

Rural Attorney Recruitment Program

The Unified Judicial System and the State Bar of South Dakota are committed to assuring that all citizens within the State of South Dakota have access to quality attorneys. In 2013, the South Dakota Legislature approved the Recruitment Assistance Pilot Program to address the current and projected shortage of lawyers practicing in small communities and rural areas of South Dakota.

This program provides qualifying attorneys an incentive payment in return for five (5) continuous years of practice in an eligible rural county or municipality. While the number of attorneys was limited to sixteen (16) and then thirty-two (32) attorneys total from 2013 until 2019, since then, the program is only capped at thirty-two (32) attorneys at any given time.

Attorneys must enter into a contract with the Unified Judicial System, the State Bar, and the eligible county or municipality in order to participate. An eligible county or municipality may enter an agreement with any county, municipality, school district, or nonprofit entity to assist the county or municipality in meeting its funding obligations under the contract.

The participating attorney receives \$12,513.60 per year, for five years, from the program, for a total of \$62,568. Of this amount:

- Unified Judicial System pays 50%, or \$6,256.80 annually for five years;
- State Bar of South Dakota pays 15%, or \$1,877.04 annually for five years;
- County/Municipality pays 35%, or \$4,379.76 annually for five years (for a total of \$21,898.80).

Eligible rural counties or municipalities:

To be eligible to participate in the recruitment assistance pilot program, a county or municipality within the State of South Dakota must:

- Have a population of 10,000 or less, if a county, or 3,500 or less, if a municipality;
- Agree to pay 35% of the total amount of the incentive payment, payable in five equal annual payments. A county or municipality may prepay its portion of the incentive payment at any time during the five-year;

- Apply to the UJS via the governing body of the county or municipality presenting a formal communication or a letter of intent that the body is able and willing to contract; and
- Be determined to be eligible by the UJS.

Before making a determination on eligibility, the UJS shall conduct a county or municipal assessment to evaluate the county or municipality's need for an attorney and its ability to sustain and support an attorney. In completing this assessment, the UJS will consider the following factors:

- Demographics of the county or municipality;
- Age and number of current attorneys practicing within the county or municipality;
- Recommendation of the presiding circuit court judge;
- Programs of economic development within the county or municipality;
- Geographic location to other counties or municipalities receiving assistance; and
- Prior participation by the county or municipality in the program.

The UJS shall maintain a list of counties and municipalities that have been assessed and that are eligible for participation in the Program. The UJS may revise any county or municipal assessment or conduct a new assessment as necessary to reflect any change in conditions within a county or municipality.

Eligible Attorneys:

To be eligible for participation, an attorney must:

- Be a U.S. citizen, U.S. National or permanent resident of the U.S.;
- Have a Juris Doctorate degree from an ABA-accredited institution and provide a transcript;
- Be licensed as an attorney in the State of South Dakota;
- Never have been disbarred, suspended or publicly censured from the practice of law in any jurisdiction;
- Be willing to reside in the county or municipality he/she serves unless the county or municipality otherwise agrees;
- Keep the UJS informed of changes to his/her physical and mailing addresses as well as any change to his/her telephone number;

- Carry malpractice insurance during his/her involvement in the program and provide proof thereof;
- Provide a Certificate of Good Standing from the SD Supreme Court;
- Agree to practice full time as an attorney within an eligible county or municipality for a minimum of five consecutive years. (Full time is defined as a minimum of 35 hours per week, for a minimum of 49 weeks per year. Excess hours cannot be applied to any other work week. Participants are allowed to spend no more than 21 full time workdays per year, excluding federal and state holidays, away from their practice for vacation, continuing legal education, illness, or any other reason, unless permission is obtained from the Chief Justice of the South Dakota Supreme Court. Qualifying FMLA leave will be approved);
- Have never previously participated in this program, or any other state or federal scholarship, loan repayment, or tuition reimbursement program that obligates the person to provide attorney services within an underserved area;
- Submit a complete application and be approved for participation in the program by the UJS;
- Be willing to provide pro bono legal services for at least one case per year during the five-year period; and
- Not be anticipated to be employed as a full-time government employee in a rural area.

The UJS will consider not only the above requirements, but also the following:

- Evaluation of the attorney seeking assistance under this program; and
- Existing or previous ties of the applicant to the county or municipality.

Payment Process:

- 1) The contract for the Recruitment Assistance Pilot Program is not effective until it is approved by the UJS, the State Bar, and the county or municipality.
- 2) The rural county or municipality must pay its 35% of the annual incentive directly to the attorney and provide notice to the UJS once payment is rendered.
- 3) The State Bar of South Dakota pays 15% of the annual incentive to the UJS.

- 4) The UJS shall then pay to the participating attorney the State Bar's portion as well as the remaining balance of the total installment payment amount due for that year.

Breach of Contract:

An attorney who breaches a commitment to serve in the county or municipality he/she contracted with will become liable to the Unified Judicial System, State Bar of South Dakota and the eligible county or municipality for an amount equal to the amounts of the payments previously paid to the attorney. If a lump sum cannot be made immediately, terms of repayment must be satisfactory to the UJS. If the attorney fails to abide by the terms of repayment, the UJS, State Bar, and/or the county or municipality may initiate legal action to enforce the contract and recover damages, including but not limited to repayment of the amounts paid to the attorney prior to the breach. Additionally, the debt may be reported to credit reporting agencies and may be referred to a debt collection agency. Moreover, disciplinary sanctions may be imposed by the State Bar of South Dakota Disciplinary Board and the Supreme Court of South Dakota, if the attorney fails to satisfactorily address repayment of his/her debt. If the attorney dies before completing his/her service obligation, the obligation will be cancelled in its entirety. No liability will be transferred to the attorney's heirs.

Suspension / Waiver:

The UJS requires attorneys to fulfill their contract for the Rural Attorney Recruitment Program without excessive absences or significant interruptions in service. Attorneys are allowed 21 days of leave per service year, excluding federal and state holidays; however, there are some circumstances that occur that will prevent an attorney from staying within this timeframe. In these cases, the UJS may, under certain circumstances, suspend (put "on hold") or waive (excuse) 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.

- a. **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.
 - b. **Maternity/Paternity/Adoption Leave.** Before taking this leave, attorneys must notify the UJS of pending maternity/ paternity/adoption leave and provide appropriate documentation. If eligible under the Family Medical Leave Act, maternity/paternity/ adoption leave of 12 weeks or less will be automatically approved, if properly documented. If the attorney's maternity/paternity/ adoption leave will exceed 12 weeks during that service year, the attorney must request a medical suspension, which may or may not be approved by the UJS.
 - c. **Call to Active Duty in the Armed Forces.** Attorneys who are also military reservists and are called to active duty 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 UJS. 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/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 UJS, which shall include the reason(s) the waiver is being sought and any necessary medical and financial documentation necessary to support the waiver request.

Assessment of Participant:

The UJS verifies every three (3) months that attorneys are meeting program requirements and fulfilling their service obligation. The In-Service Verification (ISV) is completed by both the Attorney and the UJS. By completing and signing the verification, the attorney is certifying the attorney's compliance or noncompliance with the applicable requirements during that 3-month period. The verification will also record the time spent away from the service site, e.g., the total number of days during the 3-month period that the attorney fell below the minimum service requirement of 35 hours per week. Attorneys who fail to complete and submit their 3-month ISV on time may jeopardize receiving service credit.