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LEON M. KILLIAN, III
COUNTY ATTORNEY

A RESOLUTION OF THE HAYWOOD COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING EMPLOYMENT AGREEMENT AND APPOINTING LEON M. KILLIAN, III TO SERVE AS COUNTY ATTORNEY

WHEREAS, North Carolina General Statute 153A-114 states: "The board of commissioners shall appoint a county attorney to serve at its pleasure and to be its legal adviser."

WHEREAS, it is the desire of the Haywood County Board of County Commissioners to appoint a County Attorney and to provide certain benefits, establish certain conditions of service and to set working conditions for that appointment by agreement.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF HAYWOOD COUNTY, NORTH CAROLINA, that:

The Haywood County Board of County Commissioners hereby appoints Leon M. Killian, III as the County Attorney effective October 5, 2015, to carry out all of the duties imposed upon that office by state law and County ordinances, as well as other duties as this Board of County Commissioners, from time to time, may require of the County Attorney during his appointment.

BE IT FURTHER RESOLVED by the Haywood County Board of County Commissioners that the provision for compensation for the office of County Attorney in the attached and incorporated *Employment Agreement* for his employment as County Attorney of Haywood County, and such remaining provisions of the *Employment Agreement* are adopted by reference in this resolution as if set out in full. The County Attorney shall be entitled to retirement and other benefits as set out in the *Employment Agreement*. The Chairman of the Haywood County Board of County Commissioners is hereby authorized to execute the *Employment Agreement* for Leon M. Killian, III's employment as County Attorney on behalf of the Haywood County Board of County Commissioners to be effective October 5, 2015.

BE IT FURTHER RESOLVED that prior orders and/or resolutions establishing compensation for the position of County Attorney are hereby superseded for all work performed hereafter.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Haywood County, North Carolina, this 5th day of October, 2015.

_____
Mark. S. Swanger, Chairman
Haywood County Board of Commissioners

ATTEST: _____
Ira Dove, Clerk to the Board

BOARD OF COMMISSIONERS

MARK S. SWANGER, CHAIRMAN
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COUNTY MANAGER
IRA DOVE

COUNTY ATTORNEY
LEON M. KILLIAN, III

COUNTY ATTORNEY EMPLOYMENT AGREEMENT

This Agreement is entered into this the 5th day of October, 2015 by and between Haywood County North Carolina, hereinafter referred to as the County, and Leon M. Killian III, Attorney at Law.

WHEREAS, for over forty years, the County has relied on part time and contracted services to meet many of its legal needs. Presently, the County has one full-time Agency Attorney, who handles Human Service matters for the Health and Human Services Agency. All other legal needs, including the position of County Attorney, are met by contracted and part-time labor. After review of the expenditures for various legal services for Haywood County over the last several years, and review of the amount of legal work that needs to be done on a consistent and ongoing basis, the County's best interests would be served by having a fulltime County Attorney.

WHEREAS, the County has spent an average of $ 138,000 per year on outside legal firms for the last four years, in addition to the annual retainer of Mr. Killian which is presently $53,250. Although some of the legal work required a specialist, much of the work paid to outside firms could have been done by a full-time County Attorney. Additionally, more in depth work could be done in the area of Public Health, the updating of Ordinances and policies, and the internal auditing of Departments for legal compliance.

WHEREAS, Mr. Leon M. Killian III has been the County Attorney for forty-three years. He has handled all manner of County business during this time. He has an excellent reputation throughout the State for his work as an Attorney, and has served Haywood County well. For the past several years, he has also been a member of the Nelson Mullins Law Firm in Raleigh North Carolina. He has legal commitments to the firm that may extend through the end of 2016.

NOW, THEREFORE, the County hereby agrees to employ Mr. Leon M. Killian III as the County Attorney for Haywood County upon the mutually agreed upon terms and conditions as follows:

1. Responsibilities and duties: The County Attorney is the legal advisor to the Board of Commissioners and all county officials. The County Attorney shall be responsible to perform the functions and duties specified in state statutes, the ordinances and resolutions of the County, and to perform such other legally permissible duties as the Board of Commissioners, acting at times through the County Manager, may assign. The County Attorney would be responsible for day to day legal matters, including, but not limited to reviewing written commitments made by the County and all deeds and contracts; reviewing and updating County ordinances; staying abreast of legal developments and advising officials of important changes in the law; giving interpretations of law and policy to officials; advising of the potential impact of legislation on County business; reviewing record requests from time to time. The County Attorney would appear in court or hearings on routine matters for the County and for Departments, including such matters as assisting the Health and Human Services Agency Attorney or a proceeding for a tax foreclosure, and other matters not determined to be overly complex by the County Manager. The Board of Commissioners, by resolution, may fix other duties and responsibilities upon the position of County

Attorney, not inconsistent with the provisions of this agreement. At times when a legal specialist would be required to handle complex cases in areas such as personnel or construction law, the County Attorney would serve as the liaison with the retained outside Counsel.

2. Term: County agrees to employ Mr. Killian under this agreement effective October 5, 2015 until the earlier of either the passage of sixty months from the date of effect, being October 5, 2020; or the agreement is terminated by either party in accordance with the provision set forth in paragraph 7 herein-below; or by the event of the death, resignation, retirement, permanent disability, or incapacity of Mr. Killian. Nothing herein shall be construed to prohibit or prevent the County from terminating County Attorney's employment for cause or without cause pursuant to the terms of this agreement.

3. Transition: That in order for Mr. Killian to serve as the full-time attorney, there will need to be a transition from his present firm. He can immediately begin offering more time to the County and can begin the process of moving his practice to Haywood County. During this time of transition, in light of past costs and the amount of work needed, Mr. Killian will be paid $100,000 per year salary. He has declined health insurance and other local benefits will not be provided during the transition time. He will be paid into the retirement system as a half-time employee due to regulations.

4. Regular Appointment, Salary and Benefits: Mr. Killian is expected to completely wind up private practice and begin fulltime work for the County no later than December 31, 2016. His beginning salary will be $125,000 and he will receive health insurance and all other local benefits available to Haywood County employees upon transition to full-time employment, as well as being paid into the retirement system as a full-time employee. Mr. Killian shall at all times be subject to the Haywood County personnel manual provisions and employment policies, not inconsistent herewith. For purposes of illustration provisions of the personnel manual and other policies that would apply include, but are not limited to, the following: Performance Evaluation; Holiday and Leave Pay; Sick Leave; Gifts and Favors; Adverse Weather Policy. After he is a full-time employee, Mr. Killian's salary would increase under the merit system as other employees and he would be eligible for any cost of living adjustments given to other employees. Mr. Killian will provide a letter to the Chair of the Commissioners, copied to the County Manager when he has completed his business at Nelson Mullins.

5. Supplemental Benefits: Subject to the Commissioners' discretionary annual budget appropriation, County hereby agrees to budget for and to pay for Mr. Killian's State Bar dues and travel to and expenses for meetings necessary and desirable to continue the professional development of Mr. Killian and to obtain his continuing legal education credits.

6. Personal Services: The Parties agree that this agreement is for unique personal services, and is not assignable under any circumstances. County Attorney agrees that during his tenure as County Attorney he will not engage in any activities for compensation or employment that has actual or perceived conflict with his duties and responsibilities as County Attorney. County Attorney must maintain his status as an active, current member of the North Carolina State Bar. Failure to follow any of the provisions in this paragraph shall be cause for dismissal.

7. Termination and Severance:
   (A) The parties recognize and affirm that the County Attorney is an at-will employee who serves at the pleasure of the Board of Commissioners. There is no expressed or implied promise made for continued employment except as set forth herein.

(B) The County Attorney may choose to terminate the agreement with thirty days written notice to the Board of Commissioners, delivered to the Chair of the Board of Commissioners and copied to the County Manager. Under such circumstances, the County Attorney shall be paid for accrued time as any other County employee. The County Attorney may resign at any time without notice. Under such circumstances, the County Attorney simply forfeits the rights to severance and accrued vacation payout.

(C) The Board of Commissioners may terminate the County Attorney without cause upon seven days written notice. The decision to terminate the County Attorney shall be made in a duly called meeting, in closed session and confirmed in a public meeting. In recognition of the County Attorney's long service and professional standing, County Attorney and the Commissioners shall prepare a brief joint statement to be made by the Commissioners at the public meeting when the termination is confirmed and no other details regarding said termination shall be released or discussed with the public, unless as part of an unemployment proceeding or other litigation between the parties, by court order or by official inquiry from the State bar. If the Board of Commissioners terminates the County Attorney without cause, the County shall provide him with salary and benefits for a period of sixteen weeks, in addition to paying out any accrued vacation as of the date of the notice of termination.

(D) The County may terminate the County Attorney without Advance Notice at a duly noticed regular or specially called meeting if the termination is for cause. If cause is suspected, the Chair of the Commissioners can direct the County Manager to place the County Attorney on investigatory status with pay until a meeting may be called. If the Board of Commissioners terminates the agreement for cause no accrued payout or severance shall be given. The decision to terminate shall be made in closed session and confirmed in an open meeting. A brief statement of the grounds for cause shall be made public, and no other details regarding said termination shall be released or discussed with the public, unless as part of an unemployment proceeding or other litigation between the parties, by court order or by official inquiry from the State bar. For purposes of this agreement, for "cause" shall mean termination on the account of a criminal conviction for acts other than minor traffic violations; suspension or disbarment by the North Carolina State Bar; fiscal malfeasance; a complete or near failure to perform in the position of County Attorney; failure to report for fulltime duty under the contract on or before December 31, 2016; failure to meet conditions in paragraph 6 herein-above. Nothing herein shall be construed to prohibit or prevent the County from terminating County Attorney's employment for cause or without cause; rather this provision removes the County Attorney's right to advance notice and/ or severance pay and benefits in the event of termination for cause.

8. Entire Agreement: This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior written or oral understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual signed agreement signed by the parties.

9. Severability: In the event that any provision of this agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remainder of the agreement.

IN WITNESS WHEREOF, Haywood County has caused this Agreement to be signed and executed in its behalf by its Chair of the Board of County Commissioners and duly attested by the Clerk to the Board. This Agreement has also been executed by the County Attorney.

_____
Leon M. Killian III, Attorney at Law

_____
Mark S. Swanger, Chairman
Haywood County Board of County Commissioners

ATTEST:

_____
Ira Dove, Clerk to the Board
Haywood County Board of County Commissioners

Dated: October 5, 2015