

Supplemental Materials

Nebraska Research Materials:

- **Nebraska Justice Gap: An Assessment of the Unmet Civil Legal Needs of Low and Moderate Income Nebraskans (March 2015)**

The Nebraska Justice Gap: An Assessment of the Unmet Civil Legal Needs of Low and Moderate Income Nebraskans

March 2015

The Nebraska Justice Gap is prepared to inform members and colleagues of the Nebraska Supreme Court's Committee on Self-Represented Litigation of the unmet civil legal needs of low and moderate income Nebraskans. It contains the following segments:

- Demographic information of low-income Nebraskans
- Access to Justice movement background
- Gap Analysis
- Summary of Gap Analysis and Conclusion

Nebraska's Poverty Profile

"To access the courts, citizens generally need adequate financial resources to pay for legal representation and court costs. The financial crisis of 2007 to 2008 and the ensuing economic downturn created new groups of individuals facing difficult circumstances and reinforced the vulnerabilities of some groups who historically lived in poverty. The challenge for the courts has been to provide access to justice when citizens have inadequate financial resources."¹

– **Dr. Anne Dannerbeck Janku, Missouri Office of State Courts Administrator**

The information below addresses the characteristics of financially vulnerable Nebraskans and what we know about their legal needs. We know their need for legal assistance often stems from their financial problems and, for many Nebraskans, a choice is sometimes necessary between paying for an attorney and paying for basic necessities.

Income

Nebraska's 2014 population is estimated to be 1,881,503.² The median household income is \$51,672.³ 2012 Census data⁴ indicates that 13% (233,973) of Nebraskans live at or below Federal Poverty Level (FPL).⁵ In 2012, FPL for a 1 person household was \$11,170 per year, and for a 4 person household was \$23,050 per year.

Legal Aid of Nebraska (LAN) is the largest non-profit law firm in the state that provides free legal

¹ Anne Dannerbeck Janku, "Poverty and Legal Problems: Examining Equal Access to Justice in Missouri," National Center for State Courts' Report on Trends in State Courts (2013 Print Edition), *available at* <http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202013/06212013-Poverty-and-legal-problems-Examining-Equal-Access-to-Justice-in-Missouri.ashx>.

² US Census Data found at <http://quickfacts.census.gov/qfd/states/31000.html>

³ Id.

⁴ In 2012 the population in Nebraska was 1,855,525.

⁵ Food Research and Action Center data found at <http://frac.org/wp-content/uploads/2010/07/ne.pdf>

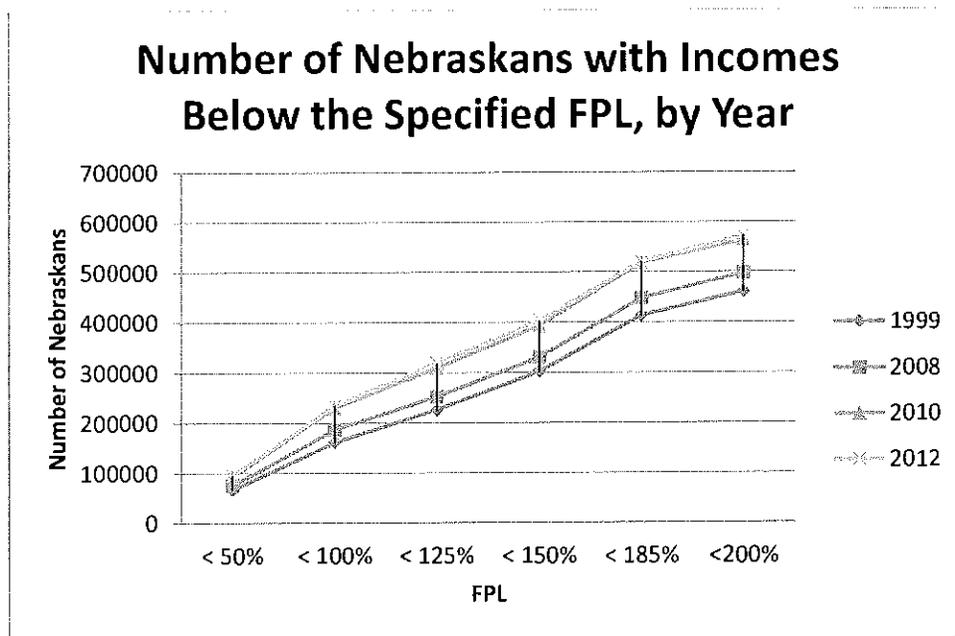
representation to underprivileged citizens. To qualify for LAN’s services, individuals must be at or below 125% of FPL⁶ or they must have income below 200% of poverty and have certain allowable deductions (e.g. rent, daycare expenses for employment) that place them at or below 125% of FPL.⁷

Both the number and proportion of low-income Nebraskans has been rising over the past decade. In 2000, approximately 225,545 or 13.5% of Nebraskans had incomes below 125% of the Federal Poverty Level (FPL). As of 2012, U.S. Census information indicates that 319,000 (approximately 17% of Nebraskans live at or below 125% of FPL) and potentially 573,000 (approximately 31% of Nebraskans live at or below 200% of FPL) Nebraskans qualify for Legal Aid’s services.

As poverty continues to rise, more and more Nebraskans find that they cannot afford to hire an attorney.

Although many people have little to no interaction with the courts, many low-income and modest-income Nebraskans require legal assistance for divorce, child custody and visitation, guardianships, landlord-tenant disputes, debt collection defense, and healthcare and probate issues, among others. For people who cannot pay a private attorney, and who are unable to get help through a free legal services provider or pro bono attorney, the only option available is to represent themselves in court.

Below is a chart that represents the growth in the poverty population between 1999 and 2012.



⁶ In 2015 125% for a household of 1 is \$14,713 and for a household of 4 is \$30,313. 200% of poverty for a household of 1 is \$23,540 and for a household of 4 is \$48,500. http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=&r=PART&n=45y4.1.3.11.12#ap45.4.1611_19.a

⁷ See 45 C.F.R. Part 1611 et seq. found at <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&n=45y4.1.3.11.12&r=PART&ty=HTML>

Available Legal Aid representation

LAN has approximately 75 full-time employees, including 42 attorneys (4 Administration, 4 Accessline®, and 34 litigation attorneys) located in 6 offices across the state. In 2014, LAN received approximately 17,321 requests for assistance. 11,787 were provided some level of legal assistance. 1,852 of those received extended representation or extensive service.

As of 2012, the number living at or below poverty is approximately 233,973. With 42 Legal Aid attorneys, that is 1 attorney for every 5,570 poor people. There are approximately 319,000 Nebraskans living at or below 125% of poverty. That is 1 Legal Aid attorney for every 7,595 people. Nebraska has approximately 5,350 attorneys with active law licenses, or 1 attorney for every 350 Nebraskans.

Other financial vulnerabilities⁸

While 13% of Nebraskans live at or below FPL, even more are financially vulnerable.

- 18.5% of Nebraskans are asset poor, meaning they lack the financial resources – money in the bank, or assets such as a home or car – to cover basic household expenses if they experience a financial crisis such as a job loss, medical crisis or other financial emergency.
- Even more Nebraskans, 25.4%, are liquid asset poor, meaning they do not have enough in liquid savings to cover basic expenses for three months.
- 10.2% of households have zero or a negative net worth, meaning they have no financial cushion to help in a financial crisis or invest in their future.
- 5.7% of Nebraskans have no bank accounts at all.
- 20.1% (1 in 5) are underbanked, meaning that although they have a mainstream bank account, they have used costly financial services for basic transaction and credit needs within the past 12 months, including check cashing services, payday loans, rent-to-own services and pawn shops.
- Nationally, 27.7% of families with income less than \$15,000 are unbanked and 22.4% are underbanked (total 50.1%). 11.4% of families with incomes between \$15,000 and \$30,000 are unbanked and 25% are underbanked (total 36.4%). 5.1% of families with incomes between \$30,000 and \$50,000 are unbanked and 23.3% are underbanked (total 28.4%).⁹
- The average individual credit card debt is \$6,424¹⁰ (not households or families which may contain two or more individuals with credit cards).
- It has been estimated nationally that 60- 95% of debt collection lawsuits result in defaults.¹¹

⁸ Corporation for Enterprise Development Asset and Opportunity Scorecard found at <http://scorecard.assetsandopportunity.org/latest/state/ne>

⁹2013 FDIC National Survey of Unbanked and Underbanked Households page 17 found at <https://www.fdic.gov/householdsurvey/2013report.pdf>

¹⁰ See FN8

¹¹ Federal Trade Commission Repairing a Broken System Protecting Consumers in Debt Collection Litigation and Arbitration page 7 (July 2010) found at http://www.ftc.gov/sites/default/files/documents/public_events/life-debt/debtcollectionreport_0.pdf; Center for Responsible Lending Debt Collection and Debt Buying page 13 (April 2014) found at <http://www.responsiblelending.org/state-of-lending/reports/11-Debt-Collection.pdf>

Housing¹²

Having a home allows for stability and homeownership provides a means to build wealth through equity.

- 66% of Nebraska households are homeowners.
- 1.6 times as many white households are homeowners compared to households of color.
- 23.3% are cost-burdened, meaning 30% or more of household income is consumed by the costs of owning a home (e.g. mortgage payments, property taxes, utilities, etc.). This increases risks of foreclosure and homelessness.
- For renting households, 44.5% of Nebraska renting households are cost burdened. This increases risks of eviction and homelessness.
- 26% (119,000) of children live in households with a high housing cost burden.¹³
- 52% (98,000) of low-income children live in households with a high cost burden.¹⁴

Healthcare¹⁵

Health insurance protects a household's assets by reducing expenses incurred from a medical emergency or the treatment of a chronic illness that might otherwise require a family to spend savings, or go into debt. Also, it encourages preventive care and treatment, thereby minimizing the impact of an individual's ability to earn income. One serious illness or accident can result in financial insecurity for the uninsured or their household.

- In 2013, 13% of Nebraskans under 65 had no health insurance.
- 2.3 times as many people of color are uninsured compared to white people.
- The uninsured rate for individuals in the bottom income bracket in Nebraska is 6 times higher than for people in the top income bracket. Nebraska ranks last in the United States in its uninsured rates by income, displaying the highest disparity in insurance rates by income.
- 8.9% of low-income children (18 years or younger living at or below 200% of FPL) in Nebraska are uninsured.
- The total number of Nebraskans under 65 without health insurance is estimated at 208,578.¹⁶

Education¹⁷

Compared to those without college degrees, individuals with a four-year degree are more likely to experience income and asset growth over the course of their lifetimes.

- 62% of Nebraska college students graduate with student loan debt.

¹² See FN8

¹³ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/7244-children-living-in-households-with-a-high-housing-cost-burden?loc=29&loct=2#detailed/2/29/false/36.868,867,133.38/any/14287,14288>

¹⁴ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/71-children-in-low-income-households-with-a-high-housing-cost-burden?loc=29&loct=2#detailed/2/29/false/36.868,867,133.38/any/376,377>; low-income household is a household with income less than 200% of poverty.

¹⁵ See FN8

¹⁶ See 2013 American Community Survey 1 Year Estimates

¹⁷ See FN8

- The average four-year public and private non-profit college graduate debt is \$26,490.
- 7.7% of Nebraskans with student loans are in default.
- In Nebraska, four-year degrees are 4.9 times more prevalent among the richest 20% of adults than among the lowest 20% of adults.
- White non-Hispanics are nearly two times more likely than people of color to have at least a 4-year degree.

Women and children

- 50.2% (944,515) of the population are females.¹⁸
- 236,129 females will experience domestic violence at some point during their lifetime.¹⁹
- 24.9% of the population are children under 18.²⁰
- The estimated number of households in 2013 was 730,579²¹
- 29.2% of families with a female head of household live below poverty.²²
 - 36.7% with related children under 18 years live in poverty.
 - 54.7% with related children under 5 live in poverty.
- In 2013, 81,000 (18%) children under 18 live in families with incomes below FPL.²³
- 20% (1 in 5) of children under 5 live in poverty.²⁴
- 189,000 (42%) of children live in families with incomes less than 200% of poverty.²⁵
- 35,000 (8%) children live in extreme poverty (families with incomes less than 50% of FPL).²⁶
- In 2012, 44% of students were eligible to receive free/reduced meals.²⁷
- The average number of free and reduced school lunch meals served daily 133,972.²⁸
- 91,240 children 18 and under received food stamp benefits in 2013.²⁹
- 15,554: average number of monthly participants (2,886 adults and 12,668 children) in Temporary Assistance for Needy Families (TANF).³⁰
- \$364: Maximum TANF benefit for single parent family of 3 (FY2011).³¹

¹⁸ See US Census data found at <http://quickfacts.census.gov/qfd/states/31000.html>

¹⁹ 1 in 4 women over 18 have been the victim of severe physical violence by an intimate partner in their lifetime. See Center for Disease Control Data found at <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>

²⁰ See FN8

²¹ See 2013 American Community Survey 1 Year Estimates

²² See 2013 American Community Survey 1 Year Estimates

²³ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/43-children-in-poverty-100-percent-poverty?loc=29&loct=2#detailed/2/29/false/36,868,867,133,38/any/321,322>

²⁴ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/2043-children-under-age-5-in-poverty?loc=29&loct=2#detailed/2/any/false/867,133,38,11,1/any/4290>

²⁵ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/47-children-below-200-percent-poverty?loc=29&loct=2#detailed/2/29/false/36,868,867,133,38/any/329,330>

²⁶ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/45-children-in-extreme-poverty-50-percent-poverty?loc=29&loct=2#detailed/2/29/false/36,868,867,133,38/any/325,326>

²⁷ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/2053-percentage-of-students-eligible-for-free-reduced-meals?loc=29&loct=2#detailed/2/any/false/868,867,133,38,35/any/4310>

²⁸ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/2052-average-number-of-free-reduced-school-lunch-meals-served-daily?loc=29&loct=2#detailed/2/any/false/868,867,133,38,35/any/4308,15004>

²⁹ Kids Count Data Center data found at <http://datacenter.kidscount.org/data/tables/2050-food-stamp-participation-children-ages-18-and-under?loc=29&loct=2#detailed/2/any/false/36,868,867,133,38/any/4304>

³⁰ Food Research and Action Center data found at <http://frac.org/wp-content/uploads/2010/07/ne.pdf>

³¹ Id.

Nebraskans with Other Access Needs

- 180,422 (10.5%) of people over 5 years of age speak a language other than English at home.³²
- 196,273 (10.8%) have a disability.³³

Computers and Internet Use³⁴

- 83.2% (607,942) households have a computer.
- 72.9% (532,757) households have a broadband internet subscription.

Rural Attorney Shortage

While Douglas County is home to 2594 attorneys, 12 of Nebraska’s 93 counties have **no** lawyers. Currently, five of these counties are also among Nebraska’s poorest. When lawyers are few and far between, access to justice becomes acutely limited for rural Nebraskans.

*10 Poorest Nebraska Counties and Number of Attorneys*³⁵

County	% Poverty	# in Poverty	# Attorneys
Thurston	30.5%	2073	6
Keya Paha	19.4%	153	0
Blaine	18.0%	87	0
Dawes	17.5%	1443	13
Loup	16.7%	96	0
Sioux	16.5%	217	2
Sheridan	16.0%	823	6
Wheeler	16.0%	121	0
Garden	15.9%	297	2
Thomas	15.5%	108	0
Douglas	15.2%	80032	2594
Pawnee	15.2%	404	6
Rock	15.2%	209	1
Scottsbluff	15.2%	5490	73

³² American Community Survey 5-Year Estimates 2009-20-13

³³ Id.

³⁴ 2013 American Community Survey 1-Year Estimates

³⁵ University of Missouri data found at <http://mcde.missouri.edu/data/saipe/pov2013charts/pov2013ne/charts.html> and NSBA information

Custody Court Filings in Nebraska³⁶

In May 2013, Nebraska's Office of Dispute Resolution & Special Court Programs conducted a study of JUSTICE closed court files to provide the Legislature, the Judicial Branch and the public with a factual report of custody, parenting time, and related court decisions from 2002-2012.

Plaintiffs' legal representation

In a vast majority of cases, plaintiffs were represented by an attorney at the time of filing of the complaint (88.3%). Some plaintiffs opted to file without first obtaining legal representation (10.2%). There were six cases found not applicable (1.5%).

Also in a vast majority of the cases, plaintiffs were represented by an attorney at the time of the final order or decree (84.6%). In some cases, representation at the time of the final order or decree was deemed not applicable, either because the plaintiff was the State of Nebraska or because the case was dismissed without prejudice.

Defendants' legal representation

In slightly more than half of the cases (50.8%), defendants were represented by an attorney at the onset of their entry into the case. At the time of the final order or decree, 47.2% of defendants were represented by counsel while 51.8% were not. Legal counsel was not applicable in the remaining 1% of cases.

Table 3 shows the percent of plaintiffs and defendants represented by attorneys at both the onset of the case and at the final order or decree. Plaintiffs were statistically more likely to be represented by attorneys at both the onset and at the final order or decree.

Table 3: Legal representation for both plaintiff and defendant

	Represented at onset of case	Represented at final order of decree
Plaintiff	88.3%	84.6%
Defendant	50.8%	47.2%

Data from this study shows that in Nebraska, defendants, as compared to plaintiffs, are less likely to retain legal representation during the court process. Lack of access to courts, particularly by self-represented parents going through dissolution and custody matters, is a growing concern in many states and countries.³⁷

³⁶ Nebraska Office of State Court Administrator, Office of Dispute Resolution & Special Court Programs, "Nebraska 2002-2012 Custody Court File Research Study, December 31, 2013," available at <https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/2002-2012-custody-court-file-research-study.pdf>.

³⁷ Id.

The Access to Justice Movement

“[A]ccess success stories are counter-balanced by access challenges. A major challenge is the number of people needing or choosing to represent themselves in court. Self-represented litigants are often unfamiliar with the law and court processes and frequently find themselves at a disadvantage when navigating the court system.”

“Our judges and our court ... staff remain committed to the American values of equal protection, due process of law, and equal access to justice...”

– Chief Justice Michael G. Heavican, *State of the Judiciary 2015*

The Center on Court Access to Justice for All is an initiative of the National Center for State Courts. The Center offers resources and technical assistance to help judges and courts advance access to justice, especially for poor and low-income individuals. The core concept behind the “access to justice” movement is state courts partnering with other stakeholders to expand access to civil justice by sharing and coordinating resources and information. At a minimum, this collaboration should include the courts, the private bar, and legal services organizations.

One of the biggest challenges in the court system is the increasing number of self-represented litigants. As the number of self-represented litigants in civil cases continues to grow, courts are responding by coordinating and improving service-delivery strategies and making courts more user-friendly. The goal is not only to effectively equip self-represented litigants to resolve their legal problems and to assist courts in efficiently processing cases involving self-represented litigants, but to improve the public’s trust and confidence in the courts.

Gap Analysis

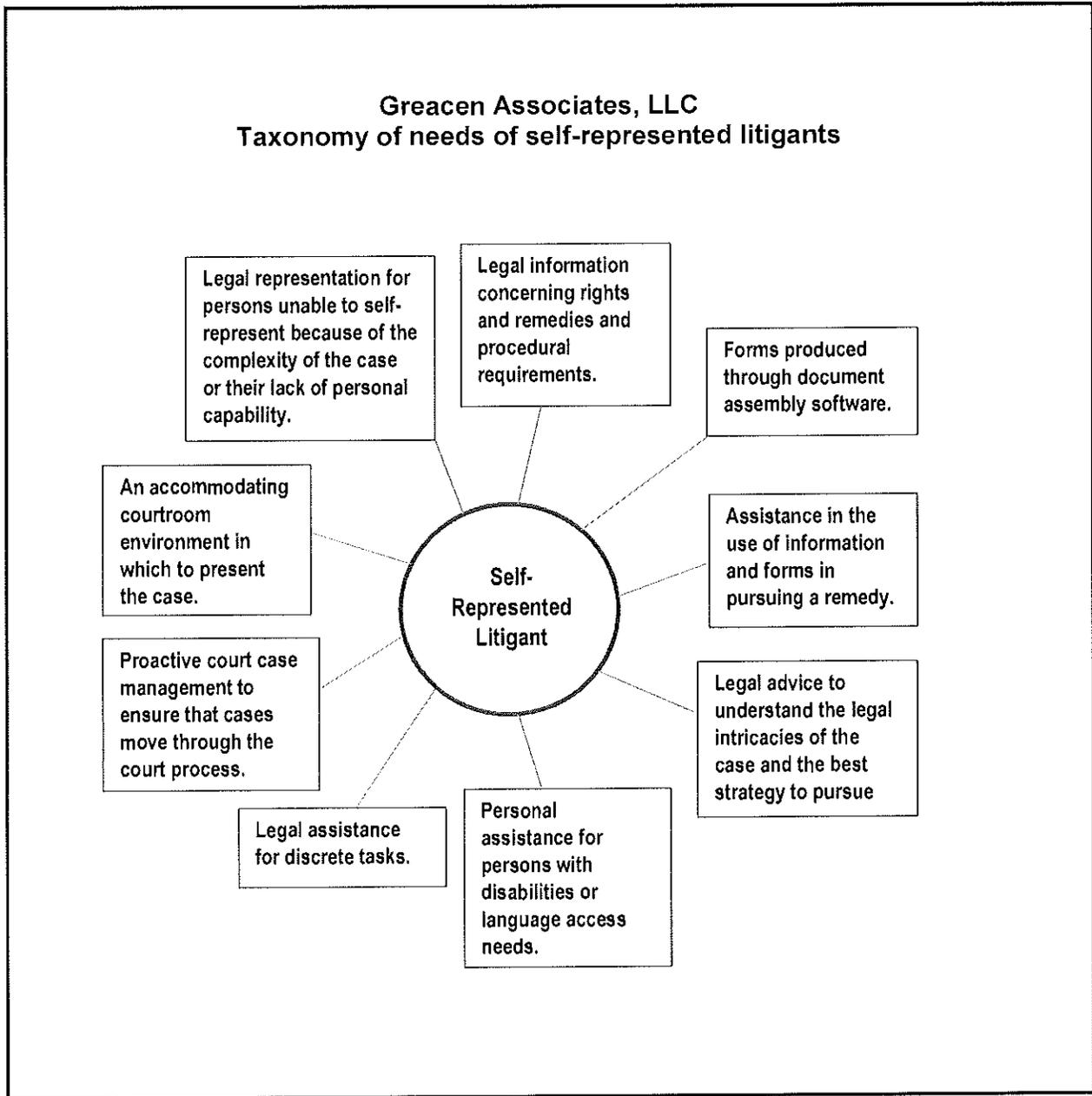
The Center on Court Access to Justice for All recently awarded the Nebraska Supreme Court Committee on Self-Represented Litigation a grant to conduct strategic planning and facilitate the Self-Represented Litigation Strategic Planning Conference.

To prepare for the conference, the strategic planning subcommittee conducted a “gap analysis” through surveys and needs assessment. After gathering narrative and statistical data about the state’s legal needs, the subcommittee identified what programs already exist to meet those needs.

This analysis categorizes existing services and gaps in relation to John Greacen’s *Taxonomy of Needs of Self-represented Litigants* (below). This classification scheme provides a framework to identify the services self-represented litigants need in order to effectively resolve their cases, the services currently available to self-represented litigants in Nebraska, and the current gaps in those services. The gap analysis aims to demonstrate the disparities that exist between Nebraska’s current and ideal system of responding to self-represented litigants. It does not provide an action plan, but a base awareness necessary to create one.

The “Inventory of Resources for Self-Represented Litigants in Nebraska” provides a profile of each of the entities listed on the Gap Analysis Chart. Please refer to the Inventory for a more complete picture of available services and resources.

Greacen Associates, LLC
Taxonomy of needs of self-represented litigants



DISCLAIMER: This analysis is limited. It was conducted within narrow time constraints and without the aid of comprehensive records. There is information we simply did not have or did not know how to obtain. Given the concentration of resources in urban areas, information about rural resources and regional gaps may be particularly incomplete. Any errors, omissions or misrepresentations are best attributed to the time and resource limitations of the authors.

Gap Analysis Chart

SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>1. Access to legal information concerning rights and remedies and procedural requirements.</p> <ul style="list-style-type: none"> ❖ <i>Causes of action and their elements.</i> ❖ <i>Available defenses and their elements, including identifying procedural defects in notice and service.</i> ❖ <i>Links to forms, statutes, and procedural rules at appropriate places in the discussion of a particular legal topic.</i> ❖ <i>Live chat to clarify material and answer questions.</i> ❖ <i>Guides specific to each stage of the case rather than massive procedural guides.</i> ❖ <i>The information provided needs to lead them to specific decisions about what to do.</i> ❖ <i>Handbooks, pamphlets, flow charts to describe court process.</i> 	<ul style="list-style-type: none"> • Nebraska Supreme Court (NSC) Online Legal Self-Help Center • NSC Website and Forms • NSC County Court Information Specialists • Volunteer Lawyers Project (VLP) Self-Help Desks • Legal Aid of Nebraska (LAN) • Law libraries (provide legal research assistance) • Nebraska Appleseed (child welfare, healthcare access, economic justice, immigration; does not typically handle individual representation cases) • Nebraska Area Agencies on Aging (provides legal education programming and some individual legal assistance to seniors) • Disability Rights Nebraska (offers a Law-in-Brief online Information Series) • Justice for Our Neighbors (immigration assistance) • Catholic Charities Immigration Legal Assistance • ACLU Nebraska (individual rights) • Military Legal Assistance Offices (basic legal assistance to active duty members, their dependents, and retired personnel. No court representation, document preparation, or information regarding business decisions.) • NE Department of Health and Human Services (some forms and information available on website) 	<ul style="list-style-type: none"> • No central information repository. • Limited handbooks, pamphlets, and other literature to describe court process or case requirements. • Information available on websites needs regular upkeep to avoid outdated content, link rot, etc. • Legal information is not available for all substantive areas. • ESL/LEP concerns – in how many different languages is information made available? • Written text has limits – how much reading comprehension do we expect, and what alternative forms can be made available? • Law school clinics are generally limited to full scope representation rather than brief services. • Limited assistance from court staff due to concerns about giving legal <i>advice</i> rather than providing legal information.

SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>2. Access to forms produced through document assembly software.</p> <ul style="list-style-type: none"> ❖ <i>TurboTax® like systems to walk them through completing the forms by asking simple questions.</i> ❖ <i>Interviews, instructions, and forms written in plain language at a target level of 5th – 7th grade.</i> ❖ <i>Forms in multiple languages</i> ❖ <i>Accessible forms (Section 508 compliant)</i> ❖ <i>Live chat assistance</i> 	<p>LAN offers LawHelp Interactive (LHI) automated court forms in these areas:</p> <ul style="list-style-type: none"> ▪ Criminal Conviction Set Asides ▪ Divorce, with children ▪ Divorce, no children ▪ Protection for Domestic Abuse and Harassment 	<ul style="list-style-type: none"> • <u>Only</u> LAN uses document assembly software, and only in limited areas. • No live chat assistance. • No comprehensive set of automated forms for all legal matters commonly pursued by self-represented litigants. • Current LAN forms are only available in English.
SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>3. Assistance in the use of information and forms in pursuing a remedy.</p> <ul style="list-style-type: none"> ❖ <i>Obtain help with forms completion and review, and assistance with hearing preparation.</i> 	<ul style="list-style-type: none"> • LAN • VLP Self-Help Centers • NSC Guardian /Conservator Specialists (email-based contact for self-represented litigants) • NSC County Court Information Specialists (phone and email-based contact person for self-represented litigants) • Some Nebraska attorneys are providing limited scope representation to self-represented litigants. • Some courthouses will provide information to self-represented litigants. 	<ul style="list-style-type: none"> • Litigants sometimes find their paperwork being refused with no explanation of the problem or how to fix it, or no referral to someone who could help. • Clerks in some districts offer information but this practice is not consistent statewide. • All the available forms on the Supreme Court website do not include instructions. • Existing instructions are often ignored and readability could be improved. • Unfamiliarity and hesitation among the private bar towards providing limited scope representation. • Existing services providers have significant staffing and eligibility limitations. • Nebraska’s rural attorney shortage means access to legal services in rural areas is alarmingly limited.

SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>4. Legal advice to understand the legal intricacies of the case and the best strategy to pursue.</p> <ul style="list-style-type: none"> ❖ <i>Such legal advice cannot be provided by court staff, whether or not they are attorneys.</i> ❖ <i>SRLs need access to lawyers who will provide them with legal advice as an unbundled service that they can afford.</i> 	<ul style="list-style-type: none"> • LAN • VLP Self-Help Centers • Some Nebraska attorneys are providing limited scope representation. • Some legal services providers offer brief legal advice and referral services, limited to their organization’s substantive focus areas. 	<ul style="list-style-type: none"> • Law school clinics and most of the other nonprofit legal services providers are limited to full scope representation and do not provide self-help or unbundled services. • No statewide, integrated referral system – courts and service providers are unsure where to send SRLs for legal advice. • Unfamiliarity and hesitation among the private bar towards providing limited scope representation. • Nebraska’s rural attorney shortage means access to legal advice in rural areas is alarmingly limited. • Limited scope representation has not been added to lawyer referral services – difficult to connect SRLs with lawyers willing to provide this service. • LAN and VLP have significant staffing limits. • Limited regional availability of LAN offices and VLP Self-Help Desks. • Nebraska has not implemented rules that permit attorneys who take pro bono cases to earn credit toward mandatory CLE requirements. • Nebraska has not implemented pro bono rules waiving some of the normal licensing requirements for retired, inactive, or out-of-state attorneys agreeing to limit their practice to volunteer service.

SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>5. Personal assistance for persons with disabilities or language access needs.</p> <ul style="list-style-type: none"> ❖ <i>Physical access</i> ❖ <i>Interpreters</i> ❖ <i>Courtroom assistance</i> ❖ <i>More intense preparation assistance for persons with mental or language limitations.</i> ❖ <i>Personal companion or advocate to assist/accompany a SRL needing special assistance.</i> 	<ul style="list-style-type: none"> • NSBA Pilot Project to provide on-call interpreter services for attorneys. • Interpretation and Language Line services are offered through LAN. • Most of the nonprofit legal services providers have Spanish-speaking or other multilingual staff. • Interpreters are available for court proceedings and for probation services. • If court staff have a problem communicating with a court patron, court employees have a variety of resources, including multilingual signs and language identification cards (so patrons can point to the language that they speak). • Some courts have bilingual staff and every court has access to the Language Line. • Court resources are outlined in the 2014 Nebraska Judicial Branch Language Access Plan: http://supremecourt.ne.gov/sites/supremecourt.ne.gov/files/report_s/courts/language-access-plan.pdf 	<ul style="list-style-type: none"> • Not all programs are able to provide interpreters or multilingual staff to accommodate non-English speakers. Few programs offer interpretation or Language Line services. • Disability Rights Nebraska, the protection and advocacy system in Nebraska, is only able to accept a very limited amount of cases. They do not assist people to fill out paperwork. • Our needs assessment did not consider the extent to which persons with disabilities are able to obtain appropriate assistance.
SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>6. Legal assistance for discrete tasks.</p> <ul style="list-style-type: none"> ❖ <i>Assisting with filling out forms and preparing responsive pleadings</i> ❖ <i>Help with understanding case management</i> ❖ <i>Coaching on courtroom conduct and strategies</i> ❖ <i>Representation at key hearings</i> 	<ul style="list-style-type: none"> • LAN • VLP Self-Help Desks • Some Nebraska attorneys are providing limited scope representation. 	<ul style="list-style-type: none"> • Legal services organizations are only able to provide representation for a fraction of the persons who qualify for services. • Law school clinics and other services providers are generally limited to full scope representation, not brief services. • Unfamiliarity and hesitation

<ul style="list-style-type: none"> ❖ <i>Educational materials and instructional videos</i> 		<p>among the private bar towards providing limited scope representation.</p> <ul style="list-style-type: none"> • Nebraska’s rural attorney shortage means access to legal services in rural areas is alarmingly limited. • Nebraska has not implemented rules that permit attorneys who take pro bono cases to earn credit toward mandatory CLE requirements. Nebraska has not implemented pro bono rules waiving some of the normal licensing requirements for retired, inactive, or out-of-state attorneys agreeing to limit their practice to volunteer service.
SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>7. Proactive court case management to ensure that cases move through the court process.</p> <ul style="list-style-type: none"> ❖ <i>Identification of cases that have stalled.</i> ❖ <i>Appropriate prompting concerning next steps.</i> ❖ <i>Assistance as needed to accomplish each procedural step.</i> ❖ <i>Preparation of court orders and final decrees or judgments – major problem for litigants and for courts.</i> 	<ul style="list-style-type: none"> • JUSTICE has a “pro se” identifier to designate a party as self-represented, and court staff are uniformly instructed to so designate a party. • <i>Emerging Practice:</i> Draft 2015 revised definitions and guidelines to designate parties as SRL is underway. • Individual courts have developed a SRL tracking process, including correspondence with SRLs to remind them of hearings, submission of documents, etc. • Nebraska Supreme Court Rules: § 6-101: time for disposition of cases in district and county courts; § 6-103: implementation assistance (2) provide information and education on effective case management. • Nebraska County Court / District 	<ul style="list-style-type: none"> • Lack of clear definition as to when a party should be designated as a self-represented litigant within JUSTICE; lack of consistency statewide. • Absence of statewide uniform SRL tracking process used by every trial court. • Absence of instruction to judges as to how to consider self-represented litigant’s case management needs within Nebraska Supreme Court Rules’ Chapter 6: Trial Courts. (NOTE: current web-based Rule format does not allow for “searching” terminology, so presence or absence of the term “pro se” or “self-represented litigant” is, at this writing, not clearly known.)

	<p>Court Procedures Manual:</p> <ul style="list-style-type: none"> ✓ Checklist for how to indicate a Limited Representation Attorney: https://supremecourt.nebraska.gov/procedure-manuals/12905/miscellaneous-checklist-2b-limited-representation-attorney ✓ Guidelines for Caseflow Management: for both county court and district court: https://supremecourt.nebraska.gov/procedure-manuals/11773/i-caseflow-management ✓ Checklists on how to request a pending detail report: https://supremecourt.nebraska.gov/procedure-manuals/12107/checklist-3-how-request-pending-detail-report 	<ul style="list-style-type: none"> • Absence of procedures as to how court staff can assist self-represented litigants with case management within the Nebraska County Court / District Court Procedures Manual.
SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>8. An accommodating courtroom environment in which to present the case.</p> <ul style="list-style-type: none"> ❖ <i>Understanding what is happening.</i> ❖ <i>Understanding what is expected of them in the court.</i> ❖ <i>Made as easy as possible to do what is expected by proactive management of the proceeding by the judge.</i> ❖ <i>Be encouraged in their efforts.</i> ❖ <i>Be protected against being undermined.</i> ❖ <i>Understand what has happened and what is expected of them next.</i> 	<ul style="list-style-type: none"> • Court case information is provided to SRLs upon filing specific case types, for example: <ul style="list-style-type: none"> ○ Small claims brochure ○ Parenting Act Information Brochure ○ Guardian / Conservator: how to carry out your duties; timelines • Web-based information on Online Self Help Center regarding steps in the filing and court process <ul style="list-style-type: none"> ○ How to appeal a small claims decision: https://supremecourt.nebraska.gov/self-help/7227/appealing-or-setting-aside-small-claims-judgment ○ How to make a motion for continuance: https://supremecourt.nebraska.gov/self-help/7219/filing-verified-motion-continuance-court-hearing ○ What to bring to court and what 	<ul style="list-style-type: none"> • Not all case types have information printed regarding how to conduct oneself in court in pursuing the case. • Not all case types have information available on the web as to how to conduct oneself in court or pursue court proceedings. • There are no explicitly designated court staff to assist self-represented litigants. • Some judges and court staff continue to be reluctant at best and resistant at the extreme in providing assistance to self-represented litigants due to several factors, including uncertainty about violating ethical standards, unauthorized practice of law, unequal

	<p>to say in a divorce hearing: https://supremecourt.nebraska.gov/self-help/7235/filing-divorce-nebraska-children-no-custody-disputes-visitation-disputes-or-property</p> <ul style="list-style-type: none"> • Every courthouse has a Public Access Screen (some with printers): this is a consumer-friendly terminal for SRLs to access court information, the world-wide web, JUSTICE, Online Self Help, etc. • Clerks of District Court: elected officials focused on customer service • Clerk Magistrates: court employees focused on customer service; this also includes a Live Chat with County Court Information Specialists through online or 800 number. • Judicial Branch Education: periodic educational forums for judges and court staff on serving SRLs. 	<p>assistance to SRLs vs. attorneys, long-standing adversarial mindset.</p>
SRL NEED	EXISTING SERVICES	GAPS IN SERVICES
<p>9. Legal representation for persons unable to self-represent because of the complexity of the case or their lack of personal capability.</p> <ul style="list-style-type: none"> ❖ <i>Need a recommendation that they seek full representation.</i> ❖ <i>Need to know of their options for representation such as the likelihood they will qualify for legal services, a pro bono attorney, or will need to pay for representation.</i> ❖ <i>Need contact information for each of these options.</i> ❖ <i>Need to allocate full</i> 	<ul style="list-style-type: none"> • VLP Direct Case Placement • LAN (screens for case complexity but measured against rights/benefits at stake) • The Abrahams Legal Clinic - Creighton University (Douglas County residents only) • UNL Civil Clinic (limited number of cases) • Nebraska Area Agencies on Aging (contracts with private attorneys and LAN to provide legal assistance) • Disability Rights Nebraska (only for individuals with disabilities) • Justice for Our Neighbors (only for low-income immigrant individuals) 	<ul style="list-style-type: none"> • No statewide, integrated referral system. • Legal services organizations are only able to provide representation for a fraction of the persons who qualify for services. • Nebraska's rural attorney shortage means access to legal representation in rural areas is alarmingly limited. • Unknown whether/how legal services programs currently allocate their representation services based on case complexity and/or personal capability of clients. Cases involving domestic violence

<p><i>representation services based on case complexity and/or personal capability of clients.</i></p>	<ul style="list-style-type: none"> • Catholic Charities Immigration Legal Assistance (only for low-income immigrant individuals) 	<p>are often prioritized.</p> <ul style="list-style-type: none"> • Nebraska has not implemented rules that permit attorneys who take pro bono cases to earn credit toward mandatory CLE requirements. • Nebraska has not implemented pro bono rules waiving some of the normal licensing requirements for retired, inactive, or out-of-state attorneys agreeing to limit their practice to volunteer service.
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Summary of Gap Analysis and Conclusion

The courts, the private bar, law libraries, and legal services organizations are the major stakeholders in the access to justice movement, along with law schools, public libraries, mediation centers, and nonprofit advocacy organizations. While each of these entities has made significant contributions to improving self-representation in Nebraska, there still remain gaps across the state to provide effective assistance to self-represented litigants.

As noted in the above chart, the gaps that still need to be addressed include some of the following.

Gaps in Legal Services

“The major problem in achieving meaningful access to a full range of high-quality legal assistance programs is the lack of programs with sufficient funding to provide the legal advice, brief service, and extended representation necessary to meet the legal needs of low-income persons.”³⁸

The most extensive assistance available to self-represented litigants in Nebraska comes from Legal Aid of Nebraska. However, LAN’s services are limited to clients who are income-eligible, and LAN is only able to provide representation for a fraction of the persons who qualify for services. Other legal services providers face similar eligibility and capacity limitations. Legal services organizations do not have sufficient funding to hire the staff necessary to serve all the people who need their services. *Most* who qualify are turned away.

Throughout the state, there is a lack of attorneys providing free or discounted legal services. Despite the general unavailability of one-on-one assistance and individual representation, most legal services providers have not developed comprehensive guides, handbooks, and instructions for legal matters commonly pursued by self-represented litigants.

Additionally, the accessibility of services is hindered by the lack of coordination among services providers. Although LAN has some formal referral systems in place, all Nebraska’s legal services providers need a coordinated, integrated referral system to ensure self-represented litigants can access all available resources currently in existence. The Nebraska Immigration Legal Assistance Hotline (NILAH) and the LAN-VLP Centralized Intake process are successful models currently in operation.

³⁸ CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, Alan W. Houseman, Senior Fellow, Center for Law and Social Policy, November 2013, <http://www.clasp.org/resources-and-publications/publication-1/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-3.pdf>

Nebraska Immigration Legal Assistance Hotline (NILAH)

Several Nebraska nonprofit organizations partnered to implement a centralized intake and referral services for immigration legal services. As a result, NILAH was created as a centralized immigration intake and referral service in order to add efficiency to Nebraska's immigration legal service organizations as well as eliminate uncertainty among applicants for immigration legal services. Direct referrals are made to participating immigration legal service organizations, including Catholic Charities (CC), Center for Legal Immigration Assistance (CLIA), Justice for Our Neighbors-Nebraska (JFON), Lutheran Family Services (LFS) and Women's Center for Advancement (WCA).

LAN-VLP Centralized Intake

LAN and the Volunteer Lawyers Project now have a coordinated intake process. The VLP is not currently accepting phone calls from individuals requesting legal assistance. Rather, an automated message refers every person requesting legal assistance to LAN to complete an application. LAN currently provides up to 40 completed applications for services (intakes) monthly to the VLP for potential placement with private attorneys. It is important to note the cases being referred to the VLP are those that cannot be handled by LAN due to a lack of staffing and resources. VLP is a program of last resort.

Gaps in Court Services

One of the preeminent gaps in the court system is the inability to accurately identify the presence of a self-represented litigant in a court case. Presently, the statewide court data management system, JUSTICE, does not capture whether a party is self-represented. This is in major part a result of the traditional legal process in which each party had been represented by an attorney.

There is an extensive and defined JUSTICE process to identify attorneys by bar number for each party. A few years ago, in recognition of a growing number of self-represented litigants, JUSTICE staff created a "self-represented litigant" data field. However, because there is an absence of a clear definition as to *when* a court clerk should designate a party as a self-represented litigant within JUSTICE, this code is not being used effectively.

A long-standing dilemma for most court staff, and hence a gap, is the limited assistance that they can offer a self-represented litigant. The limited assistance stems from lack of time, lack of court resources, and reluctance to offer procedural and case-related assistance due to ongoing uncertainty of violating the unauthorized practice of law. Indeed, while there has been judicial branch education as well as court procedures adopted on the do's and don'ts of assistance to self-represented litigants, the gap still exists as to the amount of and level of legal assistance provided.

Equally as long-standing, is the limited amount of judicial assistance that can be offered to a self-represented litigant. This is based upon historical and ethical parameters of the judge's role. Again, as with court staff, there has been periodic judicial branch education on this topic given to Nebraska judges, including a seminar by the notable self-represented litigation advocate, Richard Zorza. This role identification as well as absence of clear guidelines for judges results in a gap of judicial assistance to

self-represented litigants attempting to pursue their case in and out of the courtroom. Nebraska's Code of Judicial Conduct has been updated in accordance with the model ABA Code, but judges are often unsure of how far they can or should go in explaining procedure or accommodating the lack of knowledge of a lay person.

The Nebraska Supreme Court's Online Self-Help website has been built up over the past several years to include more forms and instructions in a variety of legal matters and, in some cases, provide instructions on how to conduct oneself in court. There still remains a gap for the self-represented litigant to truly understand which forms to use when, how to fill out the forms, when to ask for court dates, how to provide service on other parties, what papers to bring to court, and how to conduct themselves in the court room.

Written instructions and forms, while laudable, and while filling a gap of basic forms and information, still leave the gap of personal assistance. There are at least two gaps here: (1) in most courts, there are no designated court staff to assist self-represented litigants; and (2) constant changes in divorce forms/process have consumed much of the Committee's time while many areas such as garnishment and guardianship have gone untended.

As reflected in the 2014 surveys of county and district court judges and clerks, self-represented litigation services are often being delivered in a discouraging environment. Self-represented litigants are sometimes perceived as a burden or inconvenience. Institutional resistance from the bench, and bar, on both local and state levels, may create an unfavorable environment for self-represented litigants attempting to resolve their own legal problems. And, as statistics show, the successful resolution of a legal issue can have life-altering consequences for so many financially vulnerable Nebraskans.

Gaps in Private Bar Services

While a number of attorneys take pro bono cases through the Volunteer Lawyers Project, Nebraska does not require mandatory tracking of pro bono hours, and so we do not know how many attorneys are providing pro bono services in Nebraska. Many states currently offer incentives for attorneys to represent low- and moderate-income clients by permitting attorneys to obtain CLE credits for performing pro bono training and representation. Nebraska has not implemented rules that permit attorneys who take pro bono cases to earn credit toward mandatory CLE requirements. Nebraska has also not implemented pro bono rules waiving some of the normal licensing requirements for retired, inactive, or out-of-state attorneys agreeing to limit their practice to volunteer service.

Continue educating and providing resources for lawyers on providing Limited Scope Representation.

Few attorneys appear to be providing Limited Scope Representation. This may be due to unfamiliarity with the concept and hesitation that doing so is in violation of the Rules of Professional Conduct.

The lack of a statewide or local directory of attorneys willing to take limited scope representation cases makes it difficult to connect Self Represented Litigants with potential attorneys.

Currently, the Nebraska State Bar Association's Volunteer Lawyers Project offers Self-Help Desks for self-represented litigants in six counties: Lancaster, Douglas, Madison, Buffalo, Hall and Scotts Bluff. Expanding Self-Help Desks to additional counties may require additional resources, coordination and

cooperation from the local courts and local attorneys.

Nebraska faces a rural attorney shortage. Chief Justice Heavican has identified the lack of attorneys as one factor contributing to the increase in self-represented litigation in many rural communities. Currently, across Nebraska's 93 counties, there are 12 counties without an attorney and 22 others with 3 or fewer attorneys.

Technology Gaps

Nebraska has been slow to utilize and develop innovative technologies to increase access to justice.

The Supreme Court's Committee on Self-Represented Litigation and LAN continue to develop forms and instructions to assist self-represented litigants. However, these forms can be made simpler, and can be enhanced through the use of document assembly software. We also need to expand the legal forms available online to include all the legal matters commonly pursued by self-represented litigants, and ensure they remain current.

If our purpose is to provide and ensure *effective* assistance, proactive case management and outcome tracking must be prioritized. In addition to SRL case tracking, new innovations and programs require follow-up with individual self-represented litigants and follow-up with the courts. It is unknown whether current services providers have established mechanisms to evaluate the impact of their services and innovations.

Technology should be utilized to offer remote service delivery as one solution to the rural attorney shortage. Teleconferencing, live chat, and hotline services are all means of leveraging the oversupply of urban attorneys.

A Coordinated Response

Nebraska may need to establish a designated entry point for all self-represented litigants needing legal information or assistance. There is a broad referral network among service providers and the courts, including both informal and formalized collaborations, but it falls short of an integrated model of service delivery. To improve access to justice, the courts need to interact regularly with services providers and the private bar, and coordinate their programs to maximize services for self-represented litigants. The courts, private bar, libraries and legal services providers need to make appropriate referrals to one another and to appropriate social services agencies.

The gap analysis reveals a need to improve existing legal programs, develop both straightforward and more innovative solutions, and explore other ways to meet the needs of Nebraskans unable to afford an attorney. To best address these gaps, Nebraska needs a designated entity to coordinate statewide efforts to provide equal access to civil justice. A central entity can best coordinate and represent the various interests and efforts involved in the provision of legal services to the poor. Going forward, we need to identify the most appropriate "hub" of Nebraska's network of services for self-represented litigants. Given the current leadership and strategic planning of the Nebraska Supreme Court Committee on Self-Represented Litigation, and the recommendations of our consultant, a court-based solution may be the best fit for Nebraska.

