



## WARREN COUNTY BOARD OF ELECTIONS

John Graham Building Annex  
309 North Main Street  
Post Office Box 803  
Warrenton, North Carolina 27589

252-257-2114 (Office)

252-257-5232 (Fax)

March 14, 2017

The Honorable Victor Hunt  
Chairman-Warren County Board of Commissioners  
P. O. Box 619  
Warrenton, North Carolina 27589

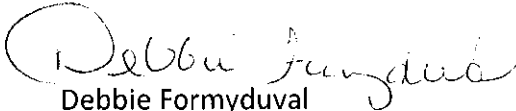
RE: Legal Services Contract -Don Wright

Dear Chairman Hunt:

The Warren County Board of Elections request approval of the attached contract for legal services with Don Wright by the Warren County Board of Commissioners at the April 3, 2017 meeting. Mr. Wright has served for the past year as legal counsel for the local board of elections. His expertise in election law is extensive. Mr. Wright has and will continue to work with Warren County attorney Jamie Wilkerson.

We appreciate prior support of the governing body and look forward to continuing to build a good strong and effective relationship that will better serve the citizens and voters of Warren County.

Respectfully,

  
Debbie Formyduval

(in the absence of )

Merwin R. Dieckmann-Chairman

Enclosure-Request Form & contract

Donald M. Wright  
Attorney at Law  
4804 Holly Brook Drive  
Apex, N.C. 2753  
(919) 387-3571 (office)  
(919) 618- 3601 (mobile)

EFFECTIVE START DATE \_\_\_\_\_

#### ATTORNEY-CLIENT FEE AND RETAINER AGREEMENT

Donald M. Wright ("Attorney") and the Warren County Board of Elections ("Client") hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. **CONDITIONS.** This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit called for under Paragraph 4. The Attorney received the initial deposit of \$1,000 on \_\_\_\_\_ 2017.

2. **SCOPE OF SERVICES.** Client hires Attorney to provide legal and consulting services pertaining to elections and the operations of the Client in the following manner:

Attorney will provide only those legal services as may be requested by Client and/or required to properly and adequately represent the Client on those matters the Client has sought the Attorney's services. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed and the Attorney's services are requested in the action, Attorney will represent Client through trial and post-trial motions. Attorney may advise to have the County Attorney as joint counsel in matters of filed litigation so as to better represent the Client and keep the costs of the litigation lower. Regardless, unless there is a conflict of interest, Attorney will make the County Attorney aware of matters that both the Client and Attorney feel are appropriate. This Agreement does not cover representation on appeal or in execution proceedings after judgment. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate written agreement.

Unless informed otherwise by the Client, Attorney will treat inquiries by the County Attorney as coming from the Client and will respond as needed and charge as set out herein.

IT IS HEREBY AGREED THAT ATTORNEY AND THE COUNTY ATTORNEY WILL COOPERATE AS MUCH AS POSSIBLE ON LEGAL MATTERS SO AS TO DEVELOP IN THE COUNTY ATTORNEY ADDITIONAL EXPERTISE AS TO ELECTION MATTER AND TO SAVE ATTORNEY FEES.

3. CLIENT'S DUTIES. Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone numbers, and whereabouts. Client will assist Attorney promptly in providing necessary information and documents and will appear when necessary at legal proceedings, both at trial and in discovery.

4. DEPOSITS AS A RETAINER. Client agrees to pay Attorney an initial deposit of \$1,000.00 within ten business days of the starting date of this Agreement. The hourly charges will be charged against the deposit. The initial deposit, as well as any future deposit, will be held in a trust account. Upon review and prior approval by Client of Attorney's billing statements, Attorney shall be authorized to use that fund to pay the fees and charges reflected in the billing statements. Attorney shall account to Client for the receipt and disbursement of all client funds from his trust account. Client acknowledges that the deposit is not an estimate of total fees and costs, but merely an advance for security.

As a retainer, this payment(s) will obligate Attorney from not consulting with or representing other parties whose interest are specifically contrary to the Client. Attorney may counsel and litigate other matters where the Client is not a named party, but where the results of such matter may affect or change previous law or operations pertaining to elections in general and operations of the State and County Board of Elections.

Whenever the deposit is exhausted during the life of this agreement, Attorney reserves the right to demand or not further deposits in amounts agreed to by both the parties to the agreement. The additional amount will be presumed to be \$1,000.00, but circumstances may cause both parties to agree to a greater or lesser new retainer. Once a trial or arbitration date is set in a matter, Client shall pay all sums then owing and deposit the attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration in the matter, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits after the initial deposit within twenty business days of Attorney's demand and the parties' agreement as to the amount of new the new deposit. Unless otherwise agreed in writing, any unused deposit at the conclusion of Attorney's services or at the ending date of this agreement will be refunded to Client by Attorney within 10 business days.

5. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Attorney's prevailing rates for all time spent on Client's matters by Attorney at the rate of \$150.00/hour as to all matters that are not in active litigation. After litigation is recommended by the Attorney and approved by the Client in a matter, payment to the Attorney will be at the rate of \$250.00/hour only as to that matter. Consulting and expert witnesses services will be at the rate of \$150.00/hour. These rates are valid for the life of this agreement and may change by mutual agreement as to future agreements.

The time charged may include the time Attorney spends on telephone calls and other means of communication relating to Client's matter, including calls with Client, witnesses, opposing counsel, or court personnel. Attorney will charge the legal fee per hour above for waiting time in court and elsewhere and for travel time, both local and out of town.

The attorney pledges to the Client that he will utilize technology such as Skype/Face Time, conference calls, and other similar services that will keep costs lower and to involve the county attorney when possible and jointly agreed.

All time will be charged in minimum units of one-tenth (.1) of an hour.

#### 6. COSTS AND OTHER CHARGES

(a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness professional, mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Attorney's actual cost. Travel, meal and rooming costs shall not be excessive, and shall not involve first -class travel nor rooms in excess of \$200 plus fees and taxes per night, unless with prior approval of Client. Client will always be provided a full listing of such costs.

In-office hard copy paper photocopying: .25/page. Attorney will avoid making unnecessary hard copies and will strive to provide Client with electronic copies at no charge.

Mileage: Allowable under the Clients current fiscal year mileage rate of which the Client shall advise Attorney.

(b) Out of town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and needed personnel as approved by the Client.

(c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. If approved by the Client, Client agrees to pay such associated fees and charges. If Attorney recommends and selects expert witness, consultants, or investigators, Client will be informed of persons chosen and their charges and will approve of their retention. If the Client fails to approve their retention as

recommended by counsel, the counsel shall have the option of withdrawing from representing the Client from the case in which the additional personnel were recommended for retention.

Additionally, Client understands that in court action or arbitration, Client may be required to pay fees and/or costs to other parties or the court in the action. Any such payment will entirely be the responsibility of Client.

7. **BILLING STATEMENTS.** As a condition precedent to receiving payment in accordance with Paragraph 4 above or at Client's request, Attorney will send Client advance statements for fees and costs incurred and balance of funds held in trust. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. **DISCHARGE AND WITHDRAWAL.** Client may discharge Attorney at any time, with or without cause. Attorney may withdraw without Client's consent or for good cause or with advance notice of the Client of at least 15 days. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matter or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney will, upon Client's request, deliver Client's file and property in Attorney's possession, whether or not Client has paid for all services. In addition any excess Client funds paid as a retainer, not owed the Attorney for payment of services and costs shall be returned to the Client within ten business days.

9. **DISCLAIMER OF GUARANTEE AND ESTIMATES.** Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of matter of litigation. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of litigation matters are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given. General information to the Client by Attorney will be given in good faith by Attorney and will represent his best efforts.

10. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

11. **SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect regardless if the Agreement is unenforceable in whole or part. The Client will be obligated to pay all incurred expenses for the time and costs of the Attorney if this Agreement becomes of no effect.

12. **MODIFICATION BY SUBSEQUENT AGREEMENT.** This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

13. **EFFECTIVE DATE.** This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date set out at the top of the first page of this Agreement.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM.  
CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: \_\_\_\_\_

For the Warren County Board of Elections

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail \_\_\_\_\_

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Attorney Donald M. Wright



WARREN COUNTY  
BOARD OF COMMISSIONERS  
AGENDA ITEM REQUEST FORM  
*Updated 1-2009*

This form must be completed and attached to all supporting documentation for items to be included in the Warren County Board of Commissioners Agenda. One (1) form per agenda item.

Submitted By: Debbie Formyduva I Department: Elections

Contact Phone #: ( 252 ) 257-2114 Date Submitted: 03/14/2017

Date of Board of Commissioners Meeting to consider this item: 4/3/17  
(Meetings are generally 1st Monday of each month.... confirm date with Clerk.)

Description (give short summary of topic, this is how item appears on the Agenda).

contract renewal-BOE with Don Wright for services

Who will attend Commissioner's meeting able to respond to questions? Give name & title:

Debbie Formyduval

Where does this item need to appear? Check all that apply:

Action Agenda                       Consent Agenda                       Closed Session  
 Presentation/Recognition                       Work session                       Schedule Public Hearing\*\*  
 Schedule joint meeting\*                       Schedule joint work session\*

\* Board, commission, or group requesting joint meeting: Warren County Board of Elections

\*\* If requesting a Public Hearing, provide an e-mail copy of sample ad to run in newspaper.

Supply General Statute or local ordinance that governs this item (attach copy):

Has this item been reviewed by County Attorney? Yes  No  (Attach recommendation.)

What action is requested of the Board? approval

What action is requested of the Manager? approval

Are County funds required? Yes / No \$ Yes Funding Source BOE Budget

**PLEASE PROVIDE:** One (1) paper copy and one (1) E-mail copy of all attachments to go in the digital Agenda to the Clerk no later than stated Agenda Item due date for above referenced meeting.