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The Justice Gap

A Study of the Legal Needs of New Hampshire's Low-Income Residents

February 2013



Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

N.H. Constitution, Part I, Article 14

The Justice Gap

A Study of the Legal Needs
of New Hampshire's Low-Income Residents

February 2013

This study was sponsored by the New Hampshire Access to Justice Commission which was established in 2007 by order of the New Hampshire Supreme Court. Consistent with Part 1, Article 14 of the New Hampshire Constitution, the Court said, it was creating the Commission to “expand access to and enhance the quality of justice in civil legal matters for New Hampshire residents.” The Legal Advice and Referral Center (LARC) coordinated with the Commission in developing the study.

The New Hampshire Bar Foundation provided funding for the study. Research was conducted in conjunction with the Rockefeller Center for Public Policy and the Social Sciences at Dartmouth College by LARC, the New Hampshire Bar Association's Pro Bono Referral Program and New Hampshire Legal Assistance. Funding for an independent analysis of the impact of the study's findings on the New Hampshire economy was provided by the American Bar Association Access to Justice Commission Expansion Project.

Electronic copies of both reports are available on the websites of both the Access to Justice Commission (<http://www.courts.state.nh.us/access/index.htm>) and LARC (www.nhlegalaid.org).

New Hampshire Supreme Court Access to Justice Commission

February 2013

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Executive Summary

The New Hampshire Legal Needs Study was commissioned by the New Hampshire Access to Justice Commission and the Legal Advice and Referral Center (LARC) in 2011, and conducted by researchers at the Rockefeller Center for Public Policy and the Social Sciences at Dartmouth College.¹ The study sought to determine the level of legal needs among low-income people in New Hampshire and to assess the capacity of existing legal services to meet those needs. The study employed a multi-method approach which included interviews with social services providers, questionnaires of volunteer attorneys, analysis of legal services data, a lengthy survey of judges, clerks, and administrators in the New Hampshire system, and analysis of legal needs assessments from other states and public data sources such as the U.S. Census.

The study found striking evidence of a gap between the legal needs of low-income people in New Hampshire and the legal services available to them. Though over 250,000 low-income people in New Hampshire are eligible for legal services, and an estimated 149,101 of these have legal needs annually, legal services was able to offer services in only 8,403 cases in 2010.² Sub-groups within the low-income population are even more likely to experience legal problems. Women, disabled persons, and senior citizens are over-represented in the low-income population, and are at greater risk of certain kinds of legal problems. Recent immigrants and rural residents each face greater challenges in accessing available services, due to language barriers and physical distance. The most pressing areas of legal need among low-income people were reported in the areas of family law, housing, and

consumer issues, with domestic violence and public benefits also identified as important areas of unmet need.³

We found that low-income people face a number of barriers in addressing their legal problems, some of them more obvious (such as a lack of available legal services and physical access issues) and some of them more subtle (such as a lack of knowledge that a legal remedy exists, or a lack of faith in the justice system).⁴ The single greatest barrier identified by all data sources was the lack of adequate legal services to meet the legal needs of low-income people in New Hampshire. The three main legal services organizations each reported far greater demand for services than they could meet, and all have experienced cuts in funding in recent years.⁵

The mismatch between legal needs and services has numerous ramifications. Most importantly, it makes a material difference to low-income people already in difficult circumstances, for whom legal help might make the difference between staying in their home or receiving needed public benefits. The justice gap also leads to a surprisingly high rate of self-representation in New Hampshire state courts—an estimated 61 to 70 percent overall. Individuals without legal representation are at a disadvantage compared to those who have it, and put a strain on the court system. The findings in this report will be useful to policymakers interested in addressing the needs of low-income people, the efficient functioning of the courts, and preserving equal access to the justice system.

Introduction

Going to court is expensive, making the justice system difficult for low-income residents to access. This report outlines how the crisis in civil legal representation affects the residents of New Hampshire. While there is a right to legal representation for criminal cases, no such guarantee is extended to low-income people in civil cases. This means that in many important legal matters—including child custody, home foreclosure, domestic violence, and landlord-tenant disputes—low-income residents often must navigate the legal system on their own, or opt to not address their legal needs at all. The effect is a stark “justice gap” between the legal needs of low-income people, and the services available to meet them.

New Hampshire has a strong core of legal services organizations dedicated to addressing the legal needs of low-income people. However, their resources have never been adequate to meet the legal needs of low-income people in New Hampshire, and these programs are often forced to turn away clients without giving them the legal help they need. This gap between legal needs and legal services capacity in New Hampshire has only worsened since the economic crisis. While the legal needs of low-income people have increased—due to increased financial hardship and the threat of home foreclosure and bankruptcy, for example—funding for legal services has been cut, in some cases dramatically.

According to a conservative estimate, 149,101 residents of New Hampshire have legal needs that currently are not being met. The first section of this study

outlines the legal needs of New Hampshire’s low-income population, who are disproportionately women, disabled, under- or unemployed, and without college education, drawing on evidence from social services providers and court personnel throughout the state.

The second section offers evidence of many barriers to legal access faced by low-income people in New Hampshire, including not understanding their problem as having a legal remedy, a lack of basic knowledge about how the legal system works, language barriers, and limited resources to help them navigate the court system and administrative appeal process. A large number of those without access to legal representation end up trying to represent themselves, with rates of self-representation in New Hampshire state courts estimated at between 61 and 70 percent. The vast majority of court employees (83 percent) do not believe self-represented litigants are well-equipped to navigate the court system on their own, and 61 percent agree that many self-represented litigants lack basic reading and comprehension skills. The lack of available, affordable legal representation is a substantial legal access barrier for New Hampshire’s low-income residents, and the consequently high level of self-representation that results from this strains New Hampshire state courts.

The third section of the study examines what legal services are currently available for low-income people with legal needs. Inadequate and unstable funding from federal and state government has made adequate provision of legal services difficult. This report ex-

amines the three largest and most important providers of legal services in New Hampshire: New Hampshire Pro Bono, New Hampshire Legal Assistance (NHCLA), and the Legal Advice and Referral Center (LARC). The report looks at the cases taken on by these three organizations, as well as the cases turned away, to create an overview of legal aid needs in the state. Additionally, the report tracks the funding of these three organizations, from federal, state, and non-profit sources, and looks at how decreases in funding hurt their ability to provide services. The findings have shown that there is a considerable amount of unmet legal need in New Hampshire: legal aid organizations are unable to accept a large number of the cases that come to them due to a lack of resources, and the number of accepted cases is a very small fraction of the need for legal services. The section concludes that current legal aid organizations are underfunded and unable to help all eligible individuals who are seeking assistance.

The final section outlines several concrete steps New Hampshire can take to address the wide justice gap in New Hampshire, including increasing access for legal services, increasing staff and resources available to self-represented litigants in New Hampshire courts, and improving coordination between service providers.

Methodology

This study was conducted during 2011, funded by the New Hampshire Bar Foundation, and conducted by researchers at the Rockefeller Center for Public Policy and the Social Sciences at Dartmouth College.⁶ It draws on several types of data to assess the gap between legal needs and existing legal services—often called “the justice gap”—in New Hampshire. The study marshals evidence from a variety of qualitative and quantitative data sources, including original data collected solely for this study.

We first conducted interviews with social service providers, legal services providers, and court personnel from across the state to obtain an overall picture of the extent of legal needs among low-income people in New Hampshire, and the extent to which those needs are met by existing legal services organizations. In order to gauge legal needs of low-income people we interviewed representatives from five of the six Community Action Program (CAP) agencies in New Hampshire. Judges and court staff interviewed included judges and clerks from Circuit and Superior courts from both rural and urban areas of the state.⁷ These in-depth interviews provided rich evidence from those on the frontline of legal and social service provision, and alerted us to specifics of the particular situation in New Hampshire.

Measuring the legal needs of the low-income population in New Hampshire presents a number of methodological challenges. The most important is that low-income people often have serious legal problems that they do not recognize as such—a finding supported

in many studies.⁸ Low-income people with legal needs are often deterred from seeking legal help because of a lack of knowledge of legal services available to them, negative views of the justice system, or lack of awareness that their problem even has a legal remedy.⁹

We addressed these challenges by triangulating a number of data sources to create a picture of the legal needs of the low-income population in New Hampshire. We first examined available data on levels of legal need in the low-income population collected through the random digit dial legal needs surveys conducted in several states since 2000. These surveys are based on the American Bar Association 1994 study model and offer a means of creating a conservative baseline estimate for legal needs in New Hampshire. Second, we drew on existing sources of census data to determine the number of people eligible for legal services, and to paint a portrait of this demographic. We also drew on qualitative data from interviews and our survey of New Hampshire court employees to further clarify the general estimate of legal needs. Finally, to assess the most pressing areas of legal need, we conducted brief surveys of former legal aid recipients and volunteer attorneys and staff through New Hampshire Pro Bono.¹⁰

For a measure of the legal services currently provided we relied on data collected and tracked by New Hampshire’s three main legal services organizations—the Legal Advice and Referral Center (LARC), New Hampshire Legal Assistance (NHLA), and

the New Hampshire Pro Bono Referral Program. The data collected by these organizations track the amount and type of legal services provided to low-income people in New Hampshire and the basic demographic characteristics of the population served.

A key data source used throughout this study is a survey of New Hampshire court employees conducted in November, 2011. The survey was distributed through a mass email sent to all New Hampshire court employees.¹¹ In it we asked a number of questions to measure unmet legal needs in New Hampshire as evidenced by the high rate of self-representation in the state court system. We sent the survey to all 747 court employees, and received completed surveys from 234 of them—a 31.3 percent response rate. These court staff—who include judges, clerks, court assistants, administrators, and other employees—provided valuable information about those with legal needs, and about the consequences of inadequate legal access both for litigants and for the functioning of the court system. One of the most significant findings of this survey was that 88 percent of court employees said they interact with self-represented (also called *pro se*) litigants either daily (72 percent) or a few times a week (16 percent). As such, court personnel have a great deal of experience with individuals with legal needs but without legal representation, and are rich sources of information about the challenges faced by this group. The court survey also asked court staff about the effects of self-representation on the litigants themselves and on the functioning of the court, the characteris-

tics of self-represented litigants, their impressions of legal aid availability, their opinions about the best way to address the problem of self-representation, and what changes they saw since the recent economic downturn.

In combination, these data drawn from previous legal needs studies, U.S. Census data, tracking data from legal aid organizations, interviews with social service providers, legal services providers, judges, and clerks, and the survey of all New Hampshire court personnel provide quantitative and qualitative information about the state of access to justice in New Hampshire today. The evidence points to a substantial justice gap in New Hampshire, in which the legal needs of low-income people far outstrip the current capacity of legal services to meet them.

Section 1: What are the Legal Needs of New Hampshire's Low-Income Population?

Of the 250,590 people eligible for legal aid in New Hampshire, a very conservative estimate puts 59.5 percent as having legal needs. By this estimate, in 2010 there were 149,101 legal aid eligible New Hampshire residents with legal needs, yet existing legal services were able to address only 8,403 cases (See Figure 1 below).

Estimated Legal Needs of Low-Income People in New Hampshire

In New Hampshire, more than 250,590 people have baseline eligibility for free

legal services based on income level. Though the income thresholds vary somewhat by issue area, and among the three primarily legal services providers in New Hampshire, if an individual has an income at or below 200 percent of the Federal poverty line, they qualify for most free legal services.¹³

From this total legal aid eligible population, an estimated 59.5 percent—149,101 individuals—will have a legal problem in any given year. This estimate was determined by averaging the findings of 14 random digit dial telephone surveys

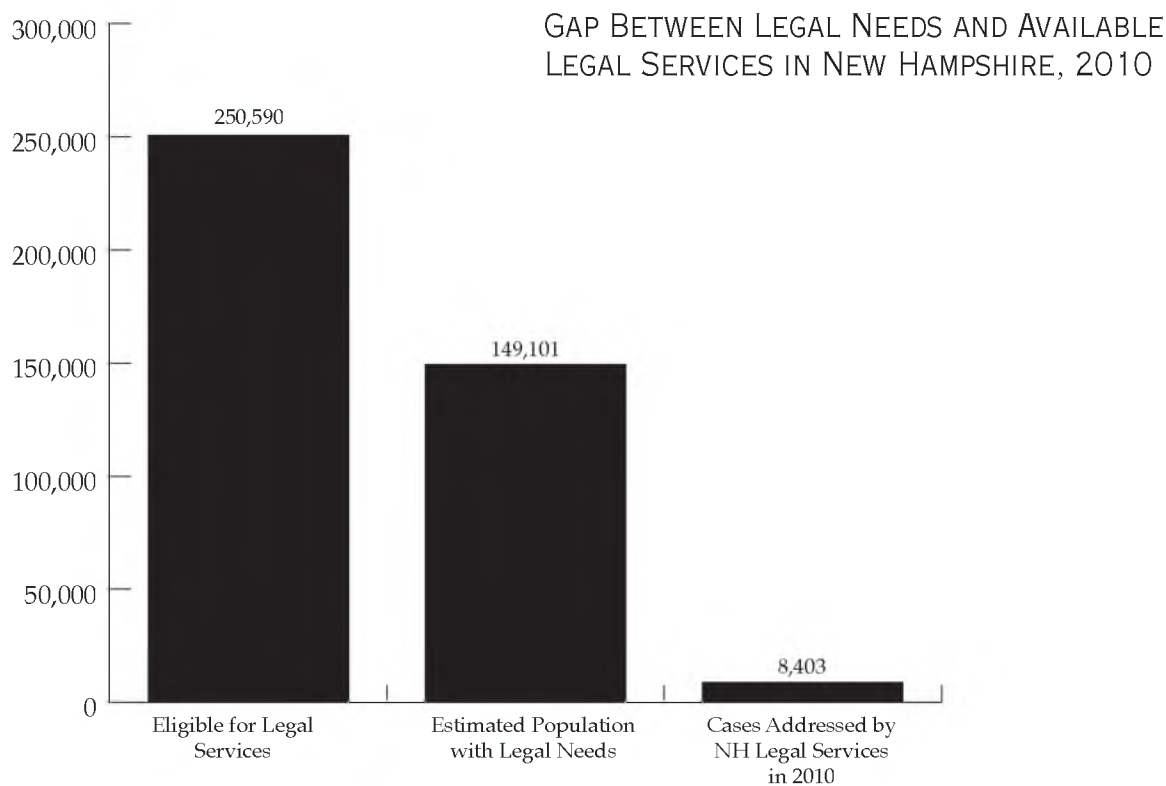


Figure 1: Estimated Legal Needs (Author Calculation)

*Calculation based on the following sources: (1) "Eligible for Legal Services" is calculated based on the population at or below 200 percent of the Federal Poverty Line (2010 U.S. Census); (2) "Estimated Population with Legal Needs" based on 59.5% of that population having at least one legal need based on averaging findings from 14 legal needs studies;¹² (3) "Cases Addressed by NH Legal Services in 2010" is the combined total of all cases addressed by NH Pro Bono, LARC, and NHLA in 2010.

of low-income households conducted since 2000.¹⁴ Though the methodologies of these studies vary somewhat by state, all are based on the model provided in the 1994 American Bar Association Comprehensive Legal Needs Survey. All asked a battery of between 45 and 100 questions to a random sample of low-income households in a state to determine whether that household had experienced a legal need in the past year. This battery of questions is extremely comprehensive—covering all potential legal needs across many categories including housing, consumer issues, family law issues like divorce and child custody, domestic violence, discrimination, and more. Using this methodology, the average rate of legal needs across those states is 59.5 percent.¹⁵

Applying this average estimate to New Hampshire, we estimate that 149,101 low-income individuals had legal needs in 2010. Of these, legal services were provided in only 8,403 cases—indicating a large justice gap in which approximately 94 percent of those with legal needs in 2010 did not receive the legal services they were eligible for.

It should be noted that this estimate, based on aggregating existing statewide studies, almost certainly underestimates the level of legal needs in New Hampshire. A follow-up study could more accurately pinpoint the levels of legal needs by deploying a random digit dialing study, similar to the ones conducted in other states. We would predict that such a study would reveal even higher levels of legal need—and therefore a wider justice gap—than pre-

sented in this study.

In 2009, the federal poverty line in the United States was \$22,050 per year for a family of four. According to the American Community Survey conducted by the U.S. Census Bureau, there were approximately 109,213 individuals living below the poverty line in New Hampshire in 2009, or 8.5 percent of the total population of New Hampshire.¹⁶ Approximately 4 percent of the total population lives below 50 percent of the poverty level, about 4.5 percent live between 50 and 100 percent.¹⁷

In New Hampshire individuals at or below 200 percent of the federal poverty level are financially eligible for legal aid. For 2010, this would mean a family of four with an income at or below \$44,100 qualified for legal aid, or a single individual with an income at or below \$21,660 would qualify.¹⁸ In New Hampshire, 19.3 percent of the population is at or below 200 percent of the federal poverty line, and thus eligible for legal aid, a total of approximately 250,590 New Hampshire residents.¹⁹

Characteristics of New Hampshire's Low-Income Population

There are approximately 250,590 people who meet the income qualifications for receiving legal aid in New Hampshire.²⁰ Of this population, a disproportionate percentage are women, disabled, under- or unemployed, and those without college education.

New Hampshire's legal aid eligible population differs in important ways from

the general population. First, women are overrepresented in the legal aid eligible population. 56 percent of those eligible for legal aid in New Hampshire are women, compared to 51 percent in New Hampshire as a whole.²¹

While most people in the legal aid population of New Hampshire are white, racial minorities are overrepresented in the legal aid population relative to their overall numbers. For instance, while constituting only 1 percent of the general population, 36 percent of New Hampshire’s African-American population are eligible for legal aid. Though African-Americans only represent 3 percent of the legal aid eligible population in New Hampshire, their relatively small total number obscures the racial inequalities that exist for this population.

The legal aid eligible population is twice as likely to have disabilities—19 percent of New Hampshire residents at

or below 200 percent of the federal poverty line have a disability, compared to 9 percent in the general New Hampshire population.²³ Low-income people are also twice as likely to be uninsured, with 21 percent uninsured among the legal aid eligible population, compared to 10 percent in the New Hampshire population in general. Individuals over 65 are also over-represented in the legal aid eligible population, constituting 21 percent of that group compared to 13 percent in the general population.

In addition, the legal aid eligible population generally has lower levels of education: for 60 percent of the legal aid eligible population, high school is the highest level of education, compared to 38 percent in the general New Hampshire population.²⁴ And while 34 percent of the general adult New Hampshire population have a Bachelor’s degree or higher, the same is true for only 16 percent of the legal aid eligible population. These basic differences between

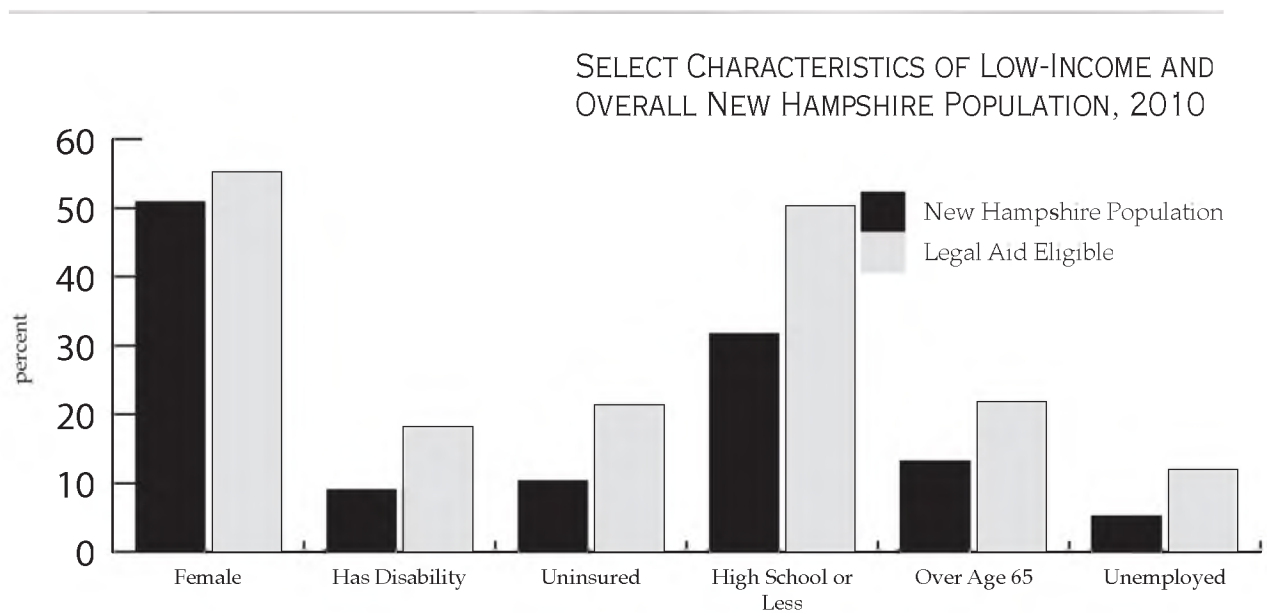


Figure 2: Data from U.S. Census, Current Population Survey, Annual Social and Economic Supplement, 2011.²²

the legal aid eligible and general population in New Hampshire underscore the particular challenges faced by this low-income group. In addition to lacking economic resources, the lower education levels may make navigating legal situations particularly difficult.

Attempts to address the justice gap in New Hampshire must account for the fact that the low-income population being served is disproportionately women, disabled, under- or unemployed, and without college education. Within this population there are a number of sub-groups that have unique legal needs.

Challenges Faced by Sub-Populations in New Hampshire

Women

Women in New Hampshire are more likely to experience financial hardship, and also more likely to have particular needs that require legal attention. Women are overrepresented among the low-income population in New Hampshire (55 percent based on census data) and even more so among legal aid recipients (for example women represented an average of 63 percent of NHLA clients and 75 percent of LARC clients from 2008-2011).

Women also disproportionately bear financial burdens for raising children on their own. Less than one quarter of New Hampshire families were structured as “traditional” families with married men serving as the sole breadwinners.²⁵ Overall, 27 percent of the children in New Hampshire are raised in single-parent households, and 18 percent in mother-only, single-parent

households.²⁶

Single-parent households are more likely to have legal needs around family law—such as divorce, custody disputes, and restraining order issues—and are also more likely to face financial difficulties. A recent study of livable wages in New Hampshire found that only 28 percent of jobs in New Hampshire pay a livable wage for a single person with one child (estimated at \$18.01/hr), and only 21 percent pay a livable wage for a single person with two children (estimated at \$20.72 per hour).²⁷ Women predominate in the two fastest-growing occupations with wages below a livable wage—Home Health Aides, and Personal and Home Care Aides.²⁸ Despite New Hampshire’s relative prosperity overall, the gender wage gap in New Hampshire is slightly bigger than in New England as a whole, with New Hampshire women earning around 72 percent of what men earn.²⁹

In addition to general wage-related issues, women may also face legal needs around sexual and domestic violence. The Violence Against Women in New Hampshire Survey found that 23 percent of women in New Hampshire had at one time been the victim of sexual assault, and 33 percent of New Hampshire women had experienced intimate partner violence.³⁰ The survey found that perpetrators are almost always someone the victim knows—only 12 percent of those who had experienced sexual assault reported being assaulted by strangers.³¹ A 2006 Community Needs Assessment of Services for Victims of Domestic and Sexual Violence surveyed 204 individuals who work in 181 different agencies and institutions

dealing with domestic violence across New Hampshire.³² This study detailed the multiple, overlapping barriers to accessing available services for domestic violence victims in disadvantaged subgroups. The report highlighted people with disabilities, immigrants and refugees, adolescents, people with mental illness, and people over 60 years of age as facing a particularly high level of barriers in accessing adequate services.³³

As in other states, a majority of legal aid recipients in New Hampshire are women. It is not surprising, therefore, that family law issues make up a significant portion of the caseload for all three major legal services providers in New Hampshire.

Persons with Disabilities

Disabled persons represent 11 percent of New Hampshire’s overall population according to the U.S. Census, and approximately 22 percent of New Hampshire’s low-income population.³⁴ It is important to highlight the needs of persons with disabilities because they are a particularly vulnerable population.

The population with disabilities is more likely to experience financial hardship. The 2011 Compendium published by the University of New Hampshire’s Institute on Disability reported that 21 percent of adults ages 18-64 living in poverty in New Hampshire have a disability.³⁵ Of disabled adults ages 18-64 in New Hampshire, 39 percent are employed, compared to 79.7 percent of the general population.³⁶ There is an annual earnings gap of \$10,871 between those

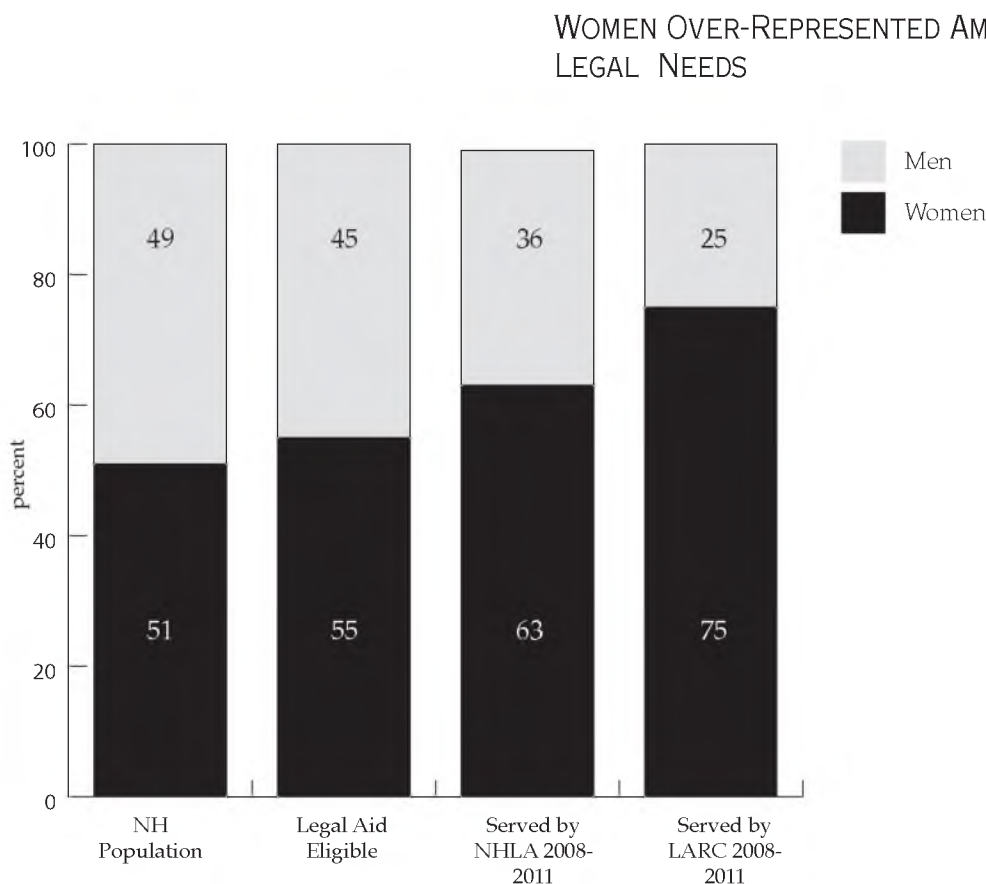


Figure 3: Data from U.S. Census, Author Calculation, NHLA, and LARC.

with disabilities and those without.³⁷

People with disabilities have rights and protections under both federal and state law, but may require legal representation to enforce these rights. The Americans with Disabilities Act (ADA) and New Hampshire RSA 354-A, (the Law Against Discrimination, enforced by the New Hampshire Commission for Human Rights) offer rights and protections for people with disabilities in New Hampshire.³⁸ For example, both public and private housing providers are required to make “reasonable accommodations” for people with disabilities.³⁹ If an individual with a disability is threatened with eviction for reasons related to the disability, a landlord refuses to rent to them because of a disability, or a landlord refuses to make reasonable accommodations for the disability, there is a remedy under the law. Similarly, discrimination in employment on the basis of disability is prohibited by federal and state law. Individuals with disabilities also have a right to an assistive technology evaluation.⁴⁰

The existence of these rights and protections for persons with disabilities, however, does not guarantee that they will be respected. In practice, people with disabilities sometimes need legal representation in order to ensure that their rights are enforced. Disabled persons are prevalent in the legal aid population, representing more than a quarter of NHLA’s clients from 2008-2011.

Recent Immigrants

Recent immigrants are another group that often have more legal needs than the average low-income person. According to the U.S. Census, foreign-born persons represent 5.3 percent of the population of New Hampshire,

compared to 12.7 percent nationally.⁴¹ Though the foreign-born population of New Hampshire represents a smaller percentage than in other states, they are an important and growing part of the population and face particular challenges, including language barriers, access to interpreters, legal problems around immigration and citizenship status, and access to benefits social services.

Immigrants constitute one of the main drivers of population growth in the Manchester and Nashua areas, and are an especially significant part of the younger population in the state.⁴² A recent Carsey Institute report found that all population growth due to migration (as opposed to birth rate) in the Manchester-Nashua metropolitan area from 2000-2007 was due to immigration, with 8,700 immigrants moving to the area during that period.⁴³ Currently, approximately 9 percent of the Manchester-Nashua metropolitan area is foreign born.⁴⁴

Recent immigrants, especially those with limited English proficiency, face challenges in accessing education, health care, housing, and public benefits. A forthcoming report on immigrant integration conducted by New Hampshire Catholic Charities highlights the challenges faced by immigrants in the state.⁴⁵ Based on interviews and focus groups with immigrants, the study found that language barriers lead to inadequate assessment of mental health and special educational needs of immigrant students in schools, a lack of adequate public transportation, and a general lack of resources and institutional infrastructure to encourage full integration of immigrants into New Hampshire communities.⁴⁶ One area with serious challenges identified by the study

was health care. The study identified needs for language interpreters in all service areas, limited access to mental health treatment, and lack of health care coverage as serious challenges for new immigrants.⁴⁷ The study also found that the lack of a “cohesive, organized, state-wide citizenship education and naturalization initiative” was an integration barrier for new immigrants.⁴⁸

Immigrant populations are more likely to be poor,⁴⁹ and immigrants tend to have not only these more general needs of low-income people, but also can have specific legal needs around their immigration status, the naturalization process, and the threat of deportation.⁵⁰ Legal aid organizations, such as LARC, which receive Legal Services Corporation (LSC) funds, however, are restricted in which immigrant populations they can serve. In general, immigrants’ access to legal services was sharply curtailed in 1996 by Congress.⁵¹

Rural Residents

The gap in access to legal services between urban and rural residents is especially important to highlight in New Hampshire. According to the U.S. Census, 41 percent of New Hampshire residents live in rural areas.⁵² Transportation barriers can render all kinds of services, including legal services, less accessible for low-income people in rural parts of the state. In addition, individuals in rural areas may have less awareness of available services. One telephone survey from another state with a large rural population found that rural low-income residents had less awareness of legal aid than their urban counterparts.⁵³ Call reports from United Way’s 2-1-1 New Hampshire helpline reveal a greater proportion of calls referred to le-

gal services from rural counties, where legal services are less available.⁵⁴

Residents of rural counties in New Hampshire may also face greater financial hardship. According to the Carsey Institute’s livable wage study, counties in which New Hampshire’s largest cities are located have a higher proportion of jobs with a livable wage than more rural counties.⁵⁵ Rural areas in New Hampshire—especially in northern Coos County—have also experienced disproportionately severe declines in jobs and resources that are not captured in state-wide averages.⁵⁶

Seniors

Senior citizens are a substantial and growing portion of the population of New Hampshire, representing 14 percent of the state’s population. Just over 30 percent of NHLA’s clients between 2008 and 2011 were over age 60.⁵⁷ According to New Hampshire Legal Assistance’s (NHLA) Senior Law Project, seniors may face probate and estate issues that have profound economic consequences for them, especially when spouses die without a will. Paying for nursing home care, home care by relatives or home health care professionals, and receiving benefits through Medicare can potentially raise issues for some seniors.⁵⁸ The New Hampshire Senior Legal Access Network (NHSLAN) conducted a legal needs assessment of seniors in 2010. They found that most seniors had needs in the areas of family law, consumer issues, housing, and public benefits.⁵⁹ The largest single problem area was related to debt collection harassment, a problem for 9 percent of seniors in the study.⁶⁰

As with other sub-populations high-

lighted in this section, seniors are both a vulnerable population at greater risk of financial hardship, and also have specific legal rights and concerns. Because many senior citizens live on a fixed income, they may be more vulnerable to fluctuations in home rental and utilities costs.⁶¹

Types of Legal Needs Faced by New Hampshire's Low-Income Population

In addition to the specific legal needs of women, persons with disabilities, recent immigrants, rural residents, and senior citizens, there are a number of legal needs among all New Hampshire's varied legal aid eligible population. In interviews with representatives of New Hampshire's Community Action Programs (CAP) we discovered that the primary legal needs among New Hampshire's poor tend to be concentrated in the areas of housing, family, and consumer law.

CAPs are non-profit organizations funded by federal, state, and private sources that offer a variety of services to low-income people throughout the state.⁶² These organizations offer a rich source of information for assessing the legal needs of low-income people in New Hampshire both because of their broad reach—the six agencies each have multiple outreach centers that together serve all 234 cities and towns in the state—and because of the many types of people they serve in their numerous programs.⁶³ While those seeking help from legal aid organizations have already identified their problem as “legal” and have enough knowledge of legal services to seek them out, workers at CAP agencies see a broader, and likely more representative sample of the

low-income population.

Though the offerings of each individual CAP agency vary depending on local needs, the six programs in New Hampshire coordinate services in offering fuel and energy assistance, Head Start, nutrition, weatherization, employment training, transportation assistance, and homelessness outreach.⁶⁴ Together these agencies provide services to in over 200,000 cases per year.⁶⁵ CAP agencies are thus ideal sites for obtaining information about the general low-income population in New Hampshire.

In order to gauge legal needs of low-income people we interviewed representatives from five of the six CAP agency programs in New Hampshire: CAP of Belknap-Merrimack Counties, Southwestern Community Services, Southern New Hampshire Services, Tri-County CAP, and Strafford County Community Action.⁶⁶ Interviewees ranged from a Workforce Development Coordinator to a Community Contact Manager to an Executive Director. All had long experience at their CAP agency, some having worked there for several decades.

We asked CAP agency workers questions that centered around two broad themes: (1) What were the greatest areas of legal needs among their clients; (2) Under what circumstances did they refer clients to legal aid organizations.

Most CAP agency workers felt that their clients had a variety of legal needs, but that the most prominent of these clustered in the family and housing areas, for family issues such as divorce, custody arrangements, child support, and housing issues such as threat of eviction, poor housing conditions, or conflicts between

Areas of Legal Need	Percent of Respondents Who Placed Issue in Top Three
Family	31.4
Housing or Utilities	18.3
Domestic Violence	17.2
Bankruptcy and Consumer	16.8
Public Benefits	5.1
Disability / ADA Issues	2.6
Elder Law	2.2

Table 1: Data Source: New Hampshire Pro Bono Volunteer Survey (N=98).⁶⁹

landlords and tenants.

While family law and housing issues were mentioned as top areas of legal need by CAP workers, they saw a growing and important set of legal needs in the consumer area as well. “Many of our clients use credit for basic necessities,” a CAP worker from Southwestern Community Services explained. CAP workers identified predatory practices such as “phone cramming,” scams preying on the elderly, and harassment by debt collection agencies as three areas of concern. Immigration issues were also mentioned as areas of legal needs for low-income clients.

LARC’s Community Board members—themselves former recipients of legal aid in New Hampshire—were also asked what they considered to be the most pressing areas of need among sixteen categories of legal needs.⁶⁷ Interestingly, the core issues identified by the Community Board members differed slightly from what we learned from CAP agency interviews. While CAP workers empha-

sized more general family law issues and consumer issues, the Community Board members emphasized domestic violence and housing as the two most pressing issues. Disability-related issues were also highlighted as areas that deserved more attention, and public benefits, employment discrimination, and unemployment were also mentioned as areas of unmet need. Not one Community Board member chose either consumer or more general family law issues as pressing areas of unmet need in New Hampshire.

When asked which single issue area of the sixteen choices was the greatest area of need, two of the four board members selected domestic violence, saying that in their experience domestic violence issues were widespread in New Hampshire. Another board member chose housing as the greatest area of need, based on her personal knowledge of individuals who did not know their rights around housing issues. The final board member chose employment discrimination as the most important area of unmet need.

Both housing and domestic violence are issues known to be of great importance to legal services providers in New Hampshire. The fact that these issues were highlighted by Community Board members serves both as a reminder of the gravity of these issues, and perhaps also indicates that despite the historical emphasis on such issues by legal services providers, there still remain greater needs in housing and domestic violence beyond what existing legal services in New Hampshire are able to meet.

We also asked volunteer attorneys through the New Hampshire Pro Bono Referral Program to identify the greatest areas of need they saw among the clients they had worked with.⁶⁸ Table 1 shows the percentage of respondents who placed each legal issue in the top three areas of legal need. Family law was identified as a top issue by nearly a third of respondents, followed by

housing and utilities, identified by 18 percent of respondents, domestic violence, and bankruptcy and consumer issues, both identified as top areas of need by 17 percent of respondents.

We then asked volunteer attorneys to identify the single issue area that is “most deserving of more attention and resources than currently received.” Here the issues identified were similar to those above, in a slightly different order. General family law issues were identified by the most respondents, with 35 percent identifying family law as the issue area most in need of additional attention and resources. The second most common answer was bankruptcy and consumer, identified by 20 percent of respondents. Housing and domestic violence were the next most popular answers, but with noticeably fewer respondents. This suggests that while housing and domestic violence are considered to be areas of great legal need, they are perhaps relatively bet-

SINGLE ISSUE MOST DESERVING OF GREATER ATTENTION AND RESOURCES

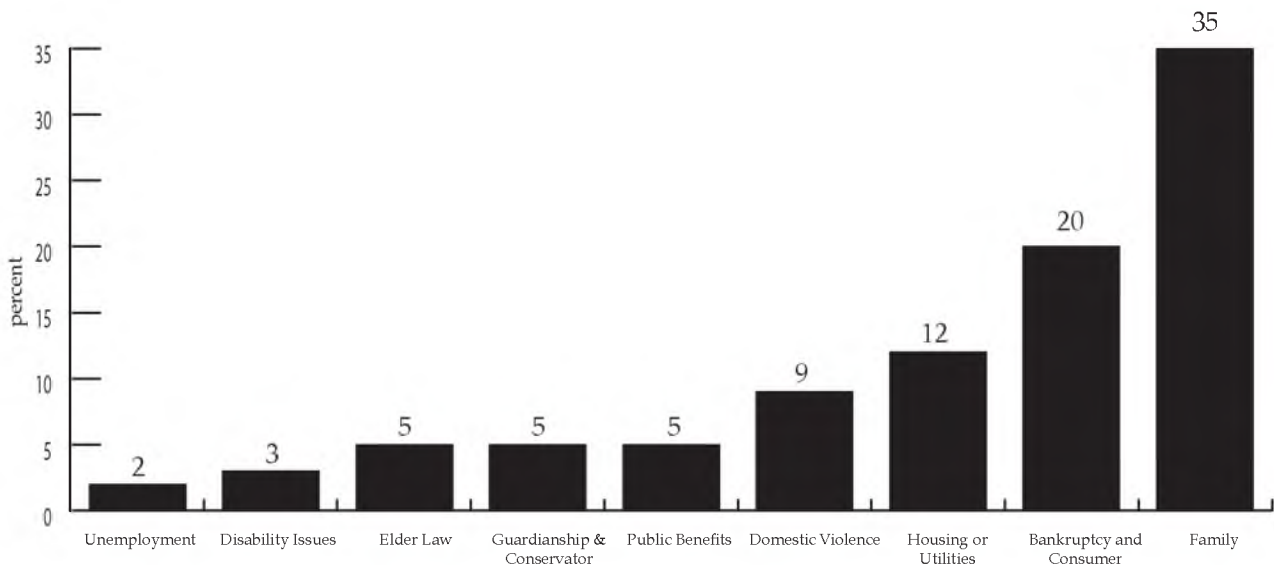


Figure 4: Data Source: New Hampshire Pro Bono Volunteer Survey (N=98). Question Wording: “Of these areas, which do you think is most deserving of more attention and resources than currently received?”

ter addressed by current legal services than more general family law issues and bankruptcy and consumer issues.

Finally, volunteer attorneys were asked how many of their clients they believed to have other legal needs beyond the one they were officially addressing. 56 percent of volunteer attorneys answered that “Many” or “Most” of their clients had other legal needs, and perhaps more compellingly, only 12 percent said “Few” and no respondents chose “None.” This confirms findings that show that individuals with any legal need are likely to have more than one.⁷⁰ Even among those being served by a legal aid or Pro Bono attorney in New Hampshire, there are still unmet needs.

Self-Representation in New Hampshire Courts as Evidence of Legal Needs

One of the strongest indicators of the level of legal needs in New Hampshire

is the large number of people who represent themselves in court proceedings. Though the complexity of legal proceedings varies a great deal—from relatively simple small claims or preliminary hearings to complex and highly consequential court cases or administrative proceedings—even seemingly simple proceedings may be difficult for individuals to navigate without legal assistance.

Self-representation has dramatically increased in New Hampshire courts, especially in the last two decades. A 2004 report by the New Hampshire Supreme Court Task Force on Self-Representation found that at least one party is self-represented (or pro se) in 85 percent of civil cases in New Hampshire’s district courts and in 48 percent of civil cases in superior courts.⁷¹ In New Hampshire’s probate courts, both parties lacked attorney representation in 38 percent of cases. This report also found that at least one party lacked attorney representation in

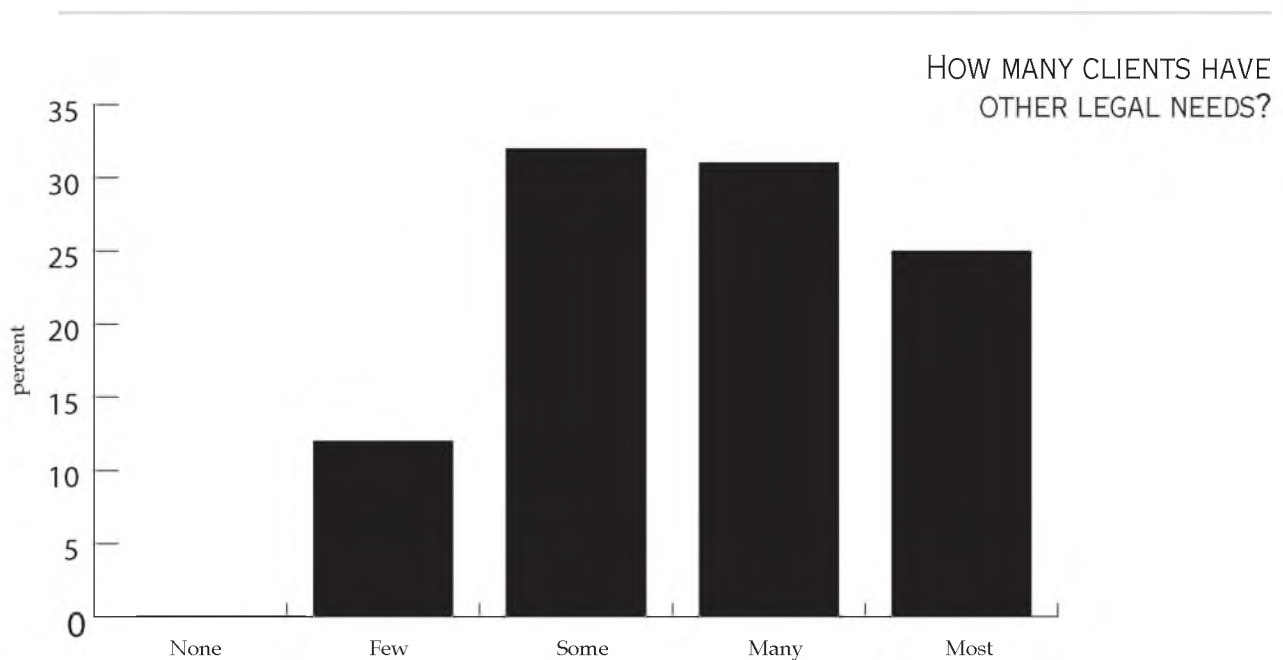


Figure 5: Data Source: New Hampshire Pro Bono Volunteer Survey (N=98). Question Wording “Of the clients you deal with, how many do you think have other legal needs beyond the one you are officially addressing?”

97 percent of all district court domestic violence cases.⁷²

Our own survey of New Hampshire State Court personnel conducted in November 2011 found that judges, administrators, clerks, court assistants, and other court employees estimate that between 61-70 percent of all litigants they encountered were self-represented, with the next most common estimate of 71-80 percent (see Figure 6).⁷³ Differences in estimates may stem in part from the position each respondent holds in the court, from regional differences across the state, and from the different types of courts (Superior Court, Probate Court, District Court) in which respondents work. However, the average and median responses indicate that the overall level of self-representation is somewhere between 61 and 70 percent across the court system.

Estimates were lowest among employees of Superior Courts and of the New Hamp-

shire Supreme Court, and higher among employees of the Probate, District, and Family courts. The greater prevalence of pro se litigants in Family, Probate, and District courts indicates greater unmet legal needs in these areas. These general areas of need square with what we heard in our interviews with legal aid and social service professionals, and with findings in other states' studies.

Court staff also reported that the number of self-represented litigants is increasing over time. When asked whether the number of self-represented litigants had decreased or increased since they starting working for the court, 74 percent said it had increased, and only 5 percent said it had decreased. This trend was particularly strong for longer-time court employees, who were five times more likely to report that the number of self-represented litigants had "increased a lot" since they started working at the court compared to those who have worked at the court for 5 years or less.

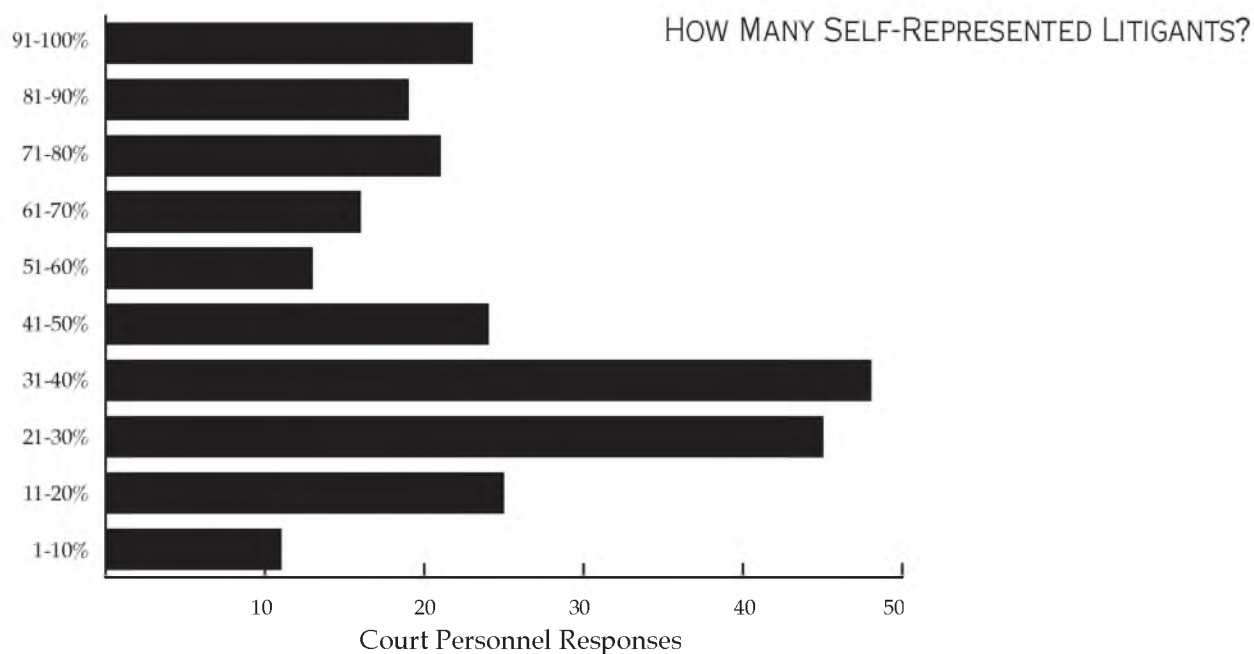


Figure 6: Data from NH Court Personnel Survey, 2011. Results from all respondents to the question, "Of the litigants you encounter in your job, what percentage do you estimate are self-represented or pro se?" (N=245).

This marked increase in self-represented litigants has serious negative consequences for litigants as well as for court functioning. It is also indicative of a growing gap between New Hampshire’s legal needs and available affordable legal services to meet them.⁷⁴

Increased Legal Needs Since Economic Downturn

The recent economic downturn has only increased legal needs, both because there are more people who cannot afford attorneys, and because many of the consumer problems related to the financial crisis have a specifically legal dimension. As in the rest of the country, New Hampshire experienced an unprecedented increase in the rate of home foreclosures in the past few years. While the loss of one’s home is difficult in itself, foreclosures also raise a series of specifically legal issues for the person at risk of foreclosure. Those faced with foreclosure or even the threat of foreclosure are entangled in a complex legal

web—negotiating a loan modification, confronting potential abuses by lenders, and the process of foreclosure itself are all complex legal matters that are difficult to navigate with an attorney.

The New Hampshire Housing Finance Authority has maintained a rigorous study of the foreclosure crisis, tracking the dramatic increase in home foreclosures over the past several years. Their figure below shows the monthly number of foreclosures for 2005-2011. The rate of foreclosures in New Hampshire not only increased dramatically especially since 2008, but continues to remain high in 2011, despite some improvements in other parts of the economy.

Despite the fact that New Hampshire has a non-judicial foreclosure process, the threat of foreclosure still raises many legal issues for those at risk.

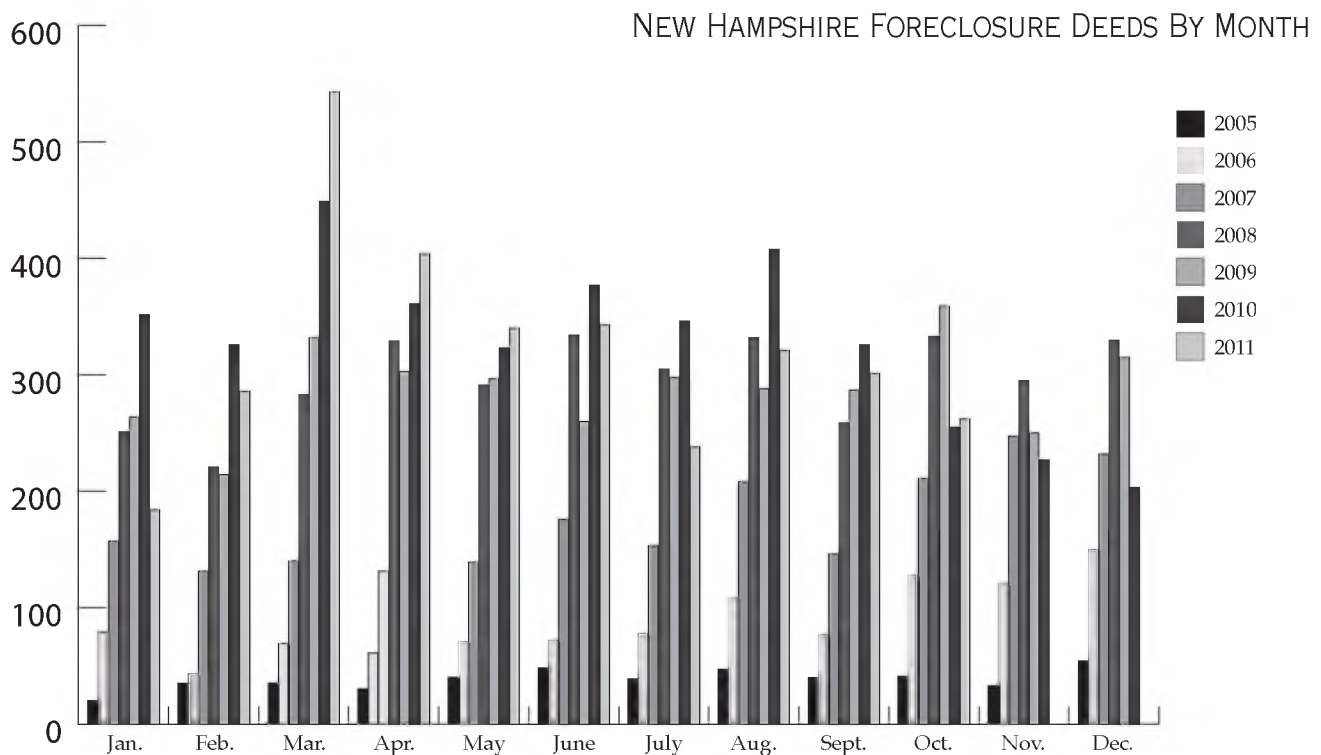


Figure 7: Figure from NH Housing Finance Authority⁷⁵
 **Note: Data for 2011 only available through month of October.

Banks must follow a set timeline (for instance providing adequate notice and allowing 30 days for individuals at risk of foreclosure to contest). There are many ways individuals at risk of foreclosure can delay or stop the process, but doing so requires knowledge of the intricate rules of foreclosure and the ways the process can be contested or slowed.⁷⁶ However, many of those at risk of foreclosure, especially since the economic crisis, go through the process without an attorney, with estimates of self-representation in foreclosure reaching well over half of all cases in some parts of the country.⁷⁷ In response to the increase in foreclosures, the New Hampshire Judicial Branch instituted a Foreclosure Mediation program for a time, but that program was discontinued in October, 2011.⁷⁸

In our survey of court employees we found that there has likely been a marked increase in all legal needs in New Hampshire since 2008. In response to the question “Since the recent economic downturn, has the number of self-represented litigants decreased, increased, or remained about the same?” 164 respondents (70 percent) said it had increased, 67 (29 percent) said it remained about the same, and only 3 (1 percent) said they saw a decrease since the recession.

We also asked specific questions about home foreclosures. When asked what are the best responses for court staff to make in response to a self-represented litigant at risk of foreclosure, the most respondents selected options that involved referring these individuals to legal aid (which 79 percent considered the best response) or referring to pro bono (59 percent—respondents could select as many options as they wanted). While 45 percent said they would provide information on how the individual could deal with the problem through the court on their own, other court staff commented that it was inappropriate for staff

to be offering advice to individuals in this situation.

Approximately 68 percent of court employees thought that there should be special legal services available to individuals at risk of foreclosure. One court worker in the Family Division in Rockingham County commented that foreclosure “is a time sensitive issue and many pro se litigants do not have the means to pay for counsel... if they had money available, they wouldn’t be in foreclosure proceedings and any extra money they have is needed to save their homes.” A court worker from Carroll County commented on the complexity of foreclosure cases that also involve a divorce, “When pro se litigants are divorcing and also facing foreclosure issues, often one or both of them is unable to contact the mortgagee. This makes it very difficult for the court and the parties to have accurate information regarding the foreclosure [and] interferes with the court’s ability to decide issues of support and property division.”

In sum, our findings indicate that the number of self-represented has increased since the economic downturn, and in particular the growth of foreclosures increases legal needs among New Hampshire’s low-income population. Most court staff felt that referring individuals at risk of foreclosure to legal services organizations was the best response, and many believed that special legal services should be made available to individuals at risk of foreclosure.

Section 2: What are the Barriers to Legal Access for Low-Income People in New Hampshire?

Because considerable portions of the legal aid eligible population are for various reasons unable to access free legal services, many are forced to navigate the court system by themselves. Examining the challenges faced by self-represented litigants (also called pro se litigants) reveals many barriers to court access faced by low-income people in New Hampshire. First, many people with legal needs but without access to legal representation do not see their problems as having a legal remedy. Second, litigants who represent themselves in court often lack basic knowledge about how the court system works, putting them at a severe disadvantage compared to those who have an attorney to represent them. Third, this problem is compounded by a general lack of readily available, and affordable, legal representation. Finally, many courts do not have adequate resources to help those with legal needs navigate the court system.

Failure to See One's Problem as Having a Legal Remedy

There is ample evidence that many of those with serious legal problems do not even attempt to seek help from an attorney or the court, often because they do not believe the justice system can work for them, or they do not know their problem has a legal remedy. Telephone surveys have been conducted in several states that ask low-income people about their legal needs, their experience with legal representation,

and their reasons for not seeking legal help. These surveys, conducted in dozens of states, have revealed that legal needs are extremely common among low income people—with an average of around 59.5 percent of low-income households having at least one legal problem⁷⁹—and that few of these legal needs are ever addressed (one in five, on average). A large part of the problem is that many low-income people are not aware their problem has a legal remedy. For instance, in the Washington study 75 percent of low-income households were found to have one or more legal problems, but only 44 percent of these knew there were legal remedies for their problems.⁸⁰

What keeps people with legal problems from seeking legal help? The reasons that emerge from these surveys underscore the complexity of the concept of legal access, and challenge policymakers to think above and beyond more obvious access barriers, such as physical distance and inadequate staffing of legal aid organizations. The reasons given cluster into three broad areas: (1) a lack of knowledge of the legal system or available resources; (2) a lack of faith that the justice system could help; and (3) fear of the repercussions of addressing the problem.

Twelve different random digit dial telephone surveys conducted since 2000 asked low-income people, among other things, why they did not seek help from an attorney to address their legal need.⁸¹

While the design of each study differs, of these twelve, six studies asked similar enough questions to make comparison between them possible. The major barriers were of three main types: a lack of knowledge, a negative or defeatist attitude toward the justice system, and fear of retaliation.

The prevalence of these reasons for not seeking legal help reveals barriers beyond those that can simply be addressed by greater funding. These barriers suggest a need for a robust campaign of education and outreach. Ideally, when any individual has a problem with a legal remedy, they will have the knowledge to take action accordingly.

These studies also found a general lack of knowledge about free legal services for low-income people. In spite of the fact that all of those studied qualified for legal aid, in every study a large proportion of respondents had not even heard of legal aid, or did not know they were eligible.⁸³

Interviews with Community Action Program (CAP) workers throughout

New Hampshire revealed that low-income people with legal needs may refrain from seeking legal redress because of their lack of faith in the justice system.⁸⁴ When asked why their clients do not seek legal help, even when they clearly have a legal need, several CAP workers pointed to the negative views of and experiences with the legal system as a cause. Some felt low-income clients had been discriminated against and lacked faith in the system. An employee from CAP of Belknap-Merrimack Counties pointed out that “Many of our clients have been brought before courts as defendants” and would be wary of calling on the legal system for a civil matter. In any case, most CAP workers felt that these negative views of the justice system were a barrier to their clients seeking help.

Other legal needs studies confirm that negative views and experiences of the legal system create an access barrier for low-income people. In one telephone survey of low-income people, 52 percent of the respondents expressed a negative view of the legal system. This study also found that three fourths of

TOP REASONS FOR NOT SEEKING LEGAL HELP

Reasons for Not Seeking Help	Percent	Barrier Type
Thought Nothing Could Be Done	17.1	Knowledge
Not a legal problem (just the way things are)	14.7	Knowledge/ Attitude Toward Justice System
Didn't know who could help	13.8	Knowledge
Too much hassle	11.5	Attitude Toward Justice System
Worried About Cost	11.9	Knowledge
Afraid/ Feared Retaliation	5.9	Fear

Table 2: Data Source: Author calculation based on averages from six state legal needs studies.⁸²

the people who had a legal problem but did not obtain representation were dissatisfied with how the situation was resolved.⁸⁵

Thus it is important to remember that those who make it to court already represent a small subset of the total population with legal needs. It is also likely that those who choose to represent themselves may be a more resourceful and educated group, or have more positive views about the legal system, than the average low-income person. However, substantial evidence suggests that even this group faces serious barriers in navigating the court system on their own.

Lack of Legal Knowledge and Other Barriers for Self-Represented Litigants

Most of the court staff we surveyed identified numerous barriers for self-represented litigants. For all items, more than half of respondents indicated that the following characteristics were “a serious barrier” or “somewhat of a barrier” to legal access for self-represented litigants: lack of legal understanding, lack of knowledge of evidentiary rules, lack of knowledge of procedures, lack of knowledge of how to get forms, lack of transportation, and language problems (see Figure 8).

The responses presented in the figure

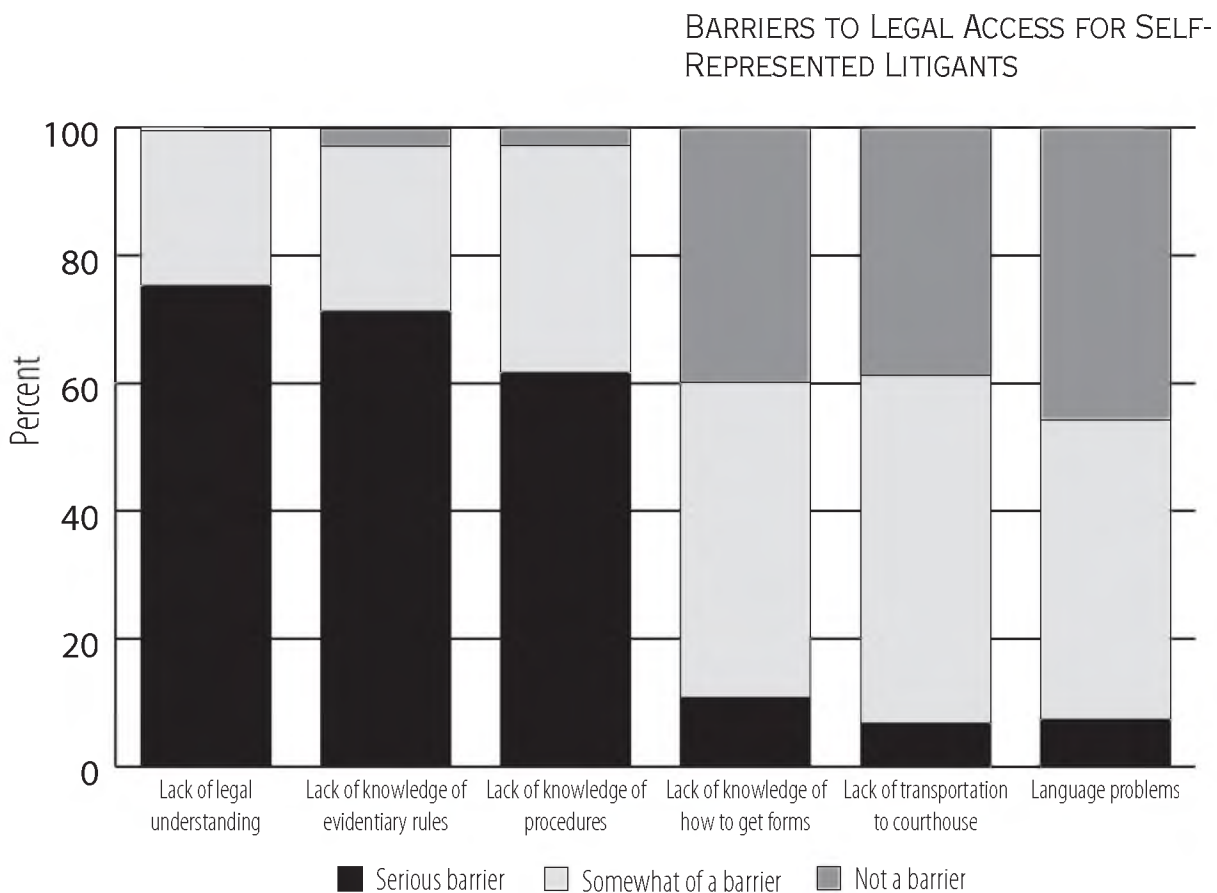


Figure 8: Data from NH Court Personnel Survey, 2011. Results presented above from court staff who interact with self-represented litigants on a daily basis (N=178). Question wording: “For each item, please indicate whether you think it is not a barrier, somewhat of a barrier, or a serious barrier to access for self-represented litigants.”

above are limited only to those with frequent interactions with self-represented litigants. These staff know the population well, and are in an excellent position to judge the legal knowledge and capability of the average pro se litigant. Yet according to these responses basic legal knowledge, including understanding of rules and procedures, is a serious barrier for most self-represented litigants.

The vast majority of court employees (79 percent) felt that self-represented litigants were at a disadvantage compared to those with attorney representation.⁸⁶ Many of the court employees who interact with self-represented litigants on a daily basis disagreed with the claim that “the average self-represented litigant is well-equipped to navigate the justice system on their own,” with more than half of respondents strongly disagreeing. In addition, 61 percent agreed that many self-represented litigants lack basic reading and comprehension skills.

There is a large population of individuals with legal problems who never make it to court. There is also a sub-

stantial population that does make it to court, but cannot afford an attorney and tries to go it alone. The evidence suggests that this group of self-represented litigants is largely ill-equipped to succeed in court. The legal system is complex and is in many ways designed under the assumption that litigants will have representation from trained legal professionals. Without representation, these litigants are at a disadvantage in addressing their legal problems.

Lack of Affordable Legal Services

In addition to the legal access barriers noted above, we found strong evidence that the lack of affordable legal services was also a substantial barrier for low-income people. When asked why they thought self-represented litigants lacked representation, the judges and clerks we interviewed generally pointed to the lack of ability to afford an attorney as the main reason. In addition, some also mentioned a general “do it yourself attitude” among some litigants as a factor as well.

These causes were confirmed by our

CAPACITY AND SKILLS OF AVERAGE SELF-REPRESENTED LITIGANT

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree
“I think the average self-represented litigant is well-equipped to navigate the justice system on their own.”	52%	31%	13%	4%
“Many of the self-represented litigants I encounter lack basic reading and comprehension skills.”	11%	28%	45%	16%

Table 3: Data from NH Court Personnel Survey, 2011. Results presented above from court staff who interact with self-represented litigants on a daily basis (N=175).

survey of court personnel (see Table 4) which found that, among those working most directly with self-represented litigants, 92 percent believed that self-represented litigants lacked an attorney because they “Can’t afford it.” While 51 percent of court personnel found that a “do it yourself” attitude led some people to file without an attorney, as evident above most court staff felt self-represented litigants lack the skills and legal knowledge to do so successfully.

The notion that self-represented litigants had tried but failed to receive help from legal aid was the least popular response, though a significant number of respondents still considered this a factor. Close to a quarter of respondents felt this was a factor for “many” or “most” self-represented litigants, while the majority of respondents (66 percent) felt this was true for only “some” or “few” self-represented litigants.

However, the perception among court personnel that most self-represented litigants had not contacted legal aid is tempered by the fact that 80 percent of respondents considered the “lack of knowledge of resources like legal aid or pro bono” to be a barrier to legal access for self-represented litigants. To probe this issue

further, in another question we explicitly asked court staff whether they thought most self-represented litigants had first tried to contact legal aid or pro bono. Only 20 percent of respondents thought most had first tried to get help from legal aid or pro bono, while over 80 percent of respondents thought most had not.

Combining these findings, it appears that, while there is some population of self-represented litigants who tried to contact legal aid and did not receive help, the majority of self-represented litigants did not contact legal aid, mostly because they did not have knowledge of the services offered.

Court Challenges in Addressing Self-Represented Litigants

The increase in self-represented litigants changes the character of demands on judges, clerks, and court assistants, places a strain on the institution and, as a result, makes it even more cumbersome for those with legal needs to navigate. The courts have experienced this increase in self-represented litigants during a time in which funding for the New Hampshire courts—like funding for many aspects of government—has experienced severe cuts. Just since the recent economic downturn, cuts

WHY DON'T SELF-REPRESENTED LITIGANTS HAVE AN ATTORNEY?

	Percent of Respondents Selecting Each Category				
	None	Few	Some	Many	Most
Can't afford it	0%	2%	7%	25%	67%
Think they can do it on their own	1%	15%	51%	25%	8%
Tried to contact legal aid but did not receive help	11%	33%	33%	20%	4%

Table 4: Data from Survey of NH Court Personnel (2011). The table above presents the responses of those who deal with pro se litigants on a daily basis are included in this table (n=175). Question wording: “Based on your experience with self-represented litigants, why do you think they lack attorney representation?”

to the New Hampshire courts have resulted in reduced staff and court hours, among other changes. The prevalence of self-represented litigants can slow down the litigation process, creating more work for court staff and judges, and raises concerns among staff about how to balance the desire to treat pro se litigants fairly with the prohibition against giving legal advice.

Interviews with judges and court staff underscored that addressing the needs of self-represented litigants is time-consuming, and may interfere with efficient processing of cases. This is because self-represented litigants often lack the legal expertise to navigate the process, and need guidance every step of the way. As one clerk explained, “There are just too many things on your desk, and it can be hard to provide that service.”⁸⁷ Judges and court staff indicated that part of what is time-consuming is that self-represented litigants want a chance to finally tell their story, but this often results in lengthy conversations and filings. One of the judges we interviewed explained that “pro se filings can be 25 to 30 pages written like a letter—and you can’t not read it...then during the hearing, the person will spew out orally everything they have written.” Court personnel frequently expressed

frustration at being the first, and often only, person these litigants speak to about how to address their legal needs. Whereas the claims of legally represented litigants are distilled and filtered through their attorneys, self-represented litigants often deal only with court staff or the judge, and may not know what information is relevant to the case at hand.

Some court staff feel that explaining the legal process and offering a high level of guidance to self-represented litigants is not their job, and many felt it takes away from their ability to process cases. The survey supported this finding. More than half of the staff that deal with self-represented litigants on a daily basis claim that the ability to process cases is affected by addressing the legal needs of self-represented litigants.

Another challenge is that court personnel find it difficult to help pro se litigants without offering “legal advice.” All interviewees made some reference to the tension between helping those who lack representation, while still remaining objective and not giving “legal advice.” As one judge put it, “[We] walk the line between trying to be fair but trying not to let people burden us.” The fine line between help and legal advice may cause judges and court

EFFECT ON CASE PROCESSING

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree
“Dealing with self-represented litigants does not affect my ability to process my cases.”	32% (56)	22% (38)	30% (51)	16% (28)

Table 5: Data from NH Court Personnel Survey, 2011. Results presented above from court staff who interact with self-represented litigants on a daily basis (N=173).

staff alike to err in the direction of offering less help, even when it is clear that the pro se litigant does not fully understand how to address their legal needs. Despite this dilemma, the majority of court personnel (77 percent) do not think the prevalence of self-represented litigants impacts the impartiality of the court.⁸⁸

Finally, these barriers at the level of the court have potentially been exacerbated by staff cuts and reductions in court hours following from recent funding cuts. While most court staff (64 percent) did not consider decreased court hours to be an access barrier for self-represented litigants, 31 percent considered it to be somewhat of a barrier, and 5 percent thought it was a serious barrier. In addition, the lack of court personnel to assist was seen as somewhat of a barrier by 42 percent of court staff, a serious access barrier by 17 percent, and not a barrier by 41 percent.

Section 3: What Services are Currently Available for Low-Income People With Legal Needs in New Hampshire?

Overview

There are three major legal services providers that have been actively providing legal services to New Hampshire's considerable (and growing) population with legal needs. While the New Hampshire Bar Association's Pro Bono Referral Program, New Hampshire Legal Assistance (NHLA), and New Hampshire Legal Advice and Referral Center (LARC) all offer legal services to low-income people in New Hampshire, each operates under different models of service provision. The majority of cases addressed by legal services organizations in New Hampshire fall in family law and housing areas. This section

describes the three organizations, the number and type of cases they address annually, and outlines some of the challenges they face.

The figure below summarizes the kind of services offered by each of these three core legal service providers in 2010. Each organization offers a different balance of services, ranging from counsel and advice to direct representation in court. LARC operates almost entirely by offering legal counsel and advice over the phone. While New Hampshire Pro Bono provides some amount of Information and Referral to low-income individuals, the majority of cases closed each year (79 percent in 2010) are ones

CASE ACTIVITY OF THREE MAIN LEGAL SERVICE PROVIDERS IN NH, 2010

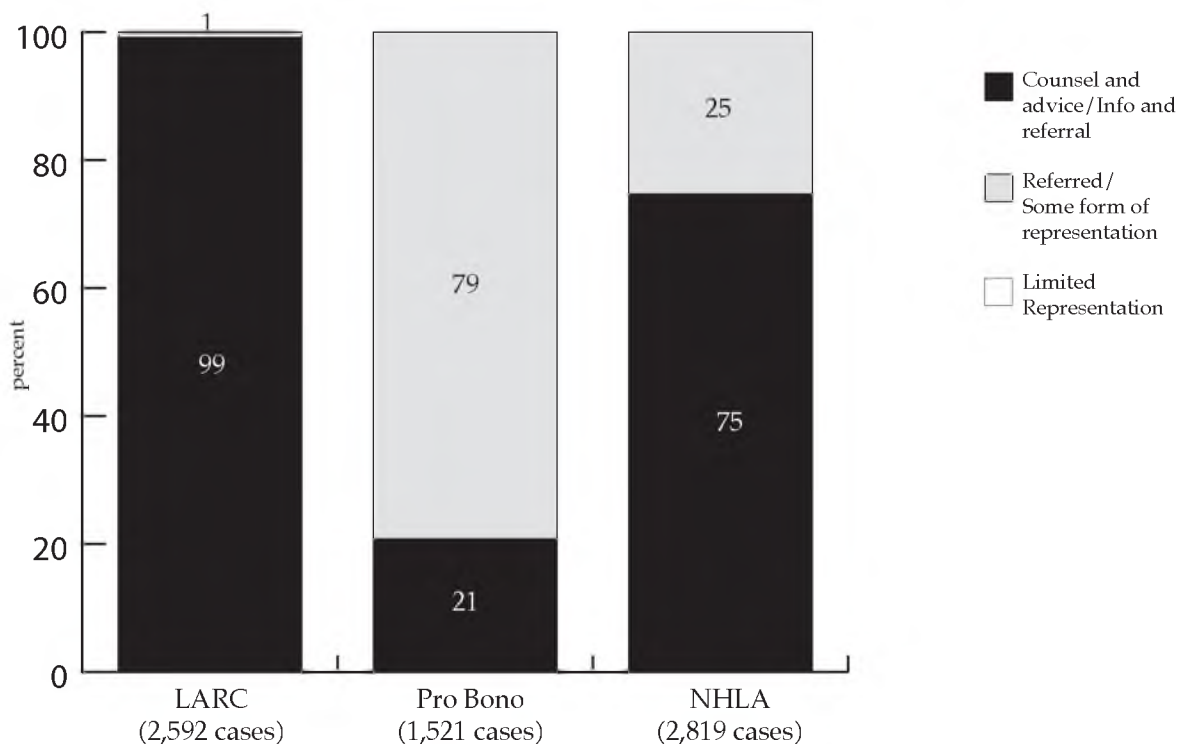


Figure 9: Data provided by LARC, New Hampshire Pro Bono, and NHLA.⁸⁹

that have been referred to their volunteer attorneys. NHLA offers some form of direct representation in 25 percent of its cases, whether in court or at an administrative hearing. The majority of NHLA's services, however, involve giving clients counsel and advice, legal information, or a referral of some kind.

Each organization provides legal services throughout the state using different, but complementary models. NHLA has numerous regional offices and operates on the more traditional legal services model of providing local offices where individuals with legal needs can seek legal advice in person. LARC seeks to maximize the volume of legal help given through a streamlined call center—a model adopted in several other states as well. New Hampshire Pro Bono offers some guidance over the phone, but their main emphasis is on matching low-income individuals with volunteer attorneys who can help with a particular legal issue. The three organizations increasingly coordinate intake and clients are referred between organizations depending on their needs.

The organizations also differ in the kinds of legal needs they typically address. As shown in more detail below, family law accounted for more than half of the cases closed by Pro Bono's volunteer attorneys in 2011, followed by cases involving consumer and housing issues. NHLA's top areas of provision address housing and income maintenance, followed by consumer and family law issues. The LARC call center focuses almost entirely on the areas of housing and family law. All three

organizations have experienced funding cuts since the economic downturn, though cuts to the NHLA budget have been most severe.

New Hampshire Pro Bono Referral Program

The New Hampshire Bar Association's Pro Bono Referral Program engages private bar resources to deliver legal services to low-income people. Based in Concord, the program coordinates private attorneys who volunteer to help low-income people across the state with non-criminal legal problems. Pro Bono's services include recruiting and training attorneys, reviewing applications for assistance, referring and overseeing cases, and providing volunteer attorneys with supportive services.⁹⁰ As part of its services, Pro Bono staff also provide legal information and referrals to other sources of assistance its clients might need.

To qualify for services through Pro Bono, individuals must be at or below 187.5 percent of the federal poverty line. For 2011, this meant that a single person would have to have a gross annual income at or below \$20,419, and a person in a family of four would have to have an income at or below \$41,906.⁹¹ The legal issues Pro Bono typically deals with (based on attorney availability) are: divorce and custody issues, domestic violence, evictions from private housing, mortgage foreclosures, bankruptcies, debt collection, wills and probate, and income tax disputes. Pro Bono also provides legal assistance to other non-profit or-

NEW HAMPSHIRE PRO BONO – TYPE OF SERVICE RENDERED, 2010

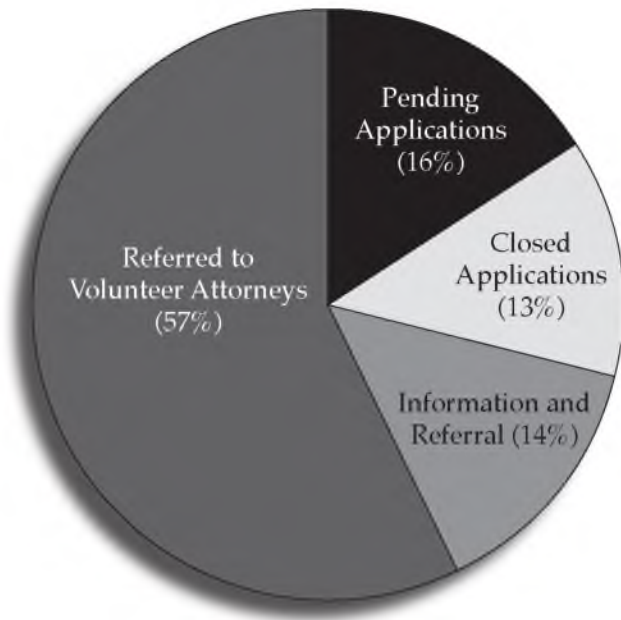


Figure 10: Data provided by New Hampshire Pro Bono.

ganizations, primarily in the form of legal research and paperwork filing.⁹² In addition, Pro Bono’s DOVE (Domestic Violence Emergency) Program provides help through a hotline and free legal representation for domestic violence victims in New Hampshire.⁹³

For the 2010 fiscal year (from June 2009 to May 2010), New Hampshire Pro Bono offered services in an estimated 2,983 cases. This number includes all individuals who contacted Pro Bono, and represents a variety of forms of help they received—ranging from those in the early stages of the process, whose applications are pending or who are “ready to refer,” to those whose cases were actually referred to a volunteer attorney. Of this total number of cases for the 2010 fiscal year, approximately 57 percent were referred to volunteer attorneys. Figure 10 indicates the type of services rendered out

of the 2,983 case annual total.

While 57 percent of cases are referred to volunteer attorneys through Pro Bono, other cases are dealt with through information and referral to appropriate agencies by Pro Bono staff. Other cases dealt with by Pro Bono include 16 percent that are “pending referral” (meaning they are waiting for an available volunteer attorney), while the remaining 13 percent of pro bono cases in 2010 were “closed applications,” primarily representing cases in which clients did not follow up with pro bono.⁹⁴ Cases turned away due to lack of resources are not included in this total tally of cases.

The number of cases addressed by New Hampshire Pro Bono has been relatively stable over the past three years, though the 2011 fiscal year saw a slight decline in total cases. The following chart shows

the breakdown of the different types of cases out of this total number that were addressed by Pro Bono during the 2010 fiscal year:

The two primary types of cases that Pro Bono took on in the 2010 fiscal year were family law cases (1,038 total or 35 percent) and consumer cases (788, or 26 percent of all cases). Housing issues (385, 13 percent), and domestic violence cases (237, or 8 percent) together also make up over 20 percent of cases.⁹⁵

Pro Bono faces the challenge of having a pool of volunteer attorneys that sometimes does not match the level of need in different areas. Location is also a factor with a larger pool of volunteer attorneys available in the Concord and Manchester area, for instance, while in the North Country, there may only be two or three attorneys available in any given issue area.⁹⁶ Pro Bono is attempting

to address some of this disparity in the domestic violence area with its North Country DOVE (domestic violence) Outreach Project, which connects low-income victims in the North with attorneys from the more populous southern tier by phone, in person, or by Skype.⁹⁷

New Hampshire Legal Assistance (NHLA)

New Hampshire Legal Assistance (NHLA) is a non-profit legal services organization that specializes in providing legal assistance to low-income people throughout New Hampshire.⁹⁸ NHLA provides an array of services ranging from basic legal counsel and advice to representation of individuals in court. NHLA also provides representation for low-income individuals in Administrative hearings before state and federal agencies.⁹⁹

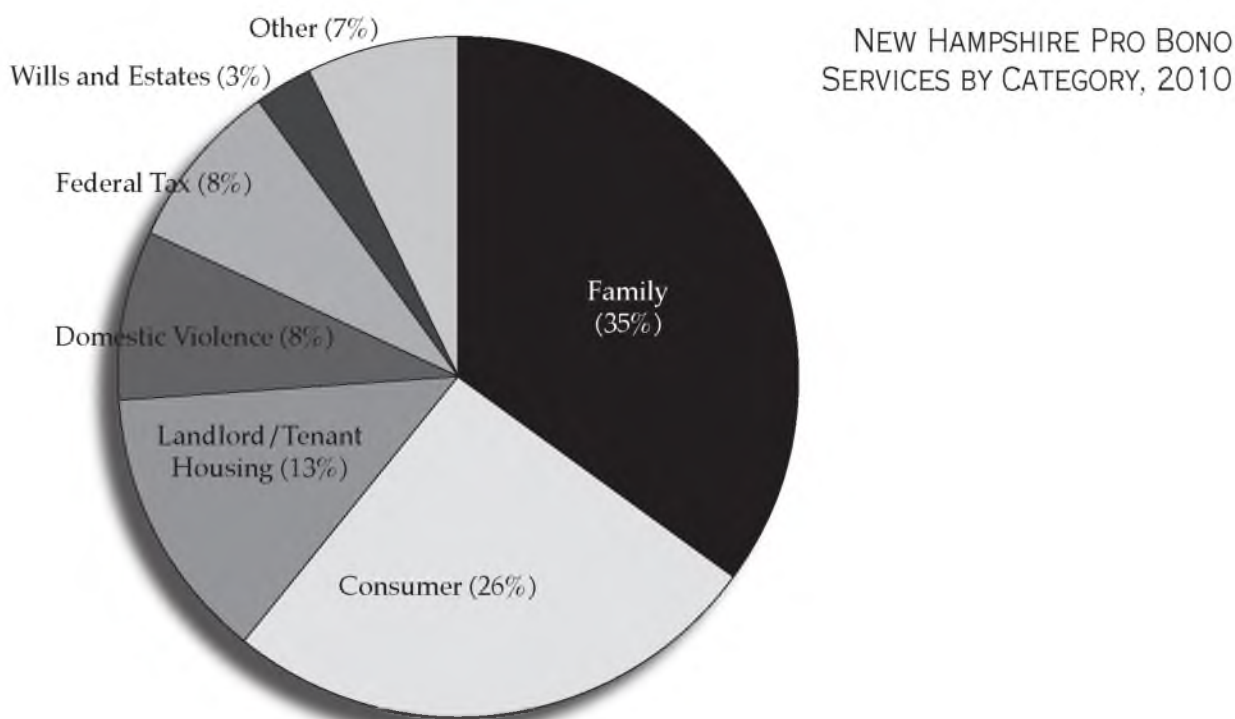


Figure 11: Data Source: New Hampshire Pro Bono.

For the past few years, NHLA has addressed over 3,000 legal aid cases per year. NHLA cases are defined broadly, and encompass a spectrum of levels of attorney involvement, from counsel and advice—which account for about 50 percent of NHLA’s caseload—to representation in court. From 2008 to 2010, NHLA was forced due to loss of staff because of significant funding cuts to decrease their caseload from 3,556 to 3,221, a 9.4 percent decrease.¹⁰⁰

NHLA breaks down their caseload into a wide variety of categories, which include: consumer issues, education, employment, family, juvenile, health, housing, income maintenance, individual rights, wills and estates, and other miscellaneous issues. In 2010, the majority of cases taken on by NHLA were either housing issues (36 percent or 1,142 out of the 3,221 total cases) or income maintenance problems (31 percent, or 988

cases).¹⁰¹

Legal Advice and Referral Center (LARC)

The New Hampshire Legal Advice and Referral Center (LARC) is a private, non-profit organization that provides free legal services to eligible low-income people.¹⁰² Unlike the other legal aid organizations, LARC generally does not have attorneys who represent low-income clients in court. The primary focus of LARC is to provide legal advice over the phone to low-income individuals who are unsure of their legal options to handle issues. LARC is predominantly staffed by paralegals and attorneys who will speak with individuals, often multiple times, and help walk them through the complex legal system. This assistance can include basic legal advice, contact with the opposing party in advocacy of the individual’s claim, as

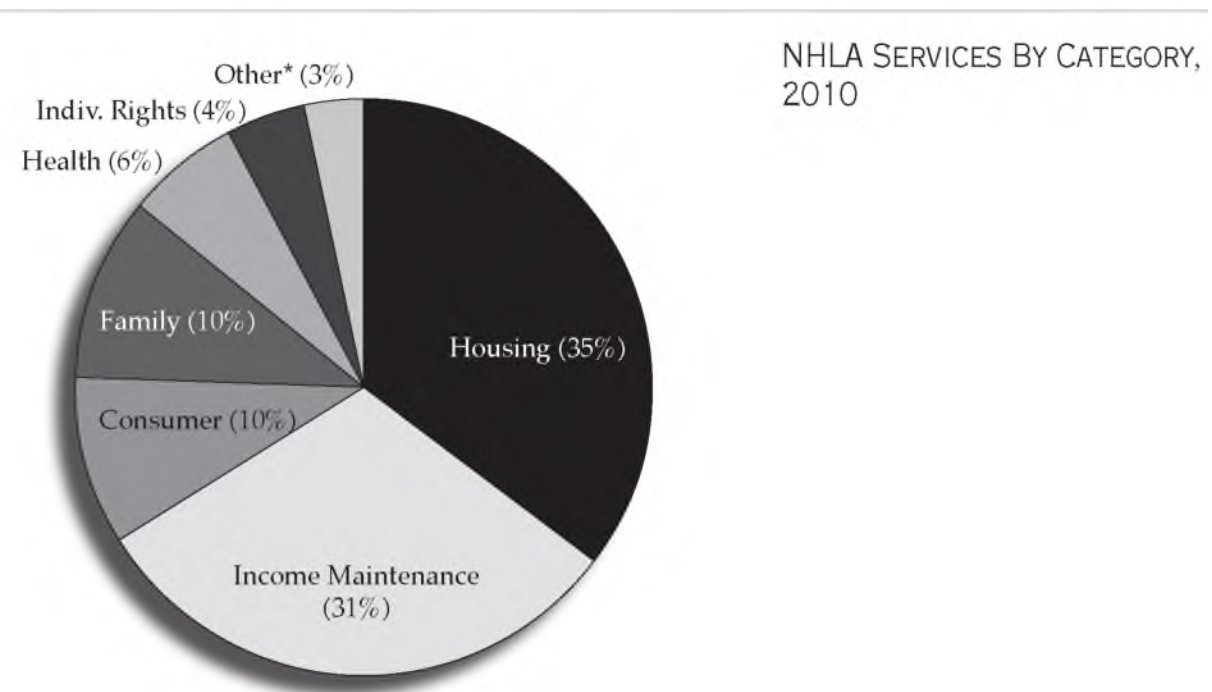


Figure 12: Source: New Hampshire Legal Assistance
 *Other includes: Wills and Estates, Education, Employment, Juvenile, and Miscellaneous.

well as referrals to other legal aid organizations and private lawyers who may be willing to take the case.¹⁰³

The LARC phone center is based in Concord and fields hundreds of calls every day.¹⁰⁴ In addition to providing advice and counsel over the phone and through their website, LARC also refers individuals eligible for legal aid to New Hampshire Pro Bono and to NHLA.

Of the calls that are received, LARC collects a variety of information from the client in order to organize their services by issue category, service provision, and basic demographics of their clientele. Figure 13 shows the percentage of each category of cases taken on by LARC during the year 2010:

The overwhelming majority of cases taken on by LARC were either family cases (such as divorce and child custody, which constituted 47 percent of LARC's cases in 2010), or housing cases (which constituted 49 percent of all cases), with only a small minority of cases coming from other areas of law.¹⁰⁵

LARC also breaks down their data based on the types of services they are able to provide to their clients. Almost all of the services LARC provides—93 percent of cases—are in the form of “Counsel and Advice.” 3.1 percent are negotiations and settlements, 2.4 percent court decisions, and limited action in 1.2 percent of cases.

Other Legal Services Providers in

New Hampshire

In addition to the three core legal services providers profiled above, there are several other organizations that address the legal access needs of low-income people in New Hampshire through more targeted services. These include the Disabilities Rights Center,¹⁰⁶ the New Hampshire Civil Liberties Union,¹⁰⁷ the Catholic Charities' Immigration and Refugee Services,¹⁰⁸ and the University of New Hampshire School of Law Civil Practice Clinic.¹⁰⁹ In addition to the Pro Bono program, the New Hampshire Bar Association also offers a Reduced Fee Program, a Lawyer Referral Service for those who do not meet income eligibility for pro bono, and LawLine, a once per month legal advice hotline.¹¹⁰ These organizations provide information to individuals in need of legal help, provide legal advice and, in some cases, represent individuals in court. These organizations are also an important source of information for individuals seeking to represent themselves in court.

Challenges Faced by Legal Services Organizations

Staff members of all three organizations strongly indicated that the demand for their services far outstripped the organizations' ability to meet it.¹¹¹ All three organizations also expressed that, even of those they are able to help, many have legal needs that cannot be fully addressed.

While the proportion of New Hamp-

shire's population eligible for legal aid has gone up in the past three years, funding for legal aid overall has decreased during the same period. The sharpest decline has been seen by New Hampshire Legal Assistance, whose budget was reduced by 26 percent from 2009 to 2011.¹¹² New Hampshire Pro Bono's budget also experienced a decrease during this period, with their budget reduced by 4 percent from 2009 to 2011.¹¹³ LARC experienced a 4 percent decrease in federal funding in 2011 and a 58 percent decrease in Interest on Lawyers Trust Accounts (IOLTA) funding in 2010. While LARC experienced an increase in revenue in 2010 and in 2011 due to outreach work, this funding cannot be used to provide direct service to clients.¹¹⁴

For example, NHLA gets its funding from a variety of state, federal, private and non-profit sources. NHLA saw its revenues increase by 19.5 percent from 2008 to 2009, from \$3.6 million to about \$4.3 million. Their funding remained relatively stable from 2009 to 2010, only decreasing by about 1.6 percent. However, a large change in revenues occurred between 2010 and 2011, when NHLA saw their overall revenues decrease by 20 percent, from about \$4.3 million to \$3.4 million.

The largest source of funding for NHLA comes from the state level, ranging from 36 to 41 percent of total funding from 2008 through 2011. In 2011 NHLA saw its state funding decrease by 29 percent,

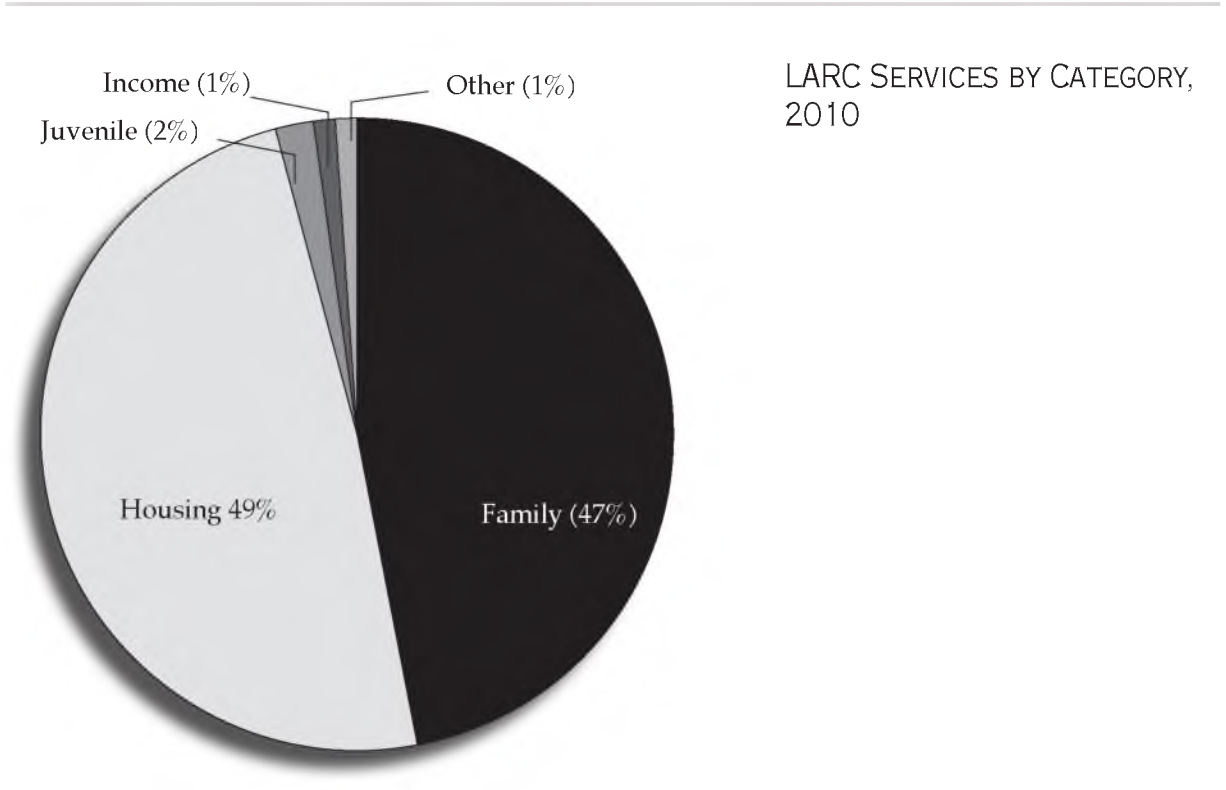


Figure 13: Source: Legal Advice and Referral Center.
 *Other includes: Health, Employment, Consumer, and Miscellaneous.

NHLA FUNDING BY
CATEGORY 2008-2011

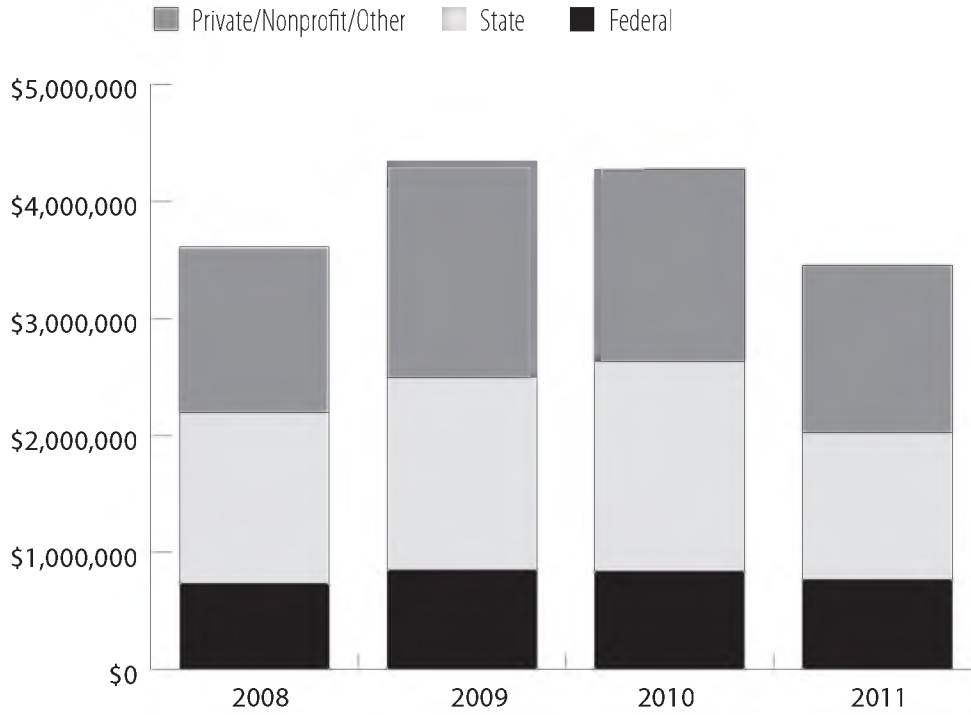


Figure 14: Source: New Hampshire Legal Assistance

CASES TURNED AWAY DUE TO
LACK OF RESOURCES (NHLA)

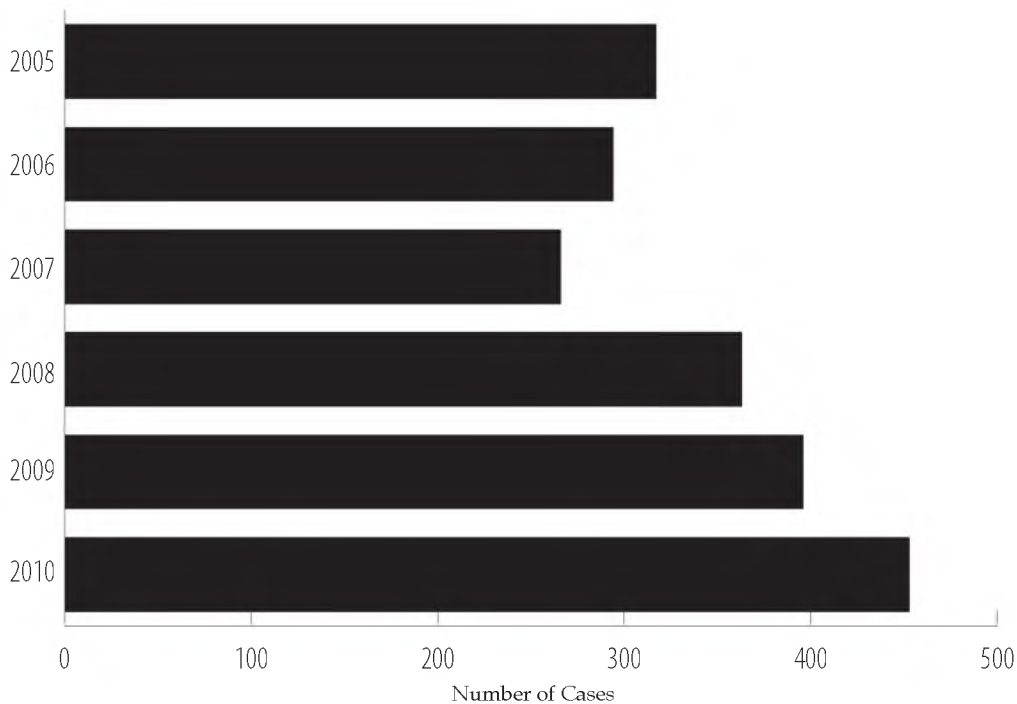


Figure 15: Source: New Hampshire Legal Assistance

from \$1,765,575 in 2010 to \$1,257,344 in 2011 and \$700,000 in 2012. Additionally, federal funding decreased by 10 percent in 2011 and private and nonprofit funding also decreased by 14.5 percent. As funding decreases, NHLA has been forced to turn away more cases. This lack of resources, combined with a weak housing market and high unemployment will most likely lead to a greater number of people who cannot obtain legal aid assistance.¹¹⁵

The cuts in funding have forced all three organizations to reduce the services that they provide, even as the demand for services is increasing. For example, based on data from LARC's call center, many who call for legal information and advice are placed on hold, and many hang up before their call is answered.¹¹⁶ It should be noted that dial-in phone services are one of the most efficient methods for distributing legal advice. However, even with this efficient method many calls go unanswered due to having too few staff to respond to the high call volume.

NHLA has also collected data on cases that have been turned away since 2000. The data collection process has been improved over time, and has become more precise in the last five to six years. From 2005 to 2010, NHLA saw a 43 percent increase in the total number of cases they had to turn away due to lack of resources, from 317 cases in 2005, to 453 cases in 2010.

It is important to note that these numbers very likely underestimate the true number of cases turned away, since they

only reflect turned away cases that were recorded. NHLA has only recently begun to consistently collect this data; the numbers of cases they must turn away due to lack of resources if anything exceed the totals above.¹¹⁷

Between 2000 and 2011 NHLA turned away at least 2,363 cases due to lack of resources.

Overall, the distribution of cases that NHLA were forced to turn away over the last ten years is fairly similar to the caseload they take on during any given year. This leads to the conclusion that NHLA is mainly forced to turn cases away due to a lack of funding, and not a lack of financially eligible clients.¹¹⁸

It is important to note that these numbers capture only those who attempt to seek legal help. We know from multiple studies that only a small fraction of those with legal needs actually attempt to seek help from legal aid resources, even when they qualify. Studies have found that even among those eligible for legal aid who have legal needs, only a small portion (between 10 and 20 percent) actually obtain it.¹¹⁹ As noted above, there are multiple reasons why people with legal problems do not seek legal help, often because they think nothing can be done, or lack of awareness of where they can get help.¹²⁰ In addition, many low-income people do not know that their problem can be addressed through legal means, lack of knowledge of legal aid, or do not believe the justice system could work for them.

Yet even among the portion of those with legal needs who seek legal help in New Hampshire, their needs are often not met entirely, and in some cases turned away altogether. Interviews and review of extensive data from all three of the core legal services providers in New Hampshire indicate that these organizations are meeting as many needs as they can with the resources they have. Yet, limited resources lead to the widening of the gap between legal needs and access to legal aid.

TYPES OF CASES TURNED AWAY DUE TO LACK OF RESOURCES (NHCLA, 2000-2011)

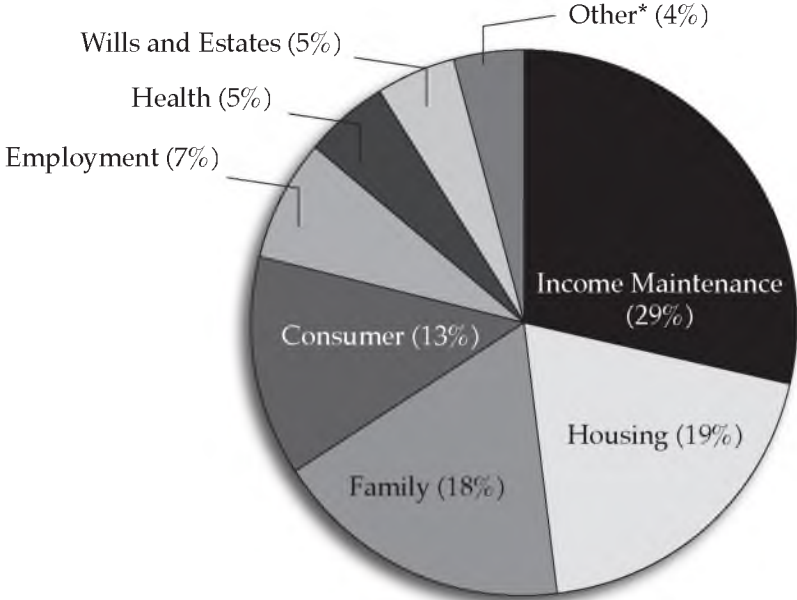


Figure 16: Source: New Hampshire Legal Assistance. *Other includes: Juvenile, individual rights, and miscellaneous.

Section 4: What Steps Can be Taken to Close the Justice Gap in New Hampshire?

This report points to a challenging gap between the legal needs of low-income people in New Hampshire and the legal services available to them. Our study also found pragmatic steps that could be taken to address this gap. Three broad areas of improvement include: (1) expanding of access to civil legal services for low-income people in New Hampshire, (2) improving resources for self-represented litigants in New Hampshire State Courts, and (3) increased coordination between service providers.

Expanding Access to Civil Legal Services for Low-Income People

Recent studies of the New Hampshire Courts have all strongly recommended increased funding for legal services in New Hampshire as a key element to addressing court functioning. For instance, the 2006 New Hampshire Citizens' Commission on the State Courts report recommended fully funding civil legal services as one of their seven recommendations for improving the judi-

cial system.¹²¹ In addition, the number one recommendation of the 2004 report by the New Hampshire Supreme Court Task Force on Self-Representation was that "Legal Services should be expanded significantly for low-income litigants."¹²²

Our study also supports this conclusion. Multiple sources of data—from the volume of legal services that go unmet due to funding constraints, to interviews with CAP agency workers, to the survey of court personnel—all indicate the importance of improved availability for legal services as key to addressing the justice gap in New Hampshire.

In particular, of all respondents to the survey of court personnel, 82 percent agreed that existing legal services for low-income people in New Hampshire are inadequate to meet the need, with 49 percent strongly agreeing. In addition, over three quarters of all respondents agreed that every litigant should be represented by an attorney (see Table 6). Given the indicators that 61 to 70

COURT PERSONNEL VIEWS ON NEED TO IMPROVE ACCESS TO LEGAL SERVICES

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree
Existing legal services for low-income people in New Hampshire are inadequate to meet the need for them."	5%	13%	34%	49%
"In an ideal world, every litigant would be represented by an attorney in court."	8%	17%	40%	36%

Table 6: Data from NH Court Personnel Survey, 2011. Results presented for all survey respondents (n=242).

percent of litigants in New Hampshire’s state courts are coming to court without a lawyer, we begin to see the magnitude of the discrepancy between legal need and the services provide by legal aid organizations.

Increased Resources for Self-Represented Litigants in New Hampshire Courts

Our findings indicate that improving legal access for low-income people in New Hampshire may also include increasing resources for self-represented litigants in New Hampshire courts. We found evidence that previous efforts to

make the court more accessible to self-represented litigants have been successful, and also found concrete suggestions for how the New Hampshire courts could improve access even further in the future.

One improvement results from the 2007 rule changes by the New Hampshire Supreme Court allowing lawyers in New Hampshire to “unbundle” their services in an effort to reduce the cost of legal representation for those seeking legal help. Our survey revealed found that a majority (60 percent) of New Hampshire’s court personal found that the introduction of “unbundled” legal

COURT RESOURCES TO IMPROVE ACCESS FOR SELF-REPRESENTED LITIGANTS

	Court offers this service	<i>If available, does this service improve the functioning of your court?</i>		<i>If not available, would offering a service like this improve the functioning of your court?</i>	
		YES	NO	YES	NO
<u>Case Manager</u> or other staff person whose primary responsibility is to work with self-represented litigants	57%	93%	7%	76%	25%
<u>Service Center</u> providing resources to self-represented litigants	22%	67%	33%	73%	27%
<u>Educational workshops</u> for self-represented litigants	4%	60%	40%	70%	30%
<u>Educational materials</u> such as pamphlets or instructions for self-represented litigants	79%	87%	13%	78%	22%
<u>Volunteer Attorneys</u> to answer questions for self-represented litigants	11%	94%	6%	86%	14%

Table 7: Data from NH Court Personnel Survey, 2011. Results presented for all survey respondents (n=221).

services had been beneficial, and only 3 percent judged it to be “somewhat harmful.” When asked whether this change had a positive, negative, or no effect on court functioning overall, the majority of respondents (67 percent) felt it had no effect on court functioning, 28 percent felt it improved court functioning, and just under 5 percent felt it had a negative effect on court functioning. This suggests that policy changes aimed explicitly at improving access for litigants can be implemented with little negative backlash, and with positive effects on citizen access.

There are already a number of initiatives in place at various courts in New Hampshire designed to help self-represented litigants, including offering case managers, service centers, and educational workshops as well as providing education material, and on-site volunteer attorneys. For each initiative, we surveyed court workers to see whether their court offered these services, and either whether they improved court functioning or, if their court did not offer these services, whether they thought they would improve court functioning. We found that all of the potential means of addressing the challenge of increased self-representation were viewed positively. Even the least popular item—having informational workshops—was still supported by more than 60 percent of the respondents.

The services viewed most positively by court staff were the presence of a case manager or other dedicated staff person to work with self-represented litigants, and the presence of volunteer attorneys. More than 90 percent of staff in courts with these services believed they im-

proved the functioning of their court.

Such services not only make courts function more smoothly but also increase court access to those with legal needs. For example, a small number of courts with dedicated “case managers” are part of a pilot program designed specifically to help pro se litigants. The pilot program instituting case managers in select courts has displayed impressive successes in the short time it has been instituted. The clerks we interviewed at one court explained that the program has helped re-orient the approach to self-represented litigants. Where before dealing with self-represented litigants was viewed as an irritation or a distraction from the job, the presence of a dedicated staff person to deal with self-represented litigants has eased much of this burden. “It’s been a paradigm shift,” this court employee explained, “Our approach used to be more of a cut off, like ‘quit telling me your story’...Now our new mantra is: ‘If we can help you, we will.’”

Court personnel we interviewed felt that having a dedicated staff person not only helped self-represented litigants, but also improves the functioning of the court. The case manager, for example, could help litigants choose which unbundled legal services the client needs, and clearly explain to the attorney what services were required.

Increased Coordination Between Service Providers

Another area for improving legal services is to forge even better working relationships between CAP and legal aid organizations in the state. Because

CAPs encounter a much larger number of low-income people than do legal aid organizations, it is vital that CAP workers have accurate knowledge of existing legal services organizations, and that they refer clients with legal needs accordingly.

In our interviews we found that CAP workers do not always refer clients to legal aid and pro bono, even when they identify legal needs among their clients. There are three main reasons for this: CAP workers try to address clients' problems themselves, they do not identify needs as legal, and, most significantly, CAP workers may perceive legal aid to be too busy or underfunded to respond.

When asked how often they refer people to legal aid, one seasoned CAP worker who had been with her agency for over 30 years replied, "Not that often. We try to resolve issues ourselves." One employee from Southern Community Services said, "Legal aid can't help with family issues, so I don't send people there." Similarly, when asked about client legal needs in the area of family law, an employee from Tri-County CAP said "I don't think legal aid addresses family law."

This finding suggests some amount of screening by CAP workers. If they perceive legal aid to be swamped or unresponsive, they may not refer even clients with clear legal needs to legal aid. While in principle some amount of screening by CAP workers may be helpful—for instance, in keeping away cases that are unlikely to go anywhere—CAP workers may opt not to refer clients that legal aid could actually help. It also

suggests some misperceptions, even among very experienced CAP workers, about what issues legal aid addresses. For example, given that family law is one of legal aid's greatest areas of service, there seems to exist a striking gap between what legal aid does and what CAP workers may think it does. Unfortunately, this lack of referral to legal aid may block an important access point for low-income people in New Hampshire. Legal aid organizations have consciously forged connections with social services providers such as ServiceLink and local crisis centers to better coordinate services. Greater education of CAP workers about the capabilities of legal services organization in New Hampshire can further help ease a potential barrier to those with legal needs. Given the larger scale and geographic spread of CAP agencies, they are an important location where low-income people with legal needs could be referred to legal services organizations.

Conclusion

The quantitative and qualitative data presented in this report reveal a sizable justice gap in New Hampshire. Of the estimated 149,101 low-income residents with legal needs in 2011, only 8,403 cases received any form of legal assistance. This figure is particularly worrisome given that this vulnerable population has many legal needs, on a wide range of issues, including: consumer, disability rights, domestic violence, family law, housing disputes, income maintenance, and bankruptcy, among others.

There are a number of reasons for the high level of unmet legal need. Many low-income residents people lack basic knowledge about how to navigate the court system; others do not see their problems as having legal remedy. Most cannot afford legal representation, or do not know that legal services exist. And those who choose to represent themselves can strain an already overtaxed court system.

Fortunately, New Hampshire has a number of organizations that provide high-quality legal services for those with legal needs. New Hampshire Pro Bono, New Hampshire Legal Assistance (NHLA), and Legal Advice and Referral Center (LARC) provide a network of programs that provide valuable services to those with unmet legal needs. Unfortunately, at the same time that demand for these services is growing, these organizations have experienced budget cuts and have been forced to turn away low-income people in need.

Policymakers can take a number of steps to reduce the barriers to legal access for the state's low-income population. Lawmakers can address gaps in social and legal services in the state. Greater emphasis

can be placed on helping self-represented litigants navigate the state's court system. And even greater coordination can be fostered between the state's existing service providers.

However policymakers decide to proceed, they should bear in mind that behind the numbers are real people with complex, difficult problems, and few resources with which to address them. In some cases, even being provided with basic information about rights and remedies under the law can make a substantial difference to individuals. In more extreme cases, representation by an attorney can help avoid eviction or foreclosure, secure government benefits that have been unfairly denied, help victims of domestic violence, and offer protection against aggressive hospital bill collection.¹²³ While there are many potential ways of increasing legal access, the evidence presented in this report underscores the urgent need for policymakers to take action to address the growing justice gap in New Hampshire.

Notes

Portions of this report were researched and written by undergraduate students at the Rockefeller Center of Dartmouth College under the supervision of the principal investigator. The student portion of the project was conducted through The Policy Research Shop of Dartmouth College's Rockefeller Center, which is supported by grants from the Ford Foundation and the Fund for the Improvement of Postsecondary Education (FIPSE). The PRS reports were developed under FIPSE grant P116B100070 from the U.S. Department of Education. However, the contents of the PRS reports do not necessarily represent the policy of the U.S. Department of Education, and you should not assume endorsement by the Federal Government.

1. The study was led by the Principal investigator Serena Laws, then a postdoctoral fellow at the Rockefeller Center for Public Policy and the Social Sciences at Dartmouth College, during 2011. It was commissioned by the New Hampshire Access to Justice Commission and the Legal Advice and Referral Center (LARC) and funded by the New Hampshire Bar Foundation. Research assistance was provided by a number of Dartmouth undergraduates at the Policy Research Shop at the Rockefeller Center for Public Policy and the Social Sciences at Dartmouth College. Dartmouth students Nina Brekelmans, Melanie Wilcox, and Brian Freeman assisted with the Community Action Program (CAP) interviews. Michael Sanchez and Richard D'Amato assisted with collection and analysis of the legal aid and pro bono data, and wrote early drafts of those sections of the report. The student research was generously donated by the Rockefeller Center.
2. Data from U.S. Census, New Hampshire legal aid organizations, and author calculation (See Section 1 and Figure 1). Note that 8,403 is the total number of cases reported by the three main legal aid organizations in any given year. It is one way of measuring the needs met by legal aid organizations, but is not identical to the number of people served. A single individual may have had more than one case served by legal aid in 2010. Conversely, each case may influence people beyond an individual client, such as other family members—for instance, NHLA estimates that on average 2.05 individuals are helped by each of their cases (NHLA 2010 data).
3. These findings came from our Survey of Court Personnel, the survey of NH Pro Bono volunteers, the questionnaire with LARC Community Board members, and interviews with Community Action Program workers, and are consistent with findings in several state legal needs studies. While each source had a slightly different assessment of the ordering of these issues, Family Law, Consumer, and Housing issues were core issues identified in all data sources. See Section 1, Sub-Section “Types of Legal Needs Faced by New Hampshire’s Low-Income Population” for complete analysis.
4. Barriers to legal access are discussed in Section 2.
5. See Section 3 for a full profile of the three main legal services providers in New Hampshire.
6. The study was commissioned by the New Hampshire Access to Justice Commission and the Legal Advice and Referral Center (LARC) and funded by the New Hampshire Bar Foundation. Research assistance was provided by a number of Dartmouth undergraduates at the Policy Research Shop at the Rockefeller Center for Public Policy and the Social Sciences at Dartmouth College. See *supra*, Note 1.
7. Interviews with judges and clerks from five different New Hampshire judicial districts were conducted in March and April of 2011 by Serena Laws.
8. These findings stem from the American Bar Association 1994 national telephone survey of civil legal needs, and the state studies patterned after it. American Bar Association. 1994. “Legal Needs and Civil Justice: A Survey of Americans. Major Findings from the Comprehensive Legal Needs Study.” Support from state studies comes from D. Michael Dale “The State of Access to Justice in Oregon” (2000), Task Force on Civil Legal Justice Funding, “The Washington State Civil Legal Needs Study” (2003), and A.L. Buruss Institute of Public Service and Research, “Civil Legal Needs of Low and Moderate Income Households in Georgia” (2009), among others.
9. *Ibid.*
10. These surveys were administered by staff members at LARC and New Hampshire Pro Bono in

February, 2012.

11. All court employees received a mass email with a link to the survey on November 29, 2011. The email explained that the survey was part of the New Hampshire Legal Needs Study, and listed the parties conducting and funding the research. Survey responses were received through early December, 2011.
12. The legal needs estimate was calculated by averaging the findings from 14 legal needs studies conducted since 2000. Only studies that included a random digit dial survey of a representative sample of low-income households were included. In addition, these studies had to employ a methodology based on the 1994 American Bar Association study, which involves asking respondents a battery of dozens of questions that gauge whether they have had legal needs in the previous year. Finally, the included studies were required to include a calculation of the percentage of low-income households who had one or more legal needs in the previous year, based on the random digit dial survey. 14 studies fit these criteria—these were the studies conducted in Connecticut (2003), Georgia (2008), Illinois (2005), Massachusetts (2003), Nevada (2008), New Jersey (2009), New York (2010), Oregon (2000), Tennessee (2004), Utah (2007), Vermont (2001), Virginia (2007), Washington (2003), and Wisconsin (2007). The average rate of legal needs among low-income people in these studies was then averaged, equaling 59.47%.
13. For the purposes of the legal needs estimate, “legal aid eligible” was defined as being at or below 200 percent of the Federal Poverty Line (FPL). While each of the three main legal services organizations has their own income thresholds for legal aid eligibility, the 200 percent threshold was determined to be the best cutoff because it most accurately describes the population. Individuals at or below 200 percent FPL in the state of New Hampshire will be eligible for some form of legal aid, even if they are not eligible for every kind of service offered by every legal services organization.
14. See full explanation of how the legal needs estimate was calculated, *supra* note 12.
15. The 14 studies represented a wide range, due to somewhat different methodologies and likely also due to some differences in state characteristics. For example, the Washington study (2003) found that 76 percent of households had at least one legal problem. The Oregon survey (2000) found that 82.1 percent had at least one legal need. And the Georgia study (2009) found that 62.2 percent had one or more legal needs. The lowest findings of the percentage of the low-income population with at least one legal need that I found was in the Illinois state study (2005) in which 49% of low-income households were found to have one or more legal needs. This is nearly identical to the finding of the 1994 ABA study—on which all the state level studies are based—which found that half of all low-income households had one or more legal needs. The New Jersey (2009) study had the lowest estimate, which found that 32.5 percent of low-income households had one or more legal needs.
16. U.S. Census. “Poverty: 2008 and 2009.” September 2010. <http://www.census.gov/prod/2010pubs/acsbr09-1.pdf> (Accessed 08/14/11).
17. *Ibid.*
18. U.S. Department of Health and Human Services, “2009/2010 HHS Poverty Guidelines.” <http://liheap.ncat.org/profiles/povertytables/FY2010/popstate.htm> (Accessed 10/15/11). Note that in some instances, those with slightly higher incomes would be eligible for legal aid, if they were a subpopulation with special needs. In addition, qualification levels for NH Pro Bono are at 187.5 percent or below of the federal poverty line.
19. U.S. Census Bureau. “Current Population Survey Table Creator for the Annual Social and Economic Supplement” http://www.census.gov/hhes/www/cpstc/cps_table_creator.html (Accessed 2/26/12).
20. See *supra* note 13 for an explanation of why the 200 percent FPL was used.
21. U.S. Census Bureau. “Current Population Survey Table Creator for the Annual Social and Eco-

- conomic Supplement" http://www.census.gov/hhes/www/cpstc/cps_table_creator.html (Accessed 2/26/12).
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 23. *Ibid.*
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 26. Kids Count, The Annie E. Casey Foundation. "Child population by household type (Percent) 2010." <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=105> (Accessed 1/30/12)
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 37. *Ibid.*, p. 60.
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 39. Disability Rights Center of New Hampshire. "Fair Housing Rights of People with Disabilities." <http://www.drcnh.org/Housingrightswb.pdf> (Accessed 2/26/12).
 40. Persons with disabilities have this right under New Hampshire Law RSA 171-A, Section 6. "Rights to Area Agency Services" <http://www.drcnh.org/ATAA.pdf> (Accessed 2/26/12).
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 44. *Ibid.*, p. 4.
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 46. *Ibid.*, p. 5-9.
 47. *Ibid.*, p. 6.
 48. *Ibid.*, p. 10.
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 56. Chris R. Colocousis and Justin R. Young. "Continuity and Change in Coos County: Results from the 2010 North Country CERA Survey." Issue Brief No. 26 (Durham, NH: Carsey Institute, 2011).
 57. Case Data provided by New Hampshire Legal Services (NHLA), July 2011.
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 63. *Ibid.*
 64. *Ibid.*
 65. New Hampshire Community Action Association. 2010 Annual Report. Compiled by author from figures found in agency summaries, pp. 9-33. Report says these figures may include some double-counting. <http://www.reaction.org/uploads/pdf/CAPreport2010finalversion.pdf> (Accessed 12/13/11).
 66. Interviews were conducted by the author and by Dartmouth undergraduates in the Rockefeller Center's Policy Research Shop. Interviewees were CAP agency workers, ranging from media relations to an executive director, and representing five of the CAP agencies in the state (we were unable to get an interview with a representative from the Rockingham Community Action). Most interviewees have worked for CAP agencies for several years, some for a few decades. Interviews were conducted in April and May of 2011 by Serena Laws and Dartmouth undergraduates Nina Brekelmans, Melanie Wilcox, and Brian Freeman.
 67. Members of the LARC Community Board were contacted via telephone by a LARC employee, who verbally asked questions and recorded answers. Board members were asked three questions. First, they were asked "Based on your experience, what are the most pressing areas of legal need for low-income people not currently met by existing legal services in New Hampshire?" to which respondents could choose to select from 16 general areas of law, or "Other." Community Board Members were then asked to identify just one of these issues they thought was most deserving of further resources, and then asked why they had selected that issue. Four of the five Community Board members of LARC offered responses to this questionnaire.
 68. The New Hampshire Pro Bono Volunteer Attorney Survey was an online survey distributed to volunteer attorneys by Pro Bono's Executive Director in February, 2012.
 69. Question Wording: "In your experience, what are the TOP THREE areas of legal need among low-income people?" Table shows the percentage of respondents who placed each issue in the top three. Other issue areas were offered as answer choices but received few or no responses and are not included in the table. These issue areas were: Unemployment or Workers Compensation; Wills, Trusts and Estates; Contracts/Taxes; Juvenile Justice; Guardianship and Conservator; Immigration; Employment

- Discrimination; Other Civil Rights; Veteran and Military Issues; and "Other."
70. Legal Services Corporation's (LSC) "Documenting the Justice Gap" (2009).
 71. New Hampshire Supreme Court Task Force on Self-Representation. (2004). "Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts," p. 2.
 72. *Ibid.*
 73. Exact question wording: "Of the litigants you encounter in your job, what percentage do you estimate are self-represented or pro se?"
 74. The New Hampshire Supreme Court's earlier report on Self Represented Litigants "Challenge to Justice" found that most pro se litigants were representing themselves because they could not afford a lawyer. This report is available at http://www.courts.state.nh.us/supreme/docs/prose_report.pdf
 75. New Hampshire Housing Authority, "Foreclosure Update." December 7, 2011. http://www.nhhfa.org/rl_docs/housingdata/ForeclosureUpdate_12-07-11.htm (Accessed 12/13/11).
 76. Elliot Berry, Connie Rakowsky, and Karen Gorham. (2011). "Informational Videos on Foreclosure." <http://www.nhlegalaid.org/taxonomy/term/607> (Accessed 12/13/11).
 77. Melanca Clark with Maggie Barren, Brennan Center for Justice. "Foreclosures: A Crisis of Legal Representation." (2009).
 78. New Hampshire Judicial Branch. "Summary of the Foreclosure Mediation Program." <http://www.courts.state.nh.us/adrp/foreclosure/index.htm> (Accessed 12/13/11).
 79. Author calculation of average occurrence of legal needs in existing state studies, *supra* note 12.
 80. Task Force on Civil Equal Justice Funding. "The Washington State Civil Legal Needs Study," Washington State Supreme Court (September 2003), p. 47.
 81. These twelve studies were identified and summarized in the Legal Services Corporation's (LSC) "Documenting the Justice Gap" report (2009). I used the summary tables in the Appendices (Pages C-1 and E-5) of that report as a starting point for my analysis.
 82. The table identifies the top reasons for not seeking legal help found in comparable state legal needs studies from Montana, Georgia, Utah, Washington, Oregon, and Tennessee.
 83. In Montana's study, for instance, only 49 percent of respondents knew about free legal services, with around 54 percent believing they might be eligible for such services, even though 100 percent of them were, (MT Study, p. 18). Most strikingly, the Utah study found that only 23.6 percent of low-income households were aware of free legal aid (UT Study, p. 19). In the Oregon study 39 percent were not aware of legal services (OR Study, p. 36).
 84. Interviews were conducted in April and May of 2011 by P.I. Serena Laws and Dartmouth undergraduates Nina Brekelmans, Melanie Wilcox, and Brian Freeman.
 85. D. Michael Dale "The State of Access to Justice in Oregon" (2000), p. 30, 18.
 86. Exact question wording: "In your experience, how do self-represented litigants fare compared to those with attorney representation? Are they generally at an advantage, at a disadvantage, or do they fare about the same?" 2.5 percent thought self-represented litigants were at an advantage, 19 percent thought they both fared about the same, and 79 percent thought they were at a disadvantage compared to those with attorney representation.
 87. Interviews with judges and clerks from five different New Hampshire judicial districts were conducted in March and April of 2011 by Serena Laws.
 88. Exact question wording: [Agree/Disagree] "The prevalence of self-represented parties has no impact on the impartiality of the court."
 89. The cases in the figure reflect only closed cases and do not include pending applications, cases in which the client withdrew, and cases still in process. The total number of cases dealt with by each organization in 2010 was thus larger than that represented in this figure, which instead emphasizes the breakdown in type of representation offered by each organization.
 90. "The Pro Bono Program of the New Hampshire Bar Association." 2010. <http://nhlegalaid.org/PBP> (Accessed 08/14/11).

91. "New Hampshire Pro Bono Referral System and DOVE Financial Eligibility Guidelines, March 2011." Data provided by New Hampshire Pro Bono. There is also an asset limit for eligibility—\$2,500 for a single person, \$5,000 for a family of four.
92. "The Pro Bono Program of the New Hampshire Bar Association." 2010. <http://nhlegalaid.org/PBP> (Accessed 08/14/11).
93. "Free Legal Services." New Hampshire Bar Association website. <http://www.nhbar.org/for-the-public/free-legal-services.asp>. (Accessed 02/26/12).
94. Author interview with Pro Bono Executive Director, October 5, 2011.
95. Data provided by New Hampshire Pro Bono, August 2011.
96. Author interview with New Hampshire Pro Bono Executive Director, October 5, 2011.
97. Information from New Hampshire Pro Bono Executive director, October 11, 2011.
- 98 "New Hampshire Legal Assistance: About Us." 2010. http://nhla.org/about_us.php (Accessed 08/14/11).
99. *Ibid.*
100. Data provided by New Hampshire Legal Assistance (NHLA), July 2011.
101. *Ibid.*
102. "Legal Advice and Referral Center." 2010. <http://nhlegalaid.org/LARC> (Accessed 08/14/11).
103. *Ibid.*
104. *Ibid.*
105. Data provided by Legal Advice and Referral Center (LARC), July 2011.
- 106 Disability Rights Center of New Hampshire <http://www.drcnh.org/help.htm> (Accessed 02/27/12).
107. New Hampshire Civil Liberties Union <http://www.nhclu.org/legal-help.php> (Accessed 02/27/12).
108. New Hampshire Catholic Charities <http://www.nh-cc.org/what-we-do/immigration-refugee-services.aspx> (Accessed 02/27/12).
109. UNH School of Law's Clinical Programs provide representation by second and third year law students in nine areas: the Appellate Defender Program, Consumer and Commercial Law, Criminal Practice, Intellectual Property and Transaction, International Technology Transfer Institute Clinic (ITTI Clinic), Immigration Law, IP Amicus Clinic, and Mediation. <http://law.unh.edu/clinics> (Accessed 01/26/12).
110. New Hampshire Bar Association. "New Hampshire Legal Services Programs" <http://www.nhbar.org/for-the-public/LegalServices.asp> (Accessed 03/19/12).
111. Based on interview with longtime LARC employee; interviews with NH Pro Bono Executive Director; and interview with NHLA Executive Director 04-10/2011.
112. Data provided by New Hampshire Legal Assistance, July 2011.
113. Data provided by New Hampshire Pro Bono, October, 2011.
114. Data provided by LARC, February and March 2012.
115. Data provided by New Hampshire Legal Assistance (NHLA), July 2011.
116. Data obtained through Best VOIP <http://larc.bestvoipusa.com/menu.php?id=admin>, September 2011.
117. Data provided by New Hampshire Legal Assistance (NHLA), July 2011.
118. *Ibid.* Note that a small number of the cases in Figure 17 were not turned away due to a lack of resources, but because they were a type of case that NHLA does not handle.
119. Task Force on Civil Legal Justice Funding, "The Washington State Civil Legal Needs Study" (2003), p. 25. D. Michael Dale "The State of Access to Justice in Oregon" (2000), p. iv.
120. *Ibid.*
121. New Hampshire Citizens Commission on the State Courts. (2006). "Report and Recommendations," p. 10.
122. New Hampshire Supreme Court Task Force on Self-Representation. (2004). "Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts," p. 8.
123. These examples were drawn from NHLA's *Statewide Legal Services Appropriation Semi-Annual Report to the Judicial Council Pursuant to RSA 525-A:2*. (June 30, 2011).