

North Dakota Legal Needs Assessment for Civil Matters

Executive Summary

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EXECUTIVE SUMMARY

I. INTRODUCTION

There is widespread agreement among advocates, scholars, and political leaders that significant legal needs are going unmet in North Dakota; however, there is extensive disagreement on what those needs might be, how to prioritize among them, and how resources for legal services should be allocated throughout the state. The University of North Dakota Law Clinic consulted with Legal Services of North Dakota (“LSND”) and the State Bar Association of North Dakota (“SBAND”) to assess the need for affordable legal services to low-income¹ and under-represented populations in the state through the creation of the North Dakota Legal Needs Assessment (hereinafter “the Assessment”). The Assessment’s dual focus was created due to the largely rural nature of North Dakota, which results in severely limited access to legal representation in many areas and especially to free or reduced-fee civil services. The need to bring legal services to outlying, small rural communities remains essential in providing residents access to their judiciary. Under-representation may also result from the increasing proportion of elderly residents² and from the development of international immigrant communities within North Dakota.

A. Goals of the North Dakota Legal Needs Assessment

The overarching goal of the Assessment was to initiate a comprehensive study of the legal needs facing low-income and under-represented North Dakotans. Additionally, the results of the Assessment may generate and promote a variety of sub-goals. First, the results will be

¹ . “Low-income” means a household earning less than 125% of the 2006 Federal Poverty Guidelines, or a household of four earning less than \$480 per week (gross income).

² . North Dakota State Data Center, Population Trends, available at <http://www.ndsu.edu/sdc> (last visited May 20, 2007). The 2000 U.S. Census found North Dakota as having the highest proportion of elderly persons eighty-five years and older in the nation. Additionally, in 2000 thirty-seven of the state’s fifty-three counties had more than twenty percent of their population base older than sixty-four years old. *Id.*

utilized by LSND, SBAND, and the Law Clinic in establishing priorities for the undertaking of certain types of cases and to direct program resources, both fiscally and professionally. Next, the results will provide information to local governments and community organizations, to be used in structuring legal outreach or community support systems. Such sharing of information spurs the possibility of future outreach programs and legal education at the community level. Finally, the entire project provides a foundation for additional research into the legal health of North Dakota and the effectiveness of legal service providers.

B. Overview of North Dakota Civil Legal Service Providers

Three primary organizations exist within North Dakota that provide free or reduced-fee civil legal services based on income requirements and/or and the nature of the applicant's case. First, LSND, which is the result of a unifying effort between Legal Assistance of North Dakota and North Dakota Legal Services in 2004. LSND accepts a variety of cases on behalf of low-income persons statewide and is the primary recipient of federal Legal Services Corporation ("LSC") funds in the state. LSC restrictions prevent LSND from providing representation in criminal cases, to incarcerated persons, or in cases that may generate attorneys fees, such as those involving claims based on constitutional or civil rights.³ Next, SBAND, which operates a statewide Volunteer Lawyer Program and a Reduced Fee Program through its Civil Legal Assistance division. While both SBAND programs focus almost exclusively on family law matters, the Reduced Fee Program accepts some simple estate planning matters and the Volunteer Lawyer Program provides limited representation for medical debt collection.⁴ Both

³ . Legal Services of North Dakota, available at http://www.legalassist.org/tree/lsnd_tree.html (last visited May 20, 2007).

⁴ . State Bar Association of North Dakota Volunteer Lawyers Program, available at <http://www.sband.org/Volunteer/> (last visited May 20, 2007).

programs determine eligibility for services based on federal poverty level standards and other various criteria.

Finally, the University of North Dakota's Law Clinic at the School of Law (successor of the Legal Aid Association) is a clinical education program funded entirely by the greater University. The Law Clinic provides free legal representation to low-income and under-represented persons and groups. Law students, who are enrolled in the Law Clinic and receive academic credit in return for completing course requirements, conduct all aspects of legal representation under the supervision of professors who are licensed attorneys. The Law Clinic typically does not accept criminal or family law cases; instead, it currently focuses on matters involving housing, employment, and government benefits. The Law Clinic does not receive LSC funding, thereby enabling it to represent persons who have been subjected to discrimination and/or harassment in employment and housing.

The state of North Dakota and these organizations collaborate with neighboring states in providing legal services to specific border populations. Dakota Plains Legal Services is a South Dakota-based organization that primarily provides Indian legal services in North Dakota through the Standing Rock and Lake Traverse Reservations, which straddle North Dakota's southern border.⁵ In addition, the Refugee, Immigrant, Migrant Services, as a unit of the southern Minnesota Regional Legal Services, accepts a variety of cases based on the unique needs of migrant farm workers in the Red River Valley on the eastern boarder of North Dakota.⁶ Since both Dakota Plains Legal Services and Refugee, Immigrant, Migrant Services receive funding from LSC, they have the same restrictions as LSND regarding the types of cases they may accept.

⁵ . Dakota Plains Legal Services, available at <http://www.dpls.org/> (last visited May 20, 2007).

⁶ . Migrant Legal Services, available at http://www.legalassist.org/migrants_legal_services/migranhome.html (last visited May 20, 2007).

C. Overview of State Funding for Low-Income Civil Legal Services

Legislative recognition of indigent civil legal needs began in 1947 when the state legislature approved the distribution of portions of civil court filing fees into what is now the Indigent Civil Legal Services Fund.⁷ This fund has the purpose of supporting providers of legal services to persons unable to afford private counsel in specific types of cases including: public benefits, medical assistance, family law matters, housing, consumer issues, and elder law.⁸ LSND is the primary recipient organization of the Indigent Civil Legal Services Fund. In 1987, an Interest on Lawyers' Trust Account program ("IOLTA") was created by Rule of the North Dakota Supreme Court, the interest from which is used, in part, for the support of civil legal services to the poor.⁹ Indeed, the governing Lawyer Trust Account Committee recognized the need for establishing more programs to increase availability of civil legal services to indigent residents in all parts of the state.¹⁰ Recipient organizations of IOLTA funds include LSND, SBAND, Dakota Plains Legal Services and Refugee, Immigrant, Migrant Services. The most recent legislative action regarding the delivery of indigent services in North Dakota was the establishment of the Commission on Legal Counsel for Indigents ("CLCI") in 2005. Now an executive branch state agency, the CLCI primarily focuses on criminal defense; however, it also provides legal support to juvenile indigents.¹¹

⁷ . N.D. CENT. CODE § 27-05.2-03(1)(a)(1) (2005) (formerly N.D. CENT. CODE § 11-17-04(1)(a)(1) (1997)); *see also* *Menz v. Coyle* 117 N.W.2d 290 (N.D. 1962) (upholding the constitutionality of the fee distribution).

⁸ . N.D. CENT. CODE § 54-06-20(3) (2005); *see also* L-139 N.D. OP. ATT'Y GEN. (1997), 1997 WL 930483.

⁹ . N.D. SUP. CT. ADMIN. RULE 24.1 (2006).

¹⁰ . *Id.* at 24.1 § 2(k).

¹¹ . N.D. Commission on Legal Counsel for Indigents, <http://www.nd.gov/indigents/> (last visited May 20, 2007).

II. LEGAL NEEDS OF UNDER-REPRESENTED AND LOW-INCOME NORTH DAKOTANS

A. Methods used in collecting information through the North Dakota Legal Needs Assessment

The primary tool used in this study was a survey instrument entitled the North Dakota Legal Needs Assessment. The Assessment consisted of ninety-four questions identifying potential legal issues within twelve categories including: 1) housing, 2) family law, 3) elder law, 4) estate planning, 5) employment, 6) government benefits, 7) health care and insurance, 8) personal rights, 9) immigration, 10) consumer issues, 11) elementary education, and 12) recent legal assistance. In addition to such questioning about common situations that often give rise to a need for civil legal services, a demographics section was included with pointed questions about the respondent. Due to the dual nature of the Assessment, the demographics of particular concern included the county in which the participant lived and the annual income of the participant, which was categorized as low-income or non low-income based on 125% of the 2006 Federal Poverty Guidelines. Additionally, community outreach and interviewing efforts were focused on the elderly through volunteer efforts of the Retired and Senior Volunteer Program (“RSVP”) and on Native Americans residing on any of the five Indian Reservations within North Dakota. Student volunteers from the Law Clinic conducted general outreach and interviewing efforts with the assistance of LSND employees. Each Assessment was completed with absolute anonymity, including those conducted through personal interviews and telephone surveying.

Between September 2006 and May 2007, the distribution and subsequent completion of individual Assessments were conducted through combined efforts including: distribution at local community, non-profit, and assistance centers; distribution and personal interviews at local

community events; and telephone interviews. All respondent participation occurred on a volunteer basis. Respondents who completed the Assessment remotely were provided with a pre-addressed and pre-paid envelope in which to return the document. Participants who completed the Assessment at a local center or at a community event had the option of returning it to the identified interviewer or through the mail. Ultimately, all completed Assessments were returned to the Law Clinic where the responses were inputted into survey software by the author. Participants also had the opportunity of completing the Assessment online.

At the outset of the project the minimum goal for completed Assessments was 600. The final number of Assessments used in compiling and analyzing the legal needs of low-income and under-represented North Dakotans was 700.

B. Findings of the North Dakota Legal Needs Assessment

1. Legal needs generally

Respondents' initial recognition of what situations had legal ramifications or remedies was not in line with the actual volume of legal problems depicted throughout the completion of the Assessment. While 53.3% of all respondents (373 individuals) did not initially recognize the occurrence of any legal issues in their lives, 28% of those respondents (43 individuals) actually had received legal assistance in the past five years. A sample group of thirty respondents who did not initially recognize any legal issues was used to determine an approximate percentage of such respondents who actually did identify legal issues. Forty percent of those thirty respondents (12 individuals) did identify at least one legal issue upon the completion of the Assessment.¹² After applying the 40% of misrepresented "No" respondents to the entire subject population, it is estimated that approximately 68% of all respondents had experienced one or more legal

¹² . An overwhelming majority of respondents reported the need for a will or other estate planning documents. The 40% figure excludes the sample population's identified need for wills and future planning.

problems within the past five years. Such problems comprised a range of substantive legal issues, with housing, family, estate planning, and consumer matters being the overall most common legal issues reported.

a. *Housing Issues*

Of the 323 participants who rented a residence within the past three years, 64.8% of those individuals reported at least one problem involving housing issues. Predominantly, renters reported problems with the return of the security deposit and not receiving an itemization of deductions from that deposit. Additionally, out of 136 respondents who reported unsafe or unhealthy conditions within the rental property to the landlord, 68.9% (93 individuals) claimed that the problem(s) remained unfixed during their tenancy. The most commonly reported condition was the occurrence of mold (19.9%), broken or cracked windows (18.7%) and door locks that did not work (12.1%). From the entire respondent base, 11.6% (79 individuals) reported being homeless within the past five years. However, only 1.2% of all respondents (8 individuals) reported the foreclosure of a home mortgage.

b. *Family/Domestic Issues*

About 14% of all respondents reported issues involving family law matters. Fourteen percent of all respondents (93 individuals) sought assistance due to the break-up of a marriage or live-in relationship. Of those respondents, 54.8% sought legal assistance, 33.3% went to a domestic violence or rape crisis center, and 22.6% called on their local police or state troopers. Ten percent of all respondents (69 individuals) reported being involved in a dispute regarding child support, with the most common issue being the amount of the child support payment. Seven percent of all respondents (45 individuals) reported being involved in a dispute over child custody.

The most severe number of problems reported relating to family matters involved domestic violence, with 14.3% of all respondents (91 individuals) reporting at least one type of abuse. Of domestic violence survivors, 72.5% (66 individuals) were subjected to emotional abuse, which may include verbal abuse, threats of violence without physical abuse, forced social isolation, etc. It is important to note that victims of emotional or mental abuse have no statutory recourse under North Dakota's domestic abuse statute.¹³ Of domestic violence survivors, 69.2% (63 individuals) reported being physically abused, 30.8% reported being stalked by their abuser, and 17.6% reported incidents of sexual abuse. The effects of domestic violence reported in the Assessment expand outside of the family law category with 18 individuals (5.8% of renting respondents) reporting threats of eviction due to the response of law enforcement at a domestic violence incident. Additionally, 14 individuals (2.1% of all respondents) reported being fired from a job within the past three years due to problems involving domestic violence. Of the ninety-one respondents reporting any type of domestic abuse, six of those individuals were men. Five of the men reported the occurrence of physical abuse and one reported being emotionally abused. Ultimately, 5.4% of all respondents (37 individuals) sought a restraining order against a member of their household within the past year. Twelve of those individuals (33.3% of respondents who sought an order) experienced problems enforcing the restraining order.

c. Elderly Issues

The most predominant issue reported facing elderly North Dakotans was situations where an individual had no ability to handle his or her own affairs. Of the 13.5% of all respondents (92 individuals) identifying such problems, 7.2% (66 individuals) had trouble managing financial affairs and 48.3% (43 individuals) had trouble managing their medical affairs. Moreover, 4.7%

¹³ . N.D. CENT. CODE § 14-07.1-01(2) (2007).

of all respondents (32 individuals) knew of a situation where an elderly relative or close friend was being physically abused or neglected. Often times the abuse was committed by a family member; however, eight of the reported situations involved a caretaker or nursing facility. Finally, 8.7% of all respondents (59 individuals) reported the occurrence of an elderly friend or relative being taken advantage of financially, most often times by a family member.

d. *Wills and Estate Issues*

Of all respondents, 66.8% (453 individuals) reported having no will by which to direct the probate of their estate upon death; however, 44.7% did recognize a need for some sort of documentation. Three percent of all respondents (20 individuals) reported having some sort of document directing the distribution of their property, often time a holographic will. However, with the majority of such holographic wills, there was no certainty as to the validity of the document. Many respondents reported having supporting or supplementary documents through a power of attorney for financial matters (21.4% or 145 individuals) or a health care directive for their medical wishes (21.6% or 146 individuals). However, 67.6% of all respondents (457 individuals) did not have any such document.

e. *Employment Issues*

Approximately 7.4% of all respondents reported experiencing some sort of discrimination while seeking employment, seeking a raise or promotion, or being fired from a job during the past three years. Of all respondents, 9.4% (64 individuals) reported being denied a job based on discrimination. The primary types of discrimination reported by jobseekers were age and physical disability, both experienced by 2.4% of such respondents (16 individuals). Of these respondents, 1.3% (9 individuals) reported being denied a job based on their gender and 1.2% (8 individuals) claimed such discrimination based on a mental disability. Of the forty-four

respondents who reported being denied a raise or promotion by an employer on a discriminatory basis, 1.8% (12 individuals) believed their gender was the reason, 1.5% (10 individuals) their age, 1.3% (9 individuals) believed they were discriminated against due to a physical disability, 0.9% (6 individuals) based on their race or ethnicity, and 0.6% (4 individuals) based on a mental disability. Finally, forty-one respondents reported being disciplined or fired from a job due to employer discrimination. Of such respondents, 1.6% (11 individuals) believed the employer's actions were based on a physical disability, 1% (7 individuals) their age, 0.9% (6 individuals) their gender, 0.7% (5 individuals) a mental disability, and 0.4% (3 individuals) their race or ethnicity.

Worker benefits and pay was an area of high response identified by the cumulative assessments. About 10.5 % of all respondents (74 individuals) reported being denied some type of worker benefit. The highest number, at 25.7% of those respondents (19 individuals), reported being denied unemployment compensation. Denial of access to job training was experienced by 18.9% of those respondents (14 individuals). Denial of earned vacation pay was reported by 13.5% of those respondents (10 individuals). Of all respondents, 4.8% (31 individuals) reported having problems collecting the amount of overtime pay they were owed. Similarly, 6.3% of all respondents (43 individuals) reported difficulty in collecting money owed to them after quitting or being fired from a job.

Of all respondents, 10.3% (70 individuals) reported experiencing difficulties at their place of employment involving sexual harassment or workplace harassment. Of those respondents, 41.2% (28 individuals) recognized a coworker(s) as the harasser, and twenty-nine individuals recognized an authority figure as the harasser. Moreover, 0.8% of all respondents (5 individuals) reported retaliation from their employer for reporting cases of sexual harassment.

Other types of employer retaliation that were reported included: retaliation for reporting work violations of other employees, 3% of all respondents (20 individuals); retaliation for reporting violations of the company, 1.8% of all respondents (12 individuals); and retaliation for organizing other workers, 1.5% of all respondents (10 individuals).

f. *Government Assistance Issues*

Approximately 53.8% of all respondents received some sort of government assistance during the past three years. The programs participated in the most were Medicaid, Medicare, and welfare generally, including Temporary Assistance for Needy Families (“TANF”), and Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”). Of all recipients, 17.6 % (63 individuals) reported experiencing some sort of difficulty with a program; in particular, respondents believed that the requirements necessary to receive the benefit were unreasonable. Other recognized difficulties included: being denied access to their file, not being given information about how to file a complaint with the agency, and not being given information about how to appeal an agency decision. Forty-five individuals who had been receiving a government benefit were involuntarily terminated from that benefit during the past three years. Of those terminated, 1.9% (13 individuals) had been receiving Medicaid, 1.6% (11 individuals) had been receiving housing assistance through a Housing and Urban Development (“HUD”) program, and 1.2% of those terminated (8 individuals) had been receiving assistance from a welfare program. Of those individuals who were involuntarily terminated from a government benefit, only 17.1% (7 individuals) attended a hearing with the agency.

g. *Health Care and Insurance Issues*

Of all respondents, 12.4% (84 individuals) reported having problems getting medical care for themselves or for dependents during the past year. The primary reason reported for such

problems was not having medical insurance or the ability to pay for the necessary services, which resulted in a refusal of aid by the health care facility. Of those reporting problems with medical assistance, 25.6% (20 individuals) found that the health care facility available was not able to serve their needs. Additionally, 10.3% of such respondents (8 individuals) reported that no local health care facility existed where they lived. No one reported problems getting medical help based on their race or ethnicity.

Of the four types of insurance listed, 8.7% of all respondents (59 individuals) reported having serious problems with medical insurance; 4.9% of all respondents (33 individuals) had serious problems involving their car insurance. Respondents who experienced problems with life insurance or home insurance both equaled 1.4% (10 individuals). Other types of insurance problems recognized by respondents involved nursing home insurance and renters' insurance.

h. Personal Rights

Of all respondents, 94.4% did not recognize any problems with any type of harassment by state or local law enforcement. However, of the 5.6% of all respondents (38 individuals) who did recognize law enforcement harassment, 54.3% (18 individuals) reported general police harassment; 25.7% (9 individuals) reported physical abuse by the police; and 14.3% (5 individuals) reported both an unreasonable search of their home and/or an unreasonable search of their car. Finally, 11.4% of such respondents (4 individuals) reported experiencing an unreasonable seizure of personal property from their home.

i. Immigration Issues

Of all respondents, 2.1% (14 individuals) reported being born as a citizen of a country other than the United States of America. Of those respondents, 57.1% (8 individuals) are currently United States citizens. Only one respondent reported not knowing whether she was a

United States citizen or not. Of the seven respondents who did not have United States citizenship, three were in North Dakota on student visas, two on work visas, one reported refugee status, and one reported being undocumented. Specific immigration problems recognized by this group varied. Two respondents had difficulty receiving a green card. Three have had problems finding a job because they were not citizens. One respondent reported having problems getting political asylum and one had been threatened with deportation. Finally, one respondent reported being taken advantage of by an employer based on the minimum wage paid. The birth countries reported by these respondents included: Canada, Norway, England, India, Germany, and the Philippines. These fourteen immigrant respondents represented only a minute portion of such populations currently settling in North Dakota.

j. *Consumer Issues*

Second only to the extent of problems recognized involving housing issues, the category of consumer issues appears to be an area of concentrated concern for many North Dakotans. Of all respondents, 27.5% (184 individuals) reported experiencing problems with creditors or debt collectors during the past five years. The most common problems reported were creditor harassment, which was experienced by 17% of all respondents (114 individuals), and a debt being sent to a collections agency, which was reported by 20.9% of all respondents (140 individuals). Within the past five years, 6.6% of all respondents (45 individuals) reported entering a lease-to-own agreement for electronics or furniture. Of those bound to such lease agreements, 46.3% (19 individuals) had trouble repaying the agreement and 20% (8 individuals) had the property repossessed.

k. *Elementary Education Issues*

Of all respondents, 31.8% (209 individuals) reported having school-aged children in their care. Alarming, 49.3% of those respondents (103 individuals) did not know what educational rights they have as a parent or guardian. Moreover, 51.2% of those respondents (107 individuals) did not know what educational rights their child has as a student. Of respondents caring for school-aged children, 28.7% (60 individuals) reported having a child with special needs. Of those special-needs children, 15.9% (10 individuals) did not have an IEP or 504 Plan. Of respondents whose child did have either an IEP or 504 Plan, 32.1% (17 individuals) did not understand their rights as a parent under those plans. Similarly, 30.2% (19 individuals) had experienced problems with school personnel regarding the educational services required for their special-needs child. Fortunately, 77% of parents would like to be more informed about parent and student educational rights.

Of the respondents caring for school-aged children, 35.9% (75 individuals) reported that their child had been bullied or harassed at school during the past three years. Of those bullied, 86.7% (65 individuals) did contact school personnel about the bullying or harassment. However, only 35.1% of those making reports to the school administration (26 individuals) were certain that the school had taken action to address the problem. The most common action taken by a school was talking to the bullying child and his or her parents. Additionally, sometimes the bullying child was either threatened with suspension or actually suspended for a period of time.

l. *Recent Legal Assistance*

The majority of respondents (68.2%) reported that they did not receive any legal assistance in the past five years. Of all respondents, 20% (132 individuals) received assistance from a private attorney; 7.1% (47 individuals) received assistance from Legal Services of North

Dakota; and 2.4% (16 individuals) received assistance from the UND Law Clinic. Of course more respondents applied for legal assistance than actually received it. Of all respondents, 1.5% (10 individuals) sought assistance through SBAND's Volunteer Lawyer Program; however, no respondents reported actually receiving legal assistance through the program. Of all respondents, 13.7% (91 individuals) reported seeking assistance from LSND, while only forty-seven respondents actually received assistance from the organization. Twenty-one individuals (3.2% of all respondents) sought assistance from the UND Law Clinic, while only sixteen received legal assistance from the program. Other organizations that actually provided legal assistance to respondents included the Grand Forks Community Violence Intervention Center and the North Dakota Public Defender program. Of all respondents, 9.7% (63 individuals) reported having problems receiving or maintaining legal assistance.

m. *General Demographics*

Of all respondents, 72.3% (480 individuals) were female. Thirty-one percent of all respondents (207 individuals) reported being sixty years of age or older, while respondents in the youngest age bracket of eighteen to twenty-five composed only 14.8% of all respondents (98 individuals). About 35.4% of all participants were either single or married, with 17.3% being divorced or separated, and 13.1% being widowed. The majority of respondents, 45.9% or 305 individuals, reported an annual income of \$12,500 or less. The predominant race reported by respondents was Caucasian, at 65.4% or 428 individuals. Native Americans accounted for 33.1% of all respondents. One percent of all respondents reported African American backgrounds, 0.9% Asian American, and 1.2% Hispanic/Latino. Of all respondents, 52.4% have received either a high school diploma or their G.E.D., and 7.8% of all respondents (52 individuals) had not graduated from high school.

2. Legal needs of particular populations

Two populations of specific interest in analyzing the Assessment results were Native Americans and elderly residents of North Dakota. The trends that appeared in both of these cross-sections of the cumulative Assessment data largely followed the general results.

a. *Native Americans*

Native Americans accounted for 33.1% of all respondents (220 individuals). For the Native American population, the Housing category showed some of the greatest differences. Approximately 70% (55 individuals) of all Native Americans who rented a residence within the past three years reported that they did not receive any part of their security deposit or an itemized list stating the deductions from that deposit upon leaving the property. Moreover, Native Americans represented half of all respondents (20 out of 46 individuals) who had been threatened with eviction from the rental property by the landlord. Additionally, Native Americans represented almost half of all respondents (37 out of 79 individuals) who reported being homeless during the past five years.

Within the Family/Domestic category, 19.1% of all Native Americans (42 individuals) reported experiencing domestic violence. Compared to the general population, where emotional abuse was most widely reported, 76.2% of Native American victims (32 individuals) reported being physically abused. Of all Native American victims, 71.4% (30 individuals) reported emotional abuse; 26.2% (11 individuals) reported being stalked by their abuser; and 11.9% (5 individuals) reported sexual abuse. Four of the forty-two Native Americans that experienced domestic violence during the past three years were male, each reporting solely physical abuse. Of the twenty-two Native Americans who reported receiving a restraining order related to their domestic problems, 40.9% (9 individuals) reported having problems enforcing the order. This

number accounted for more than half of the twelve individuals who reported such problems from the general population. The primary reason reported regarding lack of enforcement was that the tribal judiciary and law enforcement was not available or refused to assist.

Of all Native American respondents, 73.1% did not receive any legal assistance during the past five years. Of those that did actually receive such assistance, 12.8% (28 individuals) had a private attorney; 11.4% (25 individuals) were accepted by LSND, 0.5% (1 individual) utilized the Law Clinic; and 2.7% were appointed a public defender. Ten percent of all Native American respondents (22 individuals) reported having problems receiving or maintaining legal assistance. The most common reasons provided for this lack of civil representation was the inability to afford legal assistance and no local advocate or attorney through which to receive assistance.

One hundred fifty-eight Native American respondents reported living within a reservation, meaning that sixty-two were living in a non-reservation community. Ninety-five respondents listed the Turtle Mountain Reservation as their home. Thirty-one respondents listed the Fort Berthold Reservation as their home. Twenty-six respondents reported living on the Spirit Lake Reservation and six participants represented the Standing Rock Reservation. No Native American respondents reported living on the Lake Traverse Reservation, which covers only a small portion of southern North Dakota.

b. *Elderly North Dakotans (60+)*

Like the Native American population, the trends seen with respondents who reported being sixty years of age or older followed those of the general population. However, those trends generally displayed lower numbers because many elderly respondents did not report experiencing any legal problems within the past five years. Elderly respondents accounted for 31.2% of all respondents (207 individuals). One distinct difference was that a significant portion

of the 60+ population reported being retired from the work force for more than three years, which resulted in very few problems experienced within the Employment category.

Additionally, only 35.7% of elderly respondents (74 individuals) reported renting a residence during the past three years, which resulted in fewer potential housing issues within this population. However, of those elderly North Dakotans who did rent an apartment or house, fewer individuals reported experiencing problems as compared to the general population. While more elderly respondents did receive at least a portion of their security deposit upon leaving the property (52.9% or 18 individuals compared to 47.5% of the general population), 65.6% of elderly respondents (21 individuals) did not receive any itemization of deductions from that deposit. Elderly respondents also reported experiencing fewer habitability issues, with mold still being the most widely reported. However, of the 53.8% of those experiencing such problems, only seven individuals reported that the landlord did not fix the problem in a timely manner.

Of all elderly respondents, 63.3% (131 individuals) reported having a valid will. Similarly, 52.4% of all elderly respondents (108 individuals) reported having a power of attorney for financial matters, and 47.1% (97 individuals) reported having a health care directive. Each of these percentages is more than double the numbers reported by the general population. Although the actual number of legal problems reported by the elderly population of respondents are not especially great, the cases of elder abused reported by the general population signify unique legal needs for elderly residents in all North Dakota communities.

3. Participation by county

As a largely rural state, more than half of the fifty-three counties in the state have a population base below 5,000 residents.¹⁴ Of all respondents, the following chart depicts participation by county:

Counties	# of Participants	Counties	# of Participants
Adams	0	McLean	19
Barnes	14	Mercer	0
Benson	24	Morton	20
Billings	1	Mountrail	6
Bottineau	4	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	1
Burleigh	76	Pierce	6
Cass	53	Ramsey	19
Cavalier	6	Ransom	8
Dickey	1	Renville	0
Divide	0	Richland	3
Dunn	1	Rolette	109
Eddy	2	Sargent	3
Emmons	1	Sheridan	0
Foster	10	Sioux	4
Golden Valley	7	Slope	0
Grand Forks	112	Stark	38
Grant	4	Steele	1
Griggs	0	Stutsman	19
Hettinger	0	Towner	2
Kidder	2	Traill	7
LaMoure	0	Walsh	4
Logan	0	Ward	33
McHenry	6	Wells	0
McIntosh	7	Williams	14
McKenzie	17	Unidentified	36

III. CONCLUSION

The five most-noted areas of reported legal difficulty include: 1) Wills and Estate Issues, 2) Housing Issues, 3) Consumer Issues, 4) Elementary Education Issues, 5) Family/Domestic Issues. The topical area of wills and estate possesses the greatest potential for legal problems because approximately 68% of the 700 respondents, or 457 individuals, have no legal document

¹⁴. North Dakota State Data Center, Population Trends, available at <http://www.ndsu.edu/sdc> (last visited May 20, 2007).

to direct the probate of their estates, establish their medical wishes, or provide for the appointment of a power of attorney for financial matters upon their incapacity or death. As a distinct population, the 207 elderly respondents fare slightly better, with over half having a valid will and/or a power of attorney for financial matters. While it may be true that not every person lives in a financial or familial situation that would benefit from the existence a will, healthcare directive, or power of attorney for financial matters, the fact that so many individuals lack the resulting protection of such documentation should be an area of concern for the State.

Three hundred and twenty-three individuals reported renting a residence within the past three years and approximately 65%, or 209 individuals, reported experiencing at least one problem involving housing issues. The majority of problems reported involved the non-return of security deposits or the landlord not providing a list of itemized deductions taken upon the tenant leaving the rental property. Additionally, over 130 respondents reported that the landlord did not attend to maintenance problems, which resulted in unsafe or unhealthy living conditions, especially mold and the failure of security features, such as working locks.

The topical area of consumer issues, especially debt collection, is an area of concentrated concern for many respondents. Over 180 individuals reported problems with creditors or debt collection agencies, which included harassment against the debtor and a number of default judgments. Most of the individuals reporting debt problems do not know what rights and protections the law affords them as debtors, and therefore continue to avoid the situation instead of taking the proper steps to improve their financial well being. In addition, eight individuals reported foreclosure of a home mortgage.

Responses regarding the topical area of parent and student rights and responsibilities within the public elementary education system show the potential for great concern. Of the 209

respondents who report having school-aged children in their care, more than 100 had no knowledge of their rights as the parent or guardian or the child's educational rights as a student. Within the group of sixty individuals who each have a child with special needs, many parents do not understand their rights as a parent under the IEP or 504 Educational Plan. Moreover, ten special needs children were reported as having no opportunity for education through a specialized educational plan in their community.

The fifth area of noted concern is that involving family or domestic issues. Nearly 100 individuals reported seeking some sort of legal or community assistance due the break-up of a marriage or live-in relationship. As a corollary matter, many reported involvement in disputes over child custody and child support. However, the most extensive problems involved experiences of domestic violence, the affects of which are reported to extend beyond the home resulting in evictions and loss of employment.

In conclusion, the success of the North Dakota Legal Needs Assessment may, on one level, be determined through its usefulness to the State and the legal community. Exploring ways in which the State can foster more access to justice for residents is imperative for achieving an able and participatory population. Such considerations could include rules directing lawyers to fulfill pro bono representation requirements, initiating the creation of public interest law firms, and developing assistance centers/mechanisms for pro se parties. Ultimately though, the true success of the Assessment is the creation of awareness in individuals of their legal rights and responsibilities. The 700 respondents have been introduced to the knowledge that certain daily circumstances may have legal ramifications and/or remedies and, hopefully, the assurance that a few organizations do exist that want to help.