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RURAL JUSTICE IN NORTH DAKOTA

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“Life in the Vast Lane,” a poster popular in these parts, depicts a North Dakota two-lane highway surrounded by green prairie grasslands and cloudless blue sky. Other than the road itself, the landscape appears unaltered from its indigenous state. The poster captures North Dakotans’ pride in the rural character of the state—encompassing areas of undeveloped open space and small farming and ranching communities—as well as the spirit of the people who live here. With a population of less than 757,000 spread across some 70,000 square miles, North Dakota is one of five states with a population density of less than eleven people per square mile.¹

The population densities of North Dakota’s fifty-three counties² range from a high of about eighty-five people per square mile in Cass County (Fargo)³ to a low of an average of less than one person per square mile in Slope County.⁴ Over half of the counties in the state have less than 5000 residents.⁵

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1. See *Quick Facts*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/00,38> (search in search bar for “North Dakota”) (last visited Apr. 28, 2016).

2. *County History*, ND.GOV, <https://www.nd.gov/content.htm?parentCatID=83&id=County%20History> (last visited Apr. 28, 2016).

3. *Quick Facts*, *supra* note 1 (search in search bar for “Cass County, North Dakota”); see also Press Release, U.S. Census Bureau, Growth in Urban Population Outpaces Rest of Nation, Census Bureau Reports (Mar. 26, 2012), https://www.census.gov/newsroom/releases/archives/2010_census/cb12-50.html.

4. *Quick Facts*, *supra* note 1 (search in search bar for “Slope County, North Dakota”).

5. *Id.*

With only 1665 licensed attorneys located in the state, North Dakota is among a handful of states with the fewest lawyers.⁶ A relatively low number of lawyers serving a largely rural state means that North Dakota's rural counties are facing a crisis in terms of the availability of legal services. With just 1.3 lawyers per 1000 people in the state's rural areas, "[y]ou're looking at rather vast expanses of territory for one lawyer to cover."⁷ In 2015, three counties had no resident attorneys, six counties had only one resident attorney (three of whom were over sixty years old), and seven counties had only two resident attorneys (five of whom were over sixty years old).⁸ In these sixteen counties, there are twenty attorneys to serve more than 54,000 people living across 19,000 square miles (over one quarter of the state's land area).⁹ Additionally, there were ten counties with three attorneys, five counties with four attorneys, and two counties with five attorneys.¹⁰ Only eighty-five of North Dakota's 357 cities and towns have lawyers with registered firm addresses.¹¹

Though keenly felt in North Dakota, the crisis of access to justice in rural communities spans the nation:

A disproportionate percentage of people living in poverty live in rural communities in the United States. At the same time, there are very few attorneys providing legal

6. AM. BAR ASS'N, ABA NATIONAL LAWYER POPULATION SURVEY (2015), http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2015.authcheckdam.pdf; see also N.D. Bd. of Bar Exam'rs, List of Licensed Attorneys (on file with authors). The total number of attorneys licensed in North Dakota in 2015 was 2972; forty-four percent, or 1297 of those licensed attorneys, were located outside the state. *Id.*

7. Anna Burleson, *Attorneys Are Scarce in Rural North Dakota While Business Keeps Growing*, GRAND FORKS HERALD (Mar. 24, 2014, 6:15 AM), <http://www.grandforksherald.com/content/attorneys-are-scarce-rural-north-dakota-while-business-keeps-growing>.

8. N.D. Bd. of Bar Exam'rs, *supra* note 6.

9. *Quick Facts*, *supra* note 1 (search "Benson County, North Dakota"; "Billings County, North Dakota"; "Burke County, North Dakota"; "Divide County, North Dakota"; "Dunn County, North Dakota"; "Golden Valley County, North Dakota"; "Grant County, North Dakota"; "Griggs County, North Dakota"; "Kidder County, North Dakota"; "Logan County, North Dakota"; "McHenry County, North Dakota"; "Oliver County, North Dakota"; "Rolette County, North Dakota"; "Sheridan County, North Dakota"; "Slope County, North Dakota"; and "Steele County, North Dakota") (last visited Apr. 28, 2016).

10. N.D. Bd. of Bar Exam'rs, *supra* note 6.

11. Burleson, *supra* note 7.

services in rural communities, and their numbers are dwindling. In fact, in many rural counties in the United States, there are no practicing attorneys, and in some rural states, residents must travel hundreds of miles to the nearest legal services office or private firm attorney. Similarly, public defenders are scarce in rural America, often traveling circuits, similar to ways in which judges travel circuits and sit in courthouses just one day a week in certain communities.

....

In addition, a high percentage of the few attorneys practicing law in rural America are aging out of the practice of law without plans or prospects for carrying on their practices.¹²

As an *ABA Journal* article on the shortage of attorneys in rural areas summarized: “All this creates a ‘justice gap,’ with legal needs going unmet because potential clients can’t find a lawyer, or they can’t afford the lawyers they can find.”¹³

In 2012, the American Bar Association (ABA) House of Delegates passed a resolution urging states “to support efforts to address the decline in the number of lawyers practicing in rural areas and to address access to justice issues for residents in rural America.”¹⁴

The ABA resolution coincided with a task force report detailing the impact of North Dakota’s oil boom, and the resulting rapid increase in population, on the state’s justice system.¹⁵ The report found that the increasing demands on the justice system indicated that there simply were insufficient numbers of attorneys, judges, and court staff to adequately serve the state’s needs.¹⁶ The strain on the justice system was particularly severe in western North

12. Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, 40 HUM. RTS. MAG. no. 3, 2014, http://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america.html.

13. Lorelei Laird, *Too Many Lawyers? Not Here. In Rural America, Lawyers Are Few and Far Between*, A.B.A.J., Oct. 2014, at 36, 39.

14. AM. BAR ASS’N HOUSE OF DELEGATES, RESOLUTION 10B 1 (2012).

15. *Compare id.* at 2 (“The small number of rural lawyers in relation to the unmet need for legal services in rural areas is shocking.”), *with* N.D. STATE BAR ASS’N, JUSTICE SYSTEM ENERGY IMPACT TASK FORCE REPORT 3 (2012) (“There is a shortage of attorneys in western North Dakota, which impacts the ability of people to have meaningful access to the court system.”).

16. N.D. STATE BAR ASS’N, *supra* note 15.

Dakota, where felony cases increased by as much as eighty-five percent and civil case filings in areas such as probate and trust doubled over five years.¹⁷ The report warned of a “constitutional crisis rapidly approaching” in representation for indigent criminal defendants and emphasized the growing civil legal services needs of low-income people.¹⁸

To address the worsening situation in North Dakota, Judge Gail Hagerty, the then-president of the State Bar Association of North Dakota, pitched a pilot “Rural Justice” proposal to the University of North Dakota (UND) School of Law and the North Dakota Supreme Court:

As a first step in addressing the need to recruit attorneys to the rural areas of North Dakota, it is proposed that the North Dakota judicial system provide for two or three summer clerkships for law students with judges who are chambered in and live in rural communities—communities of 15,000 or fewer residents.¹⁹

The three initial clerkships would come with a modest stipend to offset the students’ living expenses.²⁰ The students “would have an opportunity to reside in a rural community and work with a judge who would most likely travel to other rural communities[,]” exposing the students to life as a rural practitioner.²¹

By creating a desirable summer opportunity, the Rural Justice Program would “encourage students to consider rural practice” after graduation.²² “While not all students involved in the program would decide to work in rural North Dakota, it is likely that at least some would do so.”²³ As Judge Hagerty explained,

There are real legal needs out there: more oil and gas law, an increasing amount of probate matters, more crimes to deal with, and more need for family law. Right now, without immediate access to legal services, it’s very difficult for people, and it can increase costs. We also need more attorneys to do indigent defense work, we need more prosecutors and we need more new

17. *Id.* at 2–3.

18. *Id.* at 2.

19. GAIL HAGERTY, RURAL JUSTICE PROPOSAL 1 (2012) (on file with the authors).

20. *Id.*

21. *Id.*

22. *Id.* at 2.

23. *Id.*

practitioners. There's a lot of potential in rural communities.²⁴

With the approval of the state supreme court and the UND School of Law, the proposal was implemented in 2014. A local paper reported one student's successful experience in the program:

Josh Wolfe of Esmond, who is entering his third year at the UND law school, has been clerking in the Northeast Judicial District's Rugby office since mid-May. He has been writing briefs and memos and following Judge John McClintock as he presides over court proceedings in Pierce, McHenry[,] and Rolette counties. McClintock also assists in the seven other counties in the Northeast District as needed. . . . Wolfe said it was a law conference on issues of rural justice that got him wondering if a rural practice might be for him. . . . "You have to think about your future and if you can see yourself in a rural community," Wolfe said. "It would be something I would be interested in. I don't mind the slower pace that a small town like Rugby has to offer." While the community may be slower paced, the court schedule is not. "The court docket has been pretty full and lively," Wolfe said. "The same cases that I think you will see in Fargo or Minot, you are going to see in Rugby and the surrounding communities." McClintock said it may be one of the biggest eye-openers for students that law in a small town is just as dynamic as a big city practice. It can be more diverse, with more general law and less specialization, he said.²⁵

As a partnership among the state courts, the State Bar Association, and the state's only law school, the Rural Justice Program quickly garnered strong interest and growing support. From the beginning, the intent was to expand the Rural Justice Program to provide additional opportunities and incentives for UND law students to pursue legal careers in North Dakota, particularly in rural communities.²⁶

24. Juan Miguel Pedraza, *New Effort to Serve Rural Communities*, N.D. L., Spring 2014, at 9, <https://issuu.com/undlaw/docs/nd-law-v7i1-spring-2014>.

25. Jill Schramm, *Pilot Program Exposes Law Students to Rural North Dakota Careers*, N.D. SUP. CT. NEWS (June 30, 2014), <https://www.ndcourts.gov/court/news/RuralJustice20140630.htm>.

26. HAGERTY, *supra* note 19, at 5.

In 2015, thanks to generous support from the Edson and Margaret Larson Foundation, the law school began to develop a pipeline designed to keep North Dakota's most promising students in the state for their legal education and to encourage current law students to practice law in the state after graduation.²⁷ In addition to "North Dakota Promise" recruitment scholarships for high-achieving applicants with ties to North Dakota and "North Dakota Practice" scholarships for second- and third-year students with a demonstrated interest in practicing in North Dakota after graduation, the Larson Foundation funding also helped expand the Rural Justice Program through additional student summer grants.²⁸

Law students use summer employment opportunities to explore career paths and to impress prospective employers in the hopes of a post-graduation job offer. While legal services are sorely needed in rural areas, opportunities in rural communities may pay less or seem riskier than positions in larger cities. Students who work in rural communities can build professional and personal networks, experience the quality of rural life, and begin to put down roots, all of which may make it more likely that the student will choose rural employment after graduation. As more solo- and small-firm practitioners reach retirement age, and as more attorneys gravitate toward larger cities, it is important to connect law students to rural communities in North Dakota.

The three summer judicial clerkships in rural counties created by the pilot Rural Justice Program serve this purpose. The Larson Foundation funding provided similar financial support for students who take a summer law-related position with a law firm, state attorney's office, or indigent defense services in any North Dakota community other than Grand Forks, Fargo, Bismarck, or Minot.²⁹

The expanded Rural Justice Program was implemented in summer 2015. A local television station reported on one of the law students who was awarded a summer grant through the expanded program:

27. Neil Carlson, *UND Program to Solve Attorney Shortage in Western North Dakota*, VALLEY NEWS (July 17, 2015, 5:31 PM), <http://www.valleynewslive.com/home/headlines/UND-Program-To-Solve-Attorney-Shortage-In-Western-North-Dakota-316141881.html>.

28. *Id.*

29. *Id.*

UND Law student, Nathan Svihovec is . . . helping an attorney in Watford City, where the oil boom has boosted the population from around [1400] to over [8000]. [Said Svihovec], “It’s extremely exciting being involved with development agreements, with the City, and just seeing the town’s growth and expansion. And the legal work you do, you feel like it’s vital to the Community and you’re actually involved in the evolution of this rural Community as it [goes] through these changes.” . . .

. . . .
 . . . Nathan Svihovec says his work with the Rural Justice Program in Watford City has him convinced . . . that’s where he’ll set up his own practice after graduation.³⁰

Possible future expansion of the Rural Justice Program is under discussion. Potential goals include increasing the number of summer and post-graduate judicial clerkships and seeking state support for a loan forgiveness program modeled after South Dakota’s Rural Attorney Recruitment Program.³¹

In just a short time, the Rural Justice Program in North Dakota has garnered increasing support and has expanded to benefit more law students and to serve more North Dakotans. While there remains much to be done in our state to address the legal needs of rural communities, the Rural Justice Program is making a difference.

30. *Id.*

31. *See Rural Attorney Recruitment Program*, S.D. UNIFIED JUD. SYS., <http://www.ujs.sd.gov/information/rarprogram.aspx> (last visited May 27, 2016).