning cycles.

Current Participants

We currently have 3 participating attorneys on the program roster. Two are located in the Grafton area and the third is in the far southwest. Two communities, Walsh County and the City of Grafton, have applied for the program. The ad hoc committee reviewed their applications on April 22, 2022 and have recommended to the supreme court that both communities be approved to participate in the program.

The court does not attempt to match participating attorneys and communities. Instead, the court maintains a list of eligible participants on its website. It is then up to each community to reach an agreement with a participating attorney. Once an agreement is reached, the court, community, state bar association, the attorney, and if applicable, local bar association will enter into a contract regarding the requirements of the program and the obligations of each of the parties.

Program Costs

Costs for the incentive payment are split between the state, participating community and the state bar association. By statute, the responsibility for providing the incentive payment is:

State: 50% (\$22,500)

Participating Community: 35% (\$15,750)

State Bar Association: 15% (\$6,750)

Statute allows the State Bar Association to partner with the North Dakota Bar Foundation and any other legal association to assist with the State Bar's portion of the incentive payment.

To date, there have been no costs specifically associated with the program since all work related to implementation has been done by existing court staff.

Because the five-year requirement of the program spans bienniums, N.D.C.C. 27-02.2-09 authorized the establishment of a continuing appropriation for depositing funds and paying incentive fees. This has been established as the Attorney Recruitment Assistance Program. The legislation did not include any initial funding for this program. We currently do not have any contracts in place, therefore, we have not made any payments from this fund.

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.

Administrative Rule 62 - RURAL ATTORNEY RECRUITMENT PROGRAM

Effective Date: 9/22/2021

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 participate in the program, the supreme court will appoint a three-member temporary committee to assess the application. The membership of the temporary committee will consist of a district judge, an attorney and a court administrator.
- (b) The committee must determine whether the county or municipality is eligible to participate in the program based on the requirements listed in N.D.C.C. §§ 27-02.2-02 and 27-02.2-03.
- (c) If the county or municipality is eligible, the committee will evaluate the information in the application to assess whether the applicant needs an attorney and has the ability to sustain and support an attorney.
- (d) In its evaluation of the application, the committee must consider:
 - (1) The information provided by the applicant under subsection (2)(b);
 - (2) The presiding judge recommendation required under subsection (2)(c);
 - (3) The geographical location of the applicant in comparison to other counties or municipalities participating in the program;
 - (4) Any prior participation in the program by the county or municipality.

(e) In assessing the information provided in the application, the committee may conduct whatever outside research it considers appropriate. On completion of its evaluation, the committee must transmit its recommendations in writing to the supreme court.

(f) The supreme court may revise the assessment of any county or municipality or appoint a temporary committee to conduct a new assessment.

Section 4. Attorney Application.

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

(b) An attorney interested in participating in the program must submit an application to the supreme court. The application must include:

- (1) A Certificate of Good Standing showing that the applicant is licensed to practice law in the state of North Dakota;
- (2) Proof that the applicant is a U.S. citizen, U.S. national or permanent resident of the U.S.;
- (3) A copy of the applicant's law school transcript;
- (4) Information about the applicant's participation in any scholarship, loan repayment or tuition reimbursement program that obligated the applicant to provide attorney services within an underserved area;
- (5) Information about whether the applicant was ever subject to an investigation or disciplinary action by any bar association;
- (6) Information about the applicant's criminal history, including any felony or misdemeanor convictions.

Section 5. Administration.

(a) The office of state court administrator must:

- (1) maintain a list of counties and municipalities that have been assessed and selected for participation in the program;
- (2) inform the state bar association of North Dakota and the applicable county or municipality when an applicant has been selected for participation in the program;
- (3) inform program participants if one of the entities responsible for payment fails to deposit their share of funding.

(b) Before July 1 of each year, the supreme court must submit a report on the status of the program to legislative management.

Rural Attorney Recruitment Program - Guidelines

1. Communities that qualify for the Rural Attorney Recruitment Program
 - a. Must be a county with a population of 16,000 or fewer; or
 - b. Must be a municipality with a population of 5,000 or fewer
2. Review and Assessment of applications
 - a. Applications will be solicited on or around February 1 in the first year of the program and on or around October 1 of each subsequent year. The solicitation period will allow up to 60 days to submit the completed application. The fall application period is used to coincide with local governments budgeting cycle and the Courts Facility Improvement Grant cycle.
 - b. The chief justice will appoint an ad hoc committee of 3 members to review applications. The committee will consist of a district court judge, an attorney, and a court administrator.
 - c. The committee's review is not limited to the application but may include whatever outside research it considers appropriate.
 - d. The committee may not consider an incomplete application **OR** the committee may return an incomplete application and request the applicant include missing information.
 - e. The committee may not consider an application that is post-marked or transmitted electronically after the deadline for submission has passed. The committee may consider an application that is post-marked or transmitted electronically within the deadline for submission but received late due to postal service or technical issues.
 - f. Committee decisions must be in writing and forwarded to the Supreme Court within 60 days after the closing of the application period.
 - g. The Supreme Court may revise the committee's assessment of an application or may appoint a new temporary committee to conduct a new assessment.
 - h. No more than 4 attorneys may participate in the program at any given time.
3. Factors the ad hoc committee must consider in evaluating county or municipality application
 - a. Information provided in the application;
 - b. Recommendation of the presiding judge of the judicial district in which the applicant resides;
 - c. Geographical dispersal of participating communities; and
 - d. Any prior participation in the rural attorney recruitment program.
4. Eligibility requirements for attorneys
 - a. Must be a U.S. citizen, U.S. National or permanent resident of the United States;
 - b. Must be licensed to practice law in North Dakota and be in good standing;
 - c. Must be willing to locate their law office in the participating county or municipality;
 - d. Must agree to live in close proximity to the participating county or municipality;

- e. Must agree to practice law full-time in the participating community for at least 5 consecutive years; and
 - f. Must carry malpractice insurance.
5. Selection of attorneys for participation. There will be a continuous application period for attorneys to apply for the program. Applications will be submitted electronically through the court's applicant management system.

Any attorney licensed to practice law in North Dakota is presumptively eligible to participate in the program, provided the attorney completes an application and submits:

- a. Proof of U.S. citizenship (a birth certificate issued by a U.S. state or by the U.S. State Department or a U.S. passport or Certificate of Citizenship or a Naturalization Certification) or proof of permanent resident status (Permanent Residence Card I-551);
- b. Their law school transcript;
- c. Information about any current or past participation in any scholarship, loan repayment or tuition reimbursement program that obligated the applicant to provide attorney services within an underserved area;
- d. Information about any investigation or disciplinary action by a bar association; and
- e. Criminal history information including any felony or misdemeanor convictions or an equivalent offense in another jurisdiction.

6. Factors making an attorney ineligible for the program
 - a. An attorney may only participate in the Rural Attorney Recruitment Program once. Previous participation in this program, whether successfully completed or not, renders the attorney ineligible for further participation.
 - b. An attorney who has previously or is currently participating in any other state or federal scholarship, loan repayment, or tuition reimbursement program requiring the individual to provide services in an underserved area is not eligible to participate in this program.
 - c. An attorney who is currently the subject of an investigation by the Judicial Conduct Commission and Disciplinary Board, or equivalent board in another jurisdiction, may not be considered for the program until the complaint has been resolved.

ON-GOING OBLIGATIONS AND EXPECTATIONS

Participating County or Municipality

- Prior to July 1 each year - Deposit required funds into Attorney Recruitment Fund or provide proof that required fee has been paid to participating attorney within the timeframe established by the contract with an attorney
- Notify supreme court if concerns about participating attorney's service or residence

Participating Bar Association

- Prior to July 1 of each year - Deposit required funds into Attorney Recruitment Fund or provide proof that required fee has been paid to participating attorney within the timeframe established by the contract with an attorney

State Bar Association

- Prior to July 1 of each year - Deposit required funds into Attorney Recruitment Fund or provide proof that required fee has been paid to participating attorney within the timeframe established by the contract with an attorney

Eligible Attorney - active participant

- Promptly advise office of the state court administrator of any change of address;
- By February 1 of each year, submit a declaration to the office of the state court administrator confirming their continued practice in the participating community and residence within close proximity to the participating community as well as compliance with all other terms of the contract

Eligible Attorney - inactive participant

- By February 1 of each year, submit a statement of continuing interest in the program to the office of the state court administrator and affirm that in all material respects the details in the original application have not changed
- Promptly submit a new application for the program if there has been a material change in the details contained in the original application
- At any time, an eligible attorney may submit a written request to the office of the state court administrator to request removal from the roster of eligible attorneys

Office of the State Court Administrator

- Before July 1 of each year, submit a report to legislative management on the status of the program;
- On an annual basis, solicit applications from counties and municipalities;
- Maintain a continuous application process for attorneys;
- Provide staff support to Ad Hoc Committee;
- Maintain a list of counties and municipalities that have been assessed and selected for the program;
- Maintain a list of attorneys who have submitted applications and been deemed eligible for the program;
- Inform the state bar association when a county or city has been selected for participation in the program;

- Inform all parties to a contract if one of the entities responsible for payment fails to deposit their share of the funding or fails to provide proof that the required funding has been paid directly to the participating attorney.

Rural Attorney Recruitment Program FAQs

1. Why is there a limited recruitment period for communities but not for attorneys?

Community applications are limited to a specific period of time because they are reviewed by a temporary committee of three. Having a set period of time focuses the work of the committee and prevents the court from having to appoint multiple committees during the year.

For attorneys, unless there is something of concern revealed in the application process, applications are automatically approved if they meet the minimum qualifications.

2. What are the population limits for communities to qualify for the program?

County populations must be 16,000 or fewer based on the latest national census.

Municipality populations must be 5,000 or fewer based on the latest national census.

3. The rule requires a letter from the presiding judge of the judicial district. Where can I find this information?

On the North Dakota Court System website there is a map of the judicial districts and a list of the presiding judge for each district. Click on the following link and then move your cursor over the map to see the judicial districts. Once you locate your judicial district, clicking on it will bring up the name and address of the presiding judge.

<https://www.ndcourts.gov/district-court>

4. What is the difference between a “participating county or municipality” and a “participating community”?

A “participating county or municipality” is a county or municipality that is providing payment for services under the rural attorney recruitment program. A “participating community” is the geographical area surrounding a participating county or municipality. The frame of reference for this geographical area is not defined and could be co-extensive with a county, group of counties, judicial district, general service area, number of miles, or some other point of reference that the parties have agreed on.

5. What is meant by “locate their residence in close proximity to the participating county or municipality”?

“Close proximity” is not defined in the rule but may be interpreted as a reasonable commute to the participating attorney’s law office.

6. What is meant by “live and practice law full-time in the participating community”?

While an attorney may choose to locate his or her residence outside the specific county or municipality that is providing payment for their services under this program, the

attorney must establish a law office in the specific municipality or county and reside and practice law full time in the general geographic area.

7. May communities submit a joint application to share costs and services under the program?

Yes, a city or county may reach an agreement with other cities or counties to share costs and services and submit a joint application for the program. The application should include the specifics of the arrangement the communities have agreed to regarding how much time the attorney will be expected to serve in each community and how the annual costs will be divided between the communities.

8. May a community and an attorney file a joint application for the program?

While we encourage a community and attorney to reach a mutual agreement prior to applying for the program, the application and approval process for each differs so it is not possible to file a joint application. However, the community application should note the agreement between the parties.

9. What is the process to match an eligible community with an eligible attorney?

Communities and attorneys are encouraged to review the list of eligible communities and attorneys and come to a mutual agreement. However, the supreme court may assign an eligible attorney to a community and request that the community enter into an agreement with the attorney.

10. Is there a complaint process to deal with an attorney who is providing unsatisfactory or insufficient service?

There is no informal complaint process available. If the community and the attorney are unable to resolve differences, the only options are to enforce the contract through appropriate legal measures or to file a complaint with the Disciplinary Board.

11. What is the process if an attorney wants to leave the community before the 5-year period has ended?

The attorney should follow the contract provisions for early termination. These may include a requirement to provide a minimum number of days' notice, re-payment of certain expenses or forfeiture of planned payments.

12. What is the process for if one of the participants does not pay their annual installment?

Contact the party owing the payment to determine if the lack of payment was an oversight. If payment is still not forthcoming, contact the office of the state court administrator. That office will notify all parties to the contract of the unpaid obligation and arrange for a discussion between all parties. If the parties are unable to reach a

resolution on the matter, the participating attorney may seek enforcement of the contract through appropriate legal measures.

13. How does an attorney who is not an active participant in the program get off the eligible attorney list if they are no longer interested in the program?

At any time an attorney may send a letter to the office of the state court administrator stating that they would like to be removed from the roster.

Alternatively, an attorney may choose not to file the annual statement of continuing interest and that will automatically result in the attorney being removed from the list after February 1.

14. How does a community get off the eligible community list if they are no longer interested in the program?

At the direction of the county or city commission, the county or city auditor may send a letter to the office of the state court administrator stating that the community would like to be removed from the roster.

15. Is an attorney who is not a North Dakota resident but is licensed to practice law in North Dakota eligible for the program?

Yes. The only residency requirement is that the attorney reside "in close proximity" to the participating "county or municipality."

16. Is the program limited to attorneys in private practice?

No. The program is open to any attorney, regardless of whether they intend to work, or are already working in, the private or public sector.

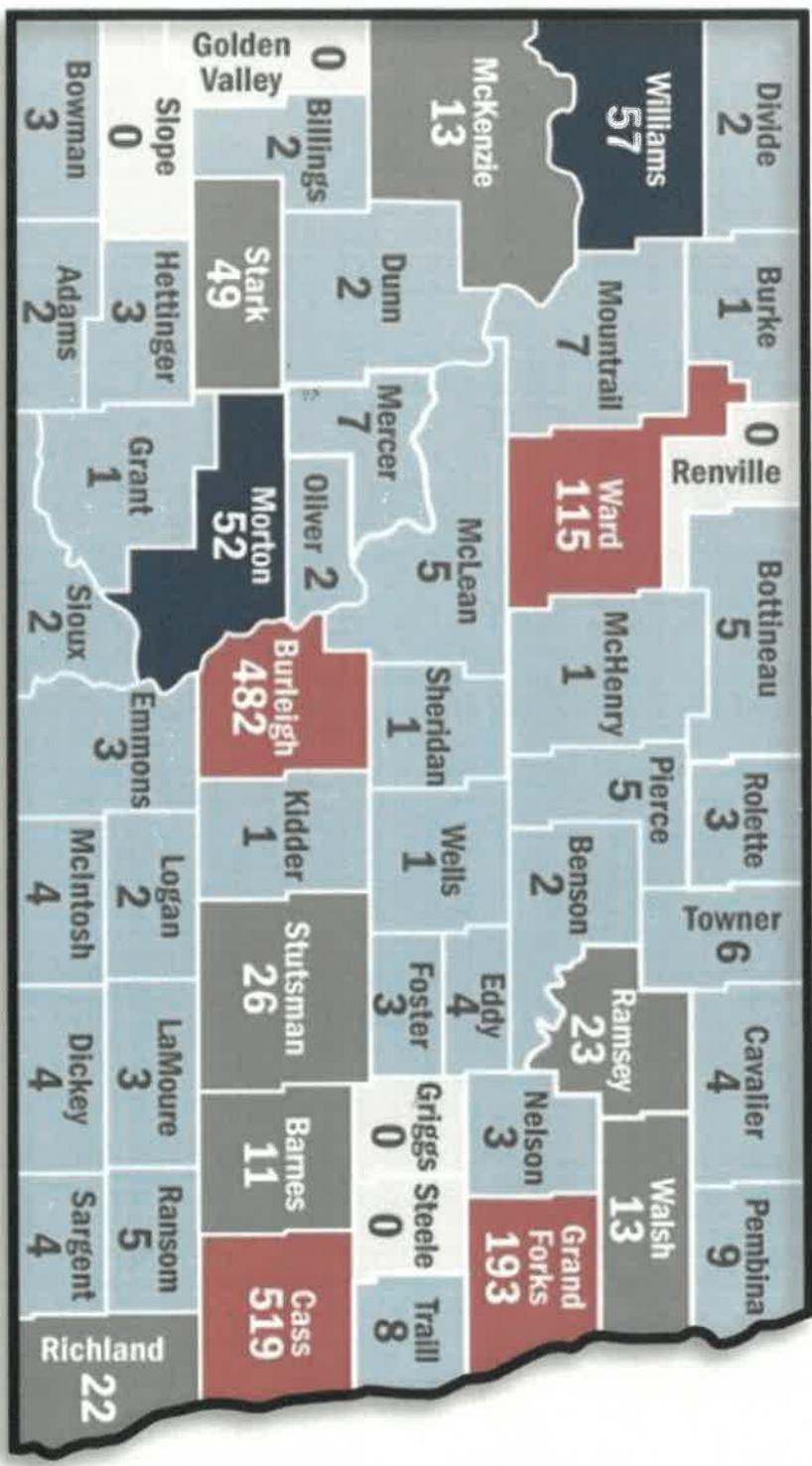
17. Is an attorney who is already working in the community eligible for the program?

Yes. The program is intended to recruit attorneys to rural locations but also to retain those attorneys who are already working in rural areas.

18. Does an attorney who is working in the public sector need to have malpractice insurance if they are covered by their employer's insurance?

If the attorney is employed full-time in the public sector and their employer's insurance covers the equivalent liabilities that malpractice insurance would, the attorney does not need to carry malpractice insurance.

North Dakota attorneys by county



■ 1-10 ■ 11-50 ■ 51-100 ■ 101 or more

Source: State Board of Law Examiners, January 2021