



# Self-Represented Litigation in Nebraska: A Survey of Judges and Clerks

# **Self-Represented Litigation in Nebraska:**

## **A Survey of Judges and Clerks**



**Nebraska Supreme Court Committee on  
Self-Represented Litigation**



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## LITERATURE ON SELF REPRESENTATION

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The growing presence of self-represented litigants (SRLs) in courts across the country has been the subject of much discussion and concern in recent years. While there are no comprehensive national statistics to quantify the problem, there is evidence from state and local courts, as well as empirical observations from judges and court staff suggesting that this problem is significant and persistent. In 2010, the American Bar Association (ABA) Coalition for Justice conducted a survey of approximately 1200 state trial judges on the topic of self-represented litigation. The results showed that an increasing number of litigants are representing themselves.<sup>1</sup> A number of jurisdiction-specific studies have also found that SRLs are present in a significant proportion of cases, especially in family law cases such as divorce, custody, child support, and paternity. For example, two out of three family court filings in California are submitted by SRLs<sup>2</sup>; 70% of family cases in Maryland involve at least one SRL at some point in the case<sup>3</sup>; and in Phoenix, AZ and Washington, DC, nearly 90% of divorce cases involve at least one SRL<sup>4</sup>.

The impact of self-representation is not yet fully understood, but extant literature on the topic suggests that there are significant access to justice concerns for those who reach the courtroom without a lawyer. The judges in the 2010 ABA study indicated that litigants are generally doing a poor job of representing themselves.<sup>5</sup> Of the judges that believed self-representation was associated with worse case outcomes, 94% said that failure to present necessary evidence was the most common problem. Other common problems included procedural errors, ineffective witness examinations, failure to properly object to evidence, and ineffective arguments. Results of Julie Macfarlane's work from Canada suggest that one of the most consistent complaints unrepresented litigants have is difficulty reading and understanding the forms due to confusing and complex language.<sup>6</sup> And, although self-help resources do exist in many jurisdictions – whether in person or online – they generally do not fully mitigate the absence of formal legal assistance.

In addition to its impact on the litigants, the SRL phenomenon potentially compromises the efficiency of the court system. Challenges courts have been facing as a result of SRLs include docket-management issues, threats to judicial impartiality, and increased costs. Seventy-eight percent of the judges in the ABA study indicated that self-representation negatively impacts the courts. Of these judges, 90% indicated that court procedures were slowed, 71% said SRLs use

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<sup>1</sup> ABA Coalition for Justice (July 2010) Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts. Available at

<http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.authcheckdam.pdf>

<sup>2</sup> Judicial Council of California (December 2014) Fact Sheet: Programs for Self-Represented Litigants. Available at

<http://www.courts.ca.gov/documents/proper.pdf>

<sup>3</sup> Maryland Judiciary (August 2007). Clearing a Path to Justice: A Report of the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts. Available at <http://www.mdcourts.gov/publications/pdfs/selfrepresentation0807.pdf>

<sup>4</sup> Jona Goldschmidt et al (1998) Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers. Chicago: American Judicature Society.

<sup>5</sup> ABA Coalition for Justice (July 2010) Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts.

<sup>6</sup> Julie Macfarlane (2013) The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report. Available at <http://www.representingyourselfcanada.files.wordpress.com/2014/02/reportml5-2.pdf>

more staff time to assist them, and 56% cited a lack of fair presentation of relevant facts. It has been estimated that the presence of SRLs can cause the courts to spend up to four times as much time on a case.<sup>7</sup>

Meanwhile, other research has suggested a more complex dynamic in the courtroom. While SRLs have been shown to slow down the process for probate, non-motor vehicle tort, and habeas corpus, there is some evidence that the presence of SRLs may actually speed up the proceedings in family law and small claims cases.<sup>8</sup> On the one hand, SRLs may take up more time in the courtroom due to their lack of understanding of court procedures and paperwork requirements; on the other hand, SRLs are less likely to utilize time-consuming tactics common among lawyers. It also might be the case that people are more likely to self-represent on less complicated, and therefore less time consuming cases. Further research is needed to flesh out all of these factors.

As the legal profession develops procedures for appropriately responding to the growth of SRLs, judges are concerned that providing guidance to individuals who are representing themselves may compromise judicial impartiality<sup>9</sup> and court staff are concerned that assistance may amount to the unauthorized practice of law. While in Canada, judges have an *obligation* to provide assistance to SRLs in both civil and criminal cases, there is no such mandate here in the United States. Only the ABA Model Code of Judicial Conduct Rule 2.2 contains minimal guidance, buried in the commentary. It reads: “it is not a violation of this rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”<sup>10</sup> Currently, 47% of states do not yet guide judges to assist SRLs.<sup>11</sup>

## SELF REPRESENTATION IN NEBRASKA

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According to the Justice Index created in 2014 by the National Center for Access to Justice to measure state-based justice systems, Nebraska received a score of 67.57 on a scale from 0-100 (where 100 is the best possible score) for support provided to SRLs. The score was based on a review of state court websites, conversations with state court administrators, surveys of secondary sources, and reviews of state access to justice sites, all to determine the amount of support provided to SRLs. The national median was 58.6 and scores ranged from 13.5 (Mississippi) to 93.2 (Hawaii).

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<sup>7</sup> John M. Greacen (2002) Self Represented Litigants and Court and Legal Services Responses to Their Needs: What we Know. Center for Families, Children & the Courts, California Administrative Office of the Courts. Available at [http://lri.lsc.gov/sites/lsc.gov/files/LRI/pdf/02/020045\\_selfrep\\_litigants\\_whatweknow.pdf](http://lri.lsc.gov/sites/lsc.gov/files/LRI/pdf/02/020045_selfrep_litigants_whatweknow.pdf) accessed March 10, 2015.

<sup>8</sup> Beth M. Henschen (December 2001) Lessons from the Country: Serving Self-Represented Litigants in Rural Jurisdictions. American Judicature Society.

<sup>9</sup> In the 2010 ABA Study, of the 78% of judges that said that the court is negatively impacted by parties not well represented, 42% recognized that the court's impartiality may be compromised.

<sup>10</sup> Jona Goldschmidt (2007) Judicial Ethics and Assistance to Self-Represented Litigants. The Justice System Journal. Vol. 28, No. 3:324-328.

<sup>11</sup> National Center for Access to Justice at Cardozo Law School, the Justice Index. <http://www.justiceindex.org/> accessed March 10, 2015.

State attributes that contributed positively to Nebraska's score included:

- A person or office in the state court system responsible for initiatives pertaining to unrepresented people
- A statute, rule of professional conduct, or other state wide guidance document authorizing the provision of unbundled or limited scope legal services (Rule 501.2b-e, Rule 504.2)
- A statute, rule of judicial conduct, or other state wide guidance document authorizing or encouraging judges to take steps to ensure that unrepresented people are fairly heard (Revised Code of Judicial Conduct §5-302.2, comment 4)
- A statute, rule or other state wide guidance document instructing court staff to provide informational assistance to unrepresented persons
- That the state provides (or courts allocate) funding for court-based programs (self-help centers or other structures) to assist unrepresented people
- The availability of forms or links to forms on the state court website, along with instructions to accompany the forms.

State attributes that contributed negatively to Nebraska's score included:

- Court staff do not receive training on this subject;
- There is no statute, rule or other state wide guidance document requiring that websites, electronic filing systems and other advanced technology used by courts be accessible to unrepresented people; and
- There is no statute, rule or other state wide document establishing the obligation of the court to communicate with people who have little or low literacy in one or more types of cases.

While the Justice Index serves as a useful tool for comparing states and gaining a basic understanding of the strengths and weaknesses of a state's justice system, a number of caveats are worth noting. First, the scores are meant to capture state-level information and do not account for within-state variation. Second, the scores are based in part on subjective reports of stakeholders in each state and therefore do not capture information regarding how programs or legal mandates have been implemented let alone how they are experienced by SRLs. Third, the questions asked of each state to compile information regarding support for self-representation focused on court efforts and therefore missed some of the very valuable support being provided by Legal Aid of Nebraska and the Nebraska State Bar Association. And finally, without knowing more about the *need* for SRL support in Nebraska, it is difficult to ascertain the extent to which those needs are being met.

## SURVEY OVERVIEW

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### *A. Objectives*

In an effort to gain more information about the SRL landscape in Nebraska, this survey of judges and clerks was conducted. The following specific objectives were defined for the data collection and analysis presented in this report:

1. To quantify the amount of self-representation that is taking place in Nebraska;
2. To identify the characteristics of self-representation cases;
3. To identify factors which either encourage or discourage self-representation;
4. To determine the impact of self-representation on individuals in the courtroom;
5. To determine the impact of self-representation on the court process; and
6. To assess the effectiveness of current resources available to self-represented litigants.

The results of this survey will be instrumental in identifying strategies to better support self-represented litigants as well as improve the court process. In addition to understanding the general trends, it is also important to understand whether there are noticeable differences based on case types or region. Therefore, statistically significant differences between types of cases (area of law), respondent locations (urban vs. rural), and court level (district vs. county)<sup>12</sup> are presented and discussed.

### *B. Methodology*

The survey instrument was distributed to district court and county court judges<sup>13</sup> throughout the state of Nebraska, as well as clerk magistrates and clerks of the district courts<sup>14</sup>, amounting to 114 judges and 169 clerks. An email containing the link to the online survey was sent by Frankie J. Moore, Chief Judge of the Nebraska Court of Appeals on December 9, 2014 and the judges and clerks were given 10 days to complete the survey.

The response rate was 75% for the judges and 63% for the clerks, for an overall response rate of 68%. These response rates are well above the rate of 30-50% identified in the literature as

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<sup>12</sup> In noting court level differences, it is important to consider the types of cases typically heard by district vs. county courts. Although district courts have concurrent jurisdiction with county courts, they primarily handle divorce, child support and visitation order enforcement, protection orders, name changes and powers of attorney. County courts handle guardianships/conservatorships, garnishments, notice of exemptions, setting aside criminal convictions, forcible entry and detainer (evictions), probate and small estate transfers, and fence disputes.

<sup>13</sup> Specifically, the survey was distributed to 56 General Jurisdiction District Court Judges and 58 Limited Jurisdiction County Court Judges. The district court judges can be found here: <https://supremecourt.nebraska.gov/dc/judges> . The county court judges can be found here:

<https://supremecourt.nebraska.gov/cc/judges>

<sup>14</sup> Specifically, the survey was distributed to the 76 clerk magistrates and 93 clerks of district courts. Information on the clerks can be found here: <https://supremecourt.nebraska.gov/cc/clerk>



acceptable for online surveys.<sup>15</sup> Consequently, 44.4% of the sample is made up of judges and 55.6% is made up of clerks. Of the judges, about half are from rural counties and half are district court as opposed to county court judges. Of the clerks, 73.1% are from rural counties, while about half are district court as opposed to county court clerks. Below is a table of response rates broken down by judicial district.

Judicial District	Clerk Response Rate	Judge Response Rate	Total Response Rate
First	72.2%	100%	79.2%
Second	33.3%	75%	57.1%
Third	33.3%	66.7%	61.1%
Fourth	66.7%	63%	63.3%
Fifth	71.4%	77.8%	73.3%
Sixth	84.6%	85.7%	85%
Seventh	42.9%	60%	47.4%
Eighth	48%	100%	56.7%
Ninth	75%	50%	58.3%
Tenth	64.3%	20%	52.6%
Eleventh	44.8%	88.9%	55.3%
Twelfth	70%	66.7%	67%

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<sup>15</sup> See Lozar Manfreda, K., M. Bosnjak, J. Berzelak, I. Haas, and V. Vehovar (2008) Web surveys versus other survey modes: A meta-analysis comparing response rates. *International Journal of Market Research* 50(1):79-104. Also see Shih, T.H., and X. Fan (2008) Comparing response rates from Web and mail surveys: A meta-analysis. *Field Methods* 20(3):249-271.

## SURVEY RESULTS

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### *A. Quantifying Self Representation in Nebraska*

#### *1. Five Year Trends*

In his 2011 State of the Judiciary Address, Nebraska Chief Justice Michael Heavican asserted that “one of the major challenges that our courts and judges face as we proceed into the 21<sup>st</sup> Century is the rapid increase of self-represented parties.” Eighty-four<sup>16</sup> percent of the judges surveyed indicated that they agree with this statement. When asked to reflect on whether they believe the percentage of self-represented litigants has increased over the past 5 years, 73% of judges and clerks agreed, and of these, just over half indicated that they believe the increase has been dramatic.<sup>17</sup>

There were some notable differences by region and court level.<sup>18</sup> Greater increases were reported among respondents in urban counties and district courts.<sup>19</sup> Almost 80% of urban county respondents believed there had been a slight or dramatic increase over the past 5 years compared to 36% of rural county respondents (see Fig. 1).

Meanwhile, approximately 89% of district court respondents believed there had been a slight or dramatic increase over the past 5 years, compared to 56% of county court respondents (see Fig. 2). A brief note about the difference between the types of cases heard by the district and county courts is worth considering here and throughout this report. Specifically, even though district courts have concurrent jurisdiction with county courts, when it comes to civil cases, divorce and custody are primarily heard in the district courts, while the county courts hear civil cases involving \$52,000 or less, small claims cases, probate, guardianship, conservatorship and adoption proceedings. It is therefore the county courts which have historically been more likely to experience self-representation, whereas this is likely to be a new phenomenon for district court staff.

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<sup>16</sup> JQ4: In his 2011 State of the Judiciary Address, Chief Justice Michael Heavican asserted that “one of the major challenges that our courts and judges face as we proceed into the 21<sup>st</sup> Century is the rapid increase of self-represented parties.” Do you agree? (Response options included Yes, No, and Unsure). Throughout this report the questions from the survey will be provided with a J preceding the question number for the questions asked of the judges and a C preceding the question number for the questions asked of the clerks.

<sup>17</sup> JQ6/CQ12: Please complete the following sentence: Compared to 5 years ago, the percentage of people representing themselves has... (Response options included decreased dramatically, decreased slightly, stayed about the same, increased slightly, increased dramatically, and I don't know). Only 17.5% said that they thought there has been no change in the past 5 years and 9.5% indicated that they did not know.

<sup>18</sup> A logistic regression was performed to ascertain the effect of urban/rural, district/county, and urban/rural on reported belief of an increase in SRLs over the past 5 years. The regression model was statistically significant and explained 22% (Nagelkerke R squared) of the variance in SRL increase reports. The district/county variable more strongly predicted the response than urban/rural, and judge/clerk was not a significant predictor. All significant results noted throughout this report are at the 95 percent confidence level.

<sup>19</sup> Counties were categorized as either urban or rural based on a value-added analysis of the 2010 Census urban/rural data, compiled by David Drizd, UNO Center for Public Affairs Research, 4-20-2012. Note that this categorization is at the county level.

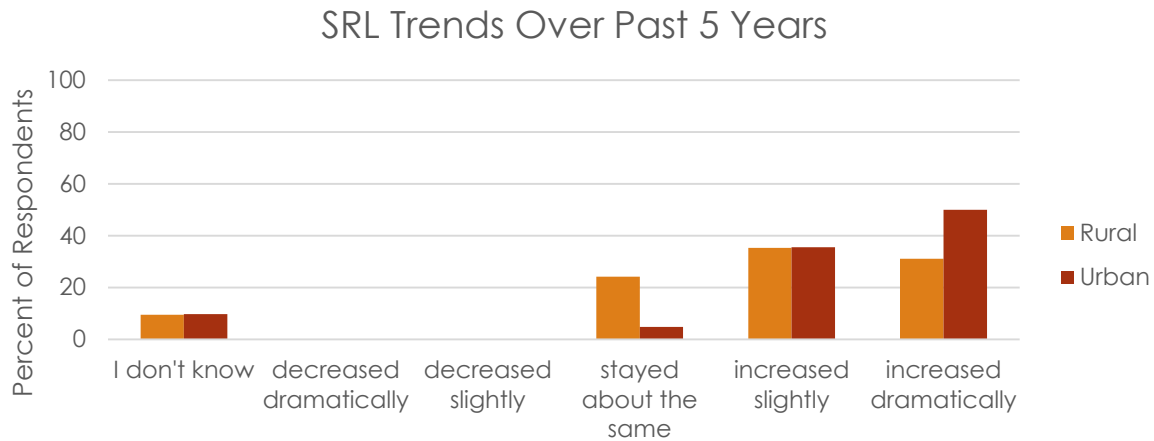


Figure 1. Percent of clerks and judges indicating specified growth trends for SRLs over the past 5 years, by urban and rural counties.

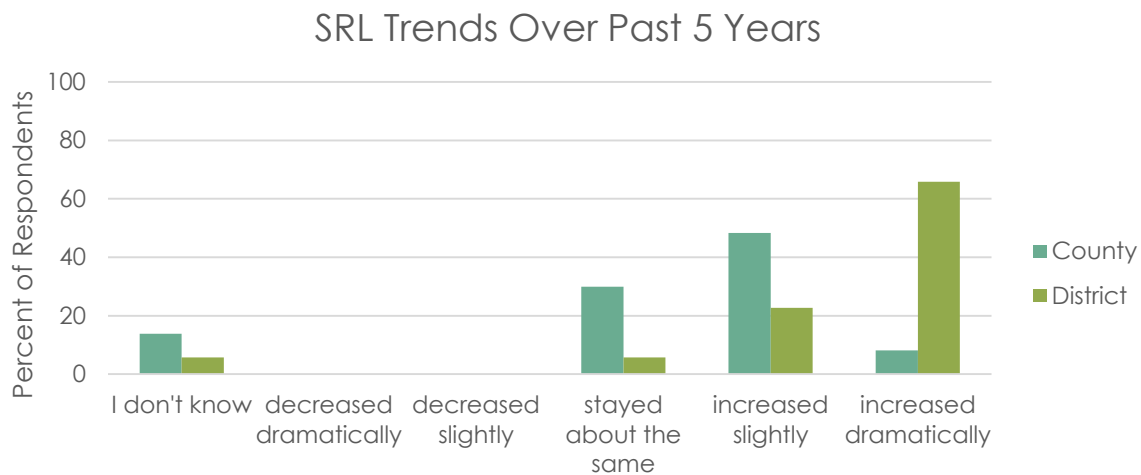


Figure 2. Percent of clerks and judges indicating specified growth trends for SRLs over the past 5 years, by county or district court.

## 2. Current Estimates

When asked to approximate the current percent of self-represented litigants in their courtrooms, there was a great deal of variation in the responses.<sup>20</sup> Approximately 36% estimated that only one party has an attorney in 0-20% of their cases, followed by 36% estimating that only one party has an attorney in 21-40% of their cases. Some judges and clerks indicated that their courts are experiencing significantly higher numbers of SRLs: 11% estimated that only one party has an attorney in 61-80% of their cases. A significant number (almost 20% of the respondents) indicated that both parties are SRLs in 21-40% of their cases (see Fig. 3).

<sup>20</sup> JQ5/CQ11: Please provide your best approximation of the number of self-represented litigants in the categories below. Do not include small claims or traffic cases. (Response options include 0-20%, 21-40%, 61-80%, and 91-100%)

Both judges and clerks agreed that a higher percentage of cases involve SRLs as defendants rather than SRLs as petitioners (see Fig. 3). Judges tended to believe that a higher percent of cases are defended by SRLs than did clerks, with 51% of judges indicating that over 20% of their cases are defended by SRLs compared to 31% of clerks.

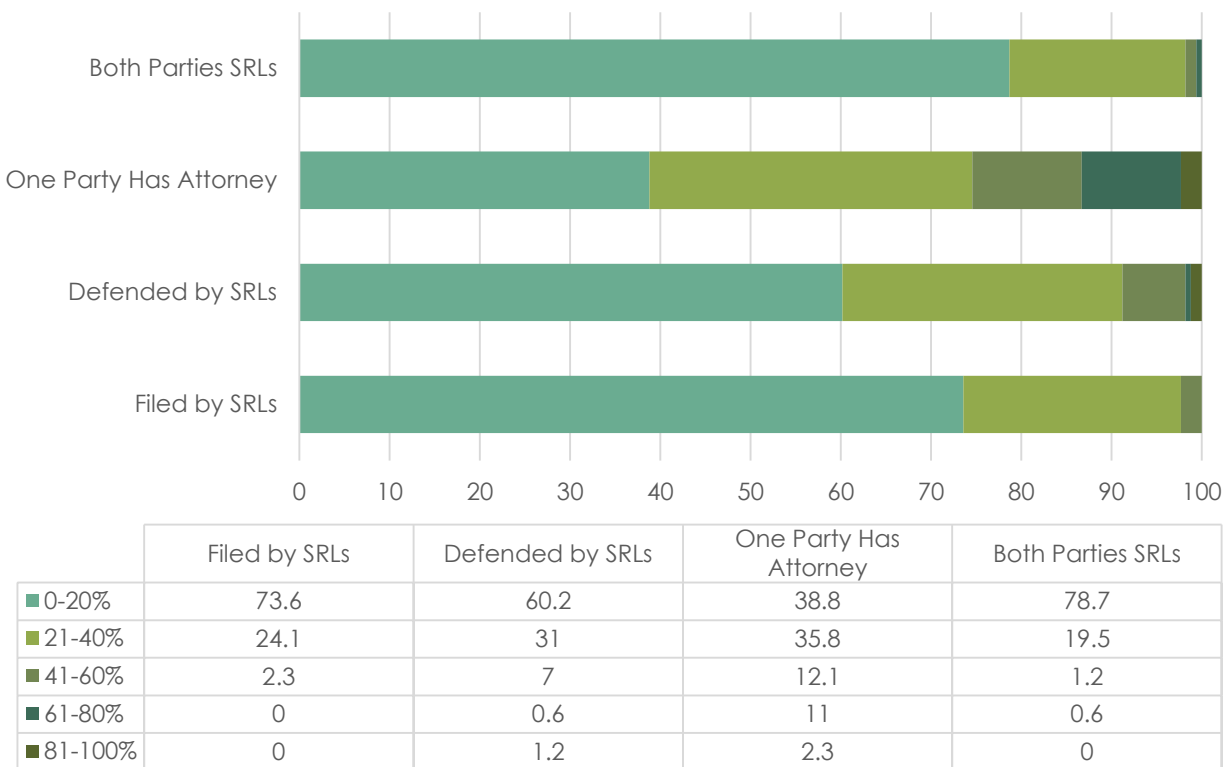


Figure 3. Estimated percent of cases filed and defended by SRLs, as well as cases for which one party has an attorney or both parties are SRLs. Colored regions represent the estimated percent of cases. The x-axis and numbers in the chart refer to the percent of respondents.

Court level differences were apparent as well, with district court respondents experiencing a significantly higher percent of cases filed by SRLs as well as cases where both parties are SRLs. Specifically, regarding cases filed by SRLs, 53.6% of district court respondents indicated that 0-20% of their cases were filed by SRLs and an additional 41.7% indicated that 21-40% of their cases were filed by SRLs. Meanwhile, almost all of the county court respondents (92%) indicated that their cases were filed by SRLs in 0-20% of their cases. See Fig. 4.

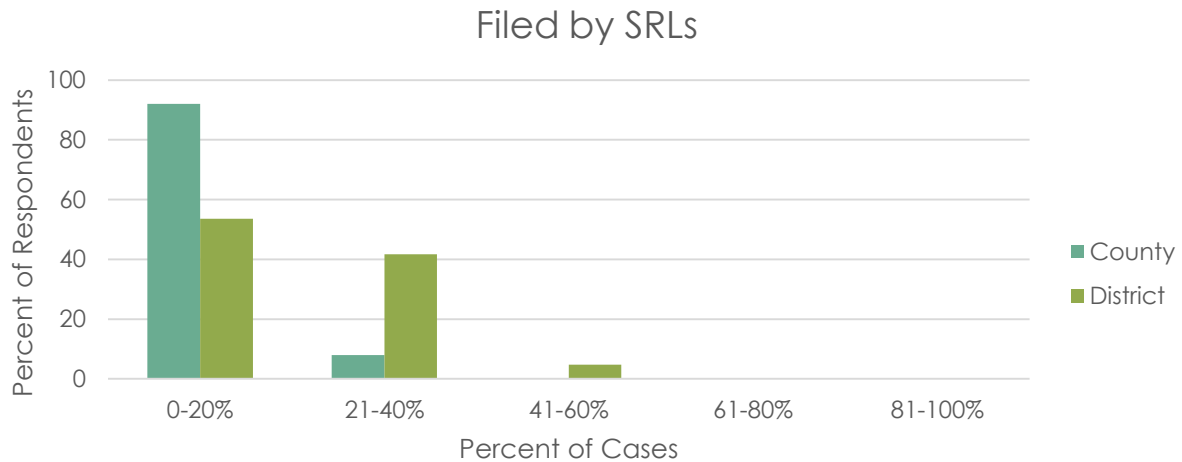


Figure 4. Percent of cases filed by SRLs.

There were court level differences for estimates of the percent of cases for which both parties are SRLs as well. Almost 65% of district court respondents indicated that both parties are SRLs in 0-20% of their cases, leaving almost 32% of district court respondents indicating that both parties as SRLs in 21-40% of their cases. Meanwhile, most (92%) of county respondents indicated that both parties are SRLs in 0-20% of their cases. See Fig. 5.

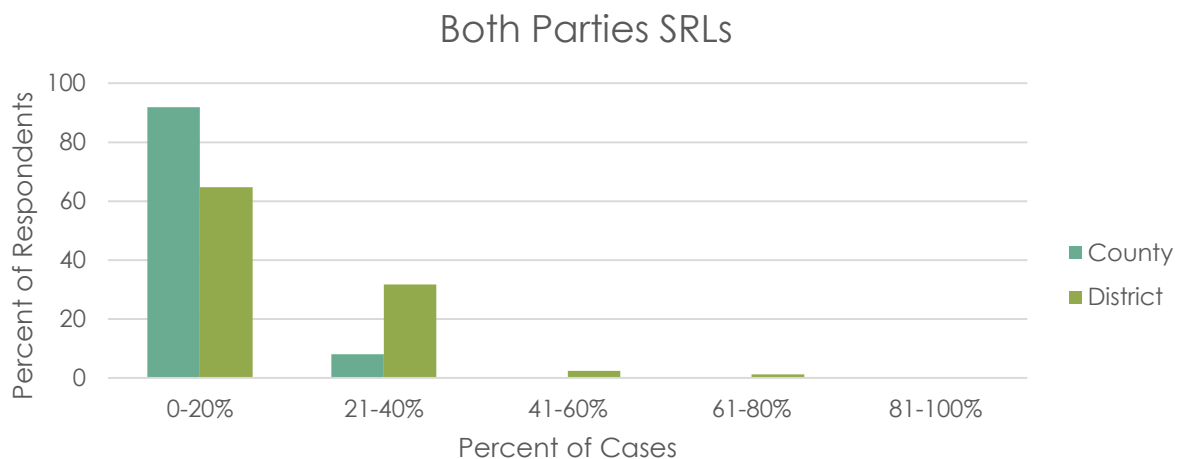


Figure 5. Percent of cases for which both parties are SRLs

An analysis of estimated percentages of cases with SRLs at the county-level showed some notable trends. The counties along the very western part of the state are experiencing a higher rate of SRLs as compared to other rural areas. And, in the district courts, there appeared to be higher rates of SRLs along the very south-eastern part of the state. See Figure 23 in the appendix for more detailed information by county.

### 3. Estimates by Area of Law

Part of the variability in estimates of how many SRLs are appearing in court can be explained by differences from one area of the law to another. Judges and clerks were asked to indicate the area of the law in which they observed the most SRLs.<sup>21</sup> Over half (60.2%) indicated that family law cases had the most SRLs as compared to the other response options provided. Almost 25% indicated that consumer law cases had the most SRLs, followed by housing law cases (12.9%). Other response options included health/medical, individual/civil rights, juvenile law, public benefits, employment, education, and wills and estates. See Fig. 6.

Among those who chose family law as having the most SRLs, almost half (45.6%) cited divorce cases specifically. Another 19.4% of those who chose family law indicated that domestic abuse cases had the most SRLs. See Fig. 6.

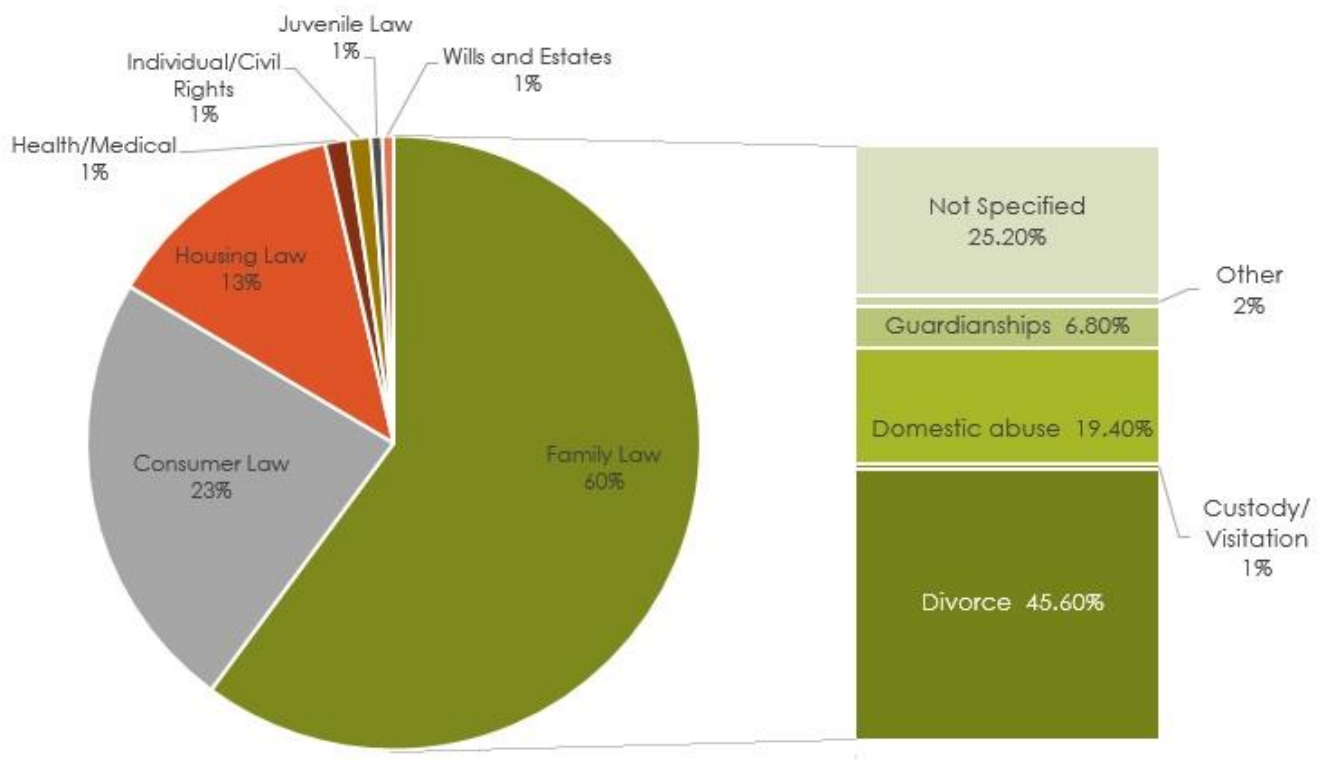


Figure 6. Percent of respondents indicating specified area of law with the most SRLs.

<sup>21</sup> JQ7/CQ13: Please provide the following information regarding self-represented litigation and substantive areas of the law. Area with the most self-represented litigants. (Area of law response options were provided in a drop-down menu).

#### 4. Differences by Region and Court Level

As expected, given that cases such as divorce, protection orders, and child support/visitation enforcement orders are heard in the district courts specifically, there were significant differences by court level in terms of the area of law selected as having the most SRLs. Almost all (98.9%) of the district court judges and clerks indicated that the most SRLs appeared in family law cases. Meanwhile, county court judges and clerks provided more variability in their responses, with 18.5% indicating family law, 48.1% indicating consumer law, and 25.9% indicating housing law as the area with the most SRLs. See Fig. 7.

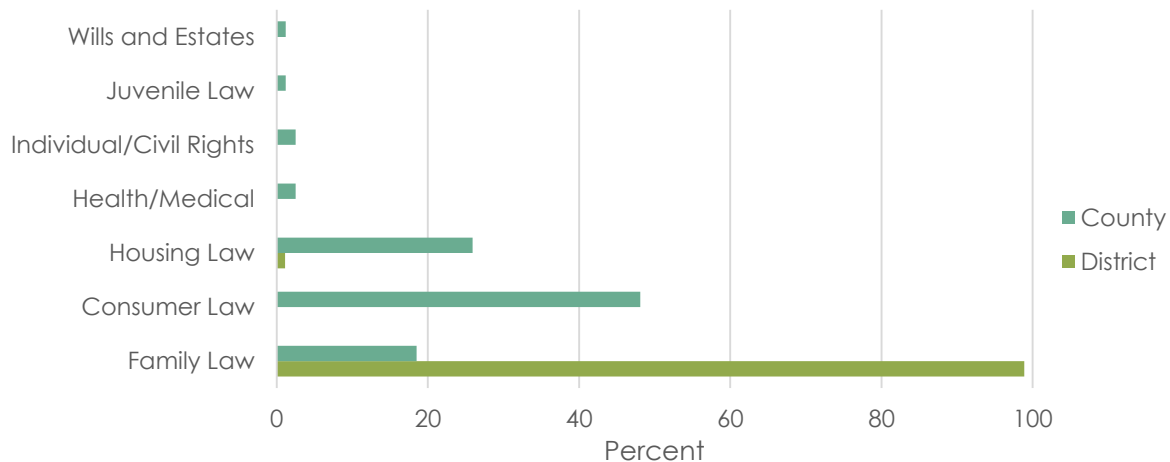


Figure 7. Area of law with the most SRLs, by court level.

Meanwhile, rural county respondents provided more variable responses than did urban county respondents in terms of the area of law with the most SRLs. Almost 68% of urban county respondents indicated that family law, followed by 21% indicating housing law and the remaining 11.3% indicating consumer law as the area with the most SRLs. Among the rural county respondents, however, 55.9% indicated family law, followed by 30.3% consumer law, 8.3% housing law, almost 2% health/medical, almost 2% civil rights, 1% juvenile and 1% wills and estates as the area with the most SRLs. See Fig. 8. Also see Figure 25 in the appendix for more detailed information by county.

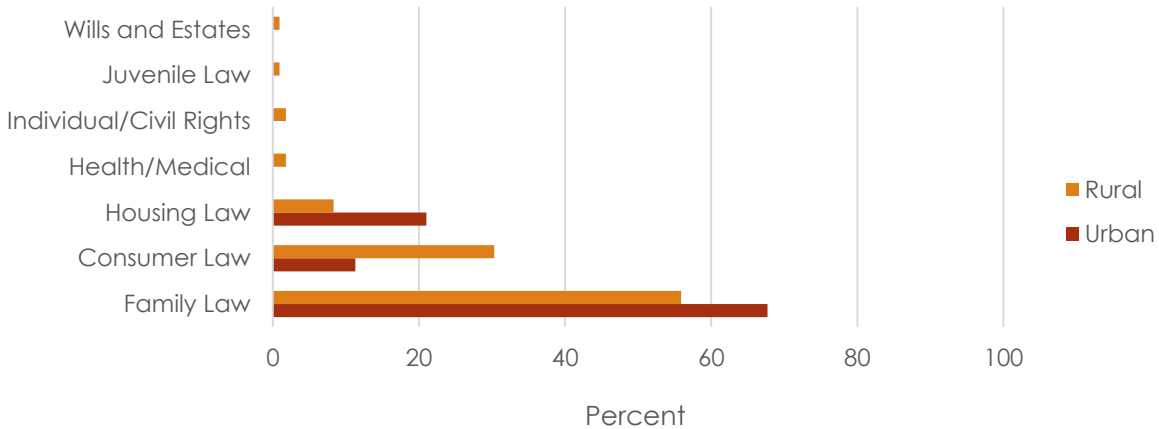


Figure 8. Area of law with the most SRLs, by rural or urban county.

## ***B. The Needs of Self Represented Litigants***

### *1. Top Reasons for Self Representing*

When asked to provide the top three reasons they believe people choose to represent,<sup>22</sup> the surveyed judges provided the following:

1. Lack of financial resources: in the top three for 85.6%, the top reason for 63.23%;
2. The belief that relying on a lawyer will increase the time and cost of resolving the dispute: in the top three for 65.8%, the top reason for 11.8%; and
3. The belief that the problem can be handled without a lawyer: in the top three for 68.4%, the top reason for 11.8%.

There were two other response options that, while they did not rank as high as the above reasons, had significant responses nonetheless. Almost 35% believed that limited understanding of the costs and benefits of representation was one of the top three reasons people choose to self-represent (2.6% believed it was the top reason) and 22.4% believed that the availability of self-help resources significantly deters litigants from seeking legal assistance (7.9 believed it was the top reason for self-representation).

There were notable geographic differences as well (see Fig. 9). Rural respondents were more likely than urban respondents to include in their top three choices the belief that a lawyer will increase the cost and time of resolving a dispute (78% of rural vs. 51.4% of urban) and the belief that the problem can be handled without a lawyer (73.2% of rural vs. 62.9% of urban). Meanwhile, urban respondents were more likely to indicate that SRLs have a limited understanding of the costs and benefits of legal representation (48.6% urban vs. 31.7% rural) and

<sup>22</sup> JQ8: Choose the top three reasons you believe people may choose to represent themselves. Response choices were as shown in Figure 9.



that the availability of self-help resources deter litigants from seeking legal assistance (28.6% urban vs. 17.1% rural).

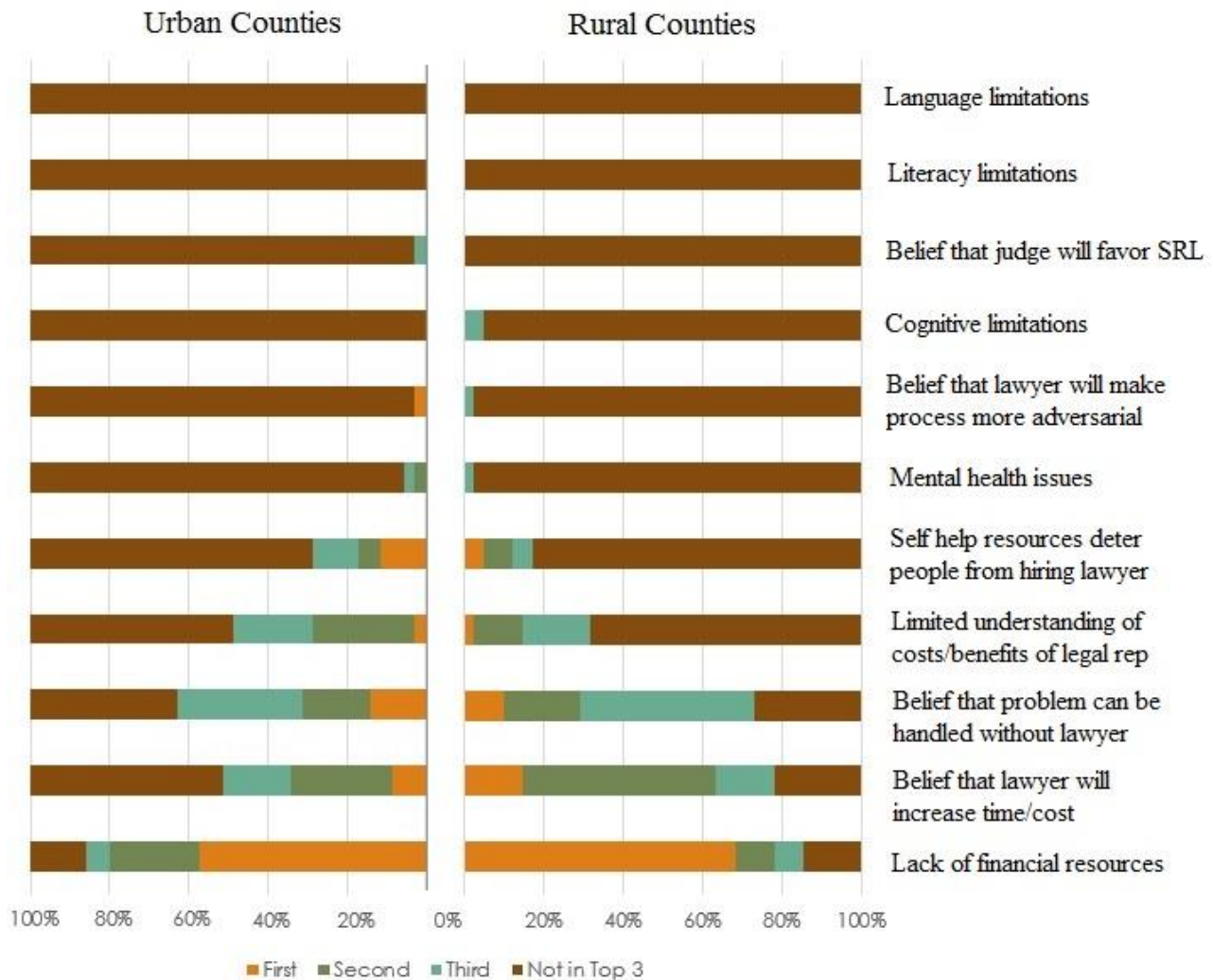


Figure 9. Top three reasons for self-representation, by urban vs rural county residency.

## 2. Frequency of Assistance Needed

Clerks were asked to estimate how often SRLs approach them for assistance.<sup>23</sup> More than a third of the clerks (36%) estimated that SRLs approach them for assistance several times a week. This response was followed by estimates of once a week (18%) and daily (17%). Clerks in urban

<sup>23</sup> CQ4: How often are you approached by a self-represented litigant seeking assistance? Response choices included never, less than once per month, 1-2 times per month, once per week, several times a week, and daily.

counties experienced a greater frequency of SRLs seeking assistance, with 42.3% estimating that SRLs approach them on a daily basis (compared to 8.1% in rural counties) and 42.3% indicating that SRLs approach them several times a week (compared to 33.8% in rural counties). Clerks in rural counties provided more variable responses to this question. See Fig. 10.

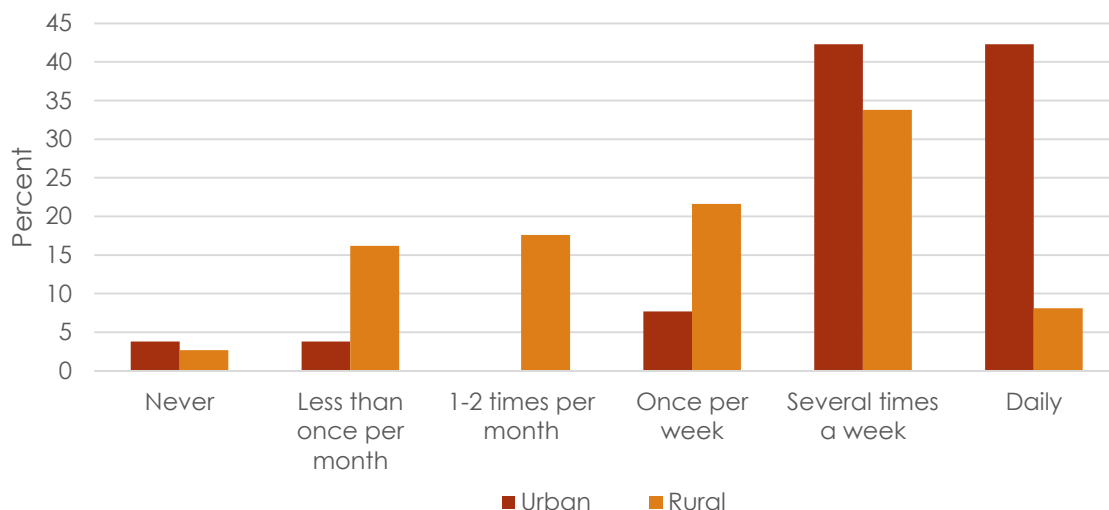


Figure 10. Clerks' estimates of the frequency with which SRLs seek assistance.

### 3. Type of Assistance Needed

When approaching court staff for assistance, the most common request by SRLs is for help filing the correct forms for their type of case.<sup>24</sup> Almost 55% of the clerks indicated that they *often* receive these requests. The second most common request for assistance is for help filling out legal forms (51% indicated they *often* receive these requests). And, the third most common request is for information regarding hearing dates (44.5% indicated they *often* receive these requests). See Fig. 11.

<sup>24</sup> CQ5: How often do you encounter the following requests for assistance from self-represented litigants?

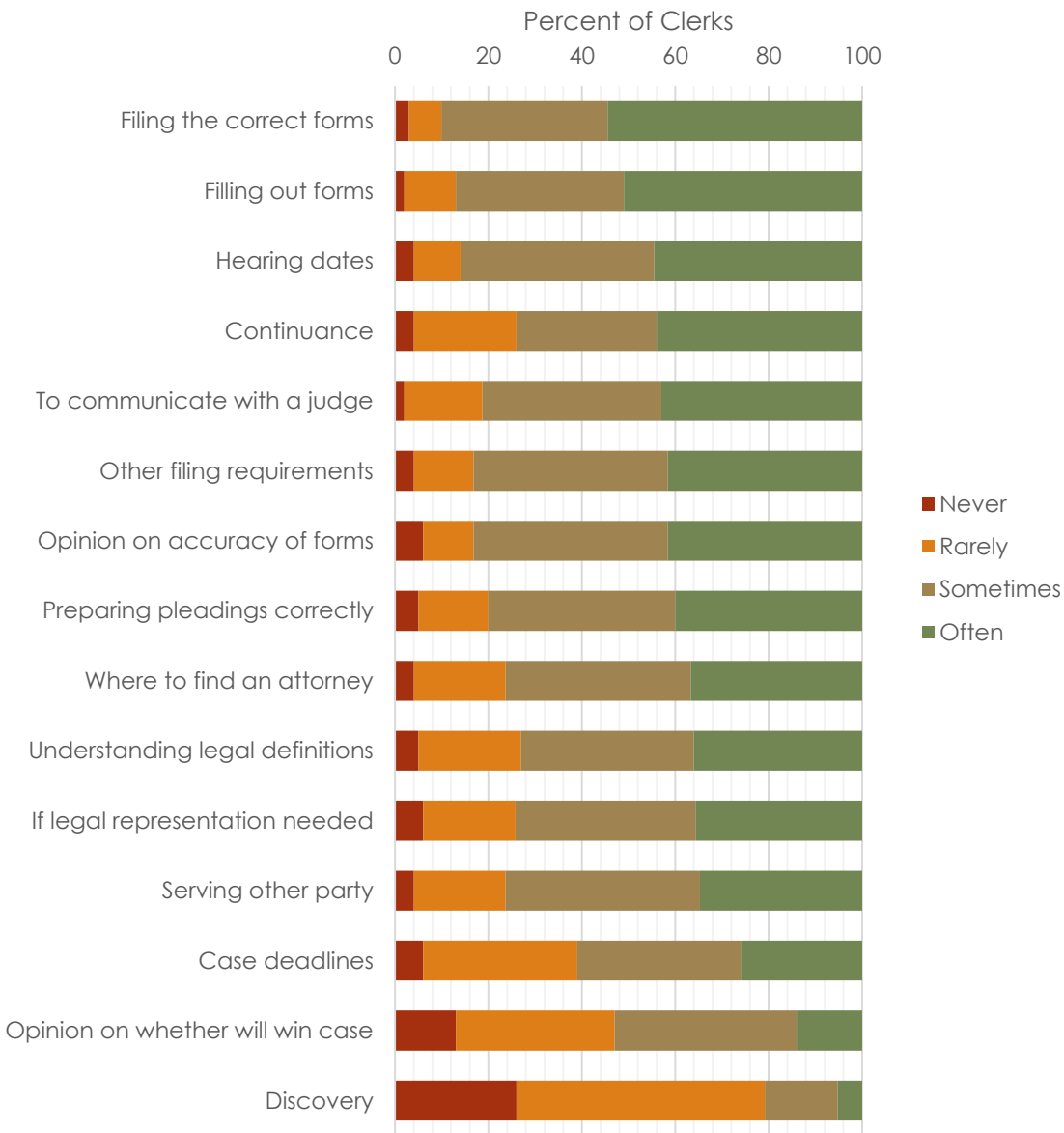


Figure 11. Clerk estimates of how often requests are made for specific types of assistance.

There were some notable court level and geographic differences in the types of request clerks typically receive. First, urban county respondents were more likely than rural county respondents to report that they often received requests for help with filing the correct forms for their case type (84.6%), serving the other party (54%), preparing pleadings correctly (64%), understanding legal definitions (56%), whether or not their matter requires legal representation (51.9% often) and solicit the clerk’s opinion regarding whether or not they would be successful (26.9% often).

District court respondents were more likely than county court respondents to report that they often received requests for help filing the correct forms for their case type (71.4%) and serving the other party (51%). Meanwhile county court respondents were more likely than district court respondents to report that they often received requests for a continuance (58.8%).

Because of the fact that what SRLs believe they need help with and what they actually need help with might be very different, clerks and judges were asked to indicate how often SRLs effectively represent themselves with regard to a list of specific court activities.<sup>25</sup> The activities most clerks and judges believe that SRLs are either never or rarely able to do include: adequately call witnesses (73.7%), adequately present evidence (72.3%), follow court procedural rules (53.4%), and have realistic expectations about the likely outcome of their cases (50%). See Fig. 12.

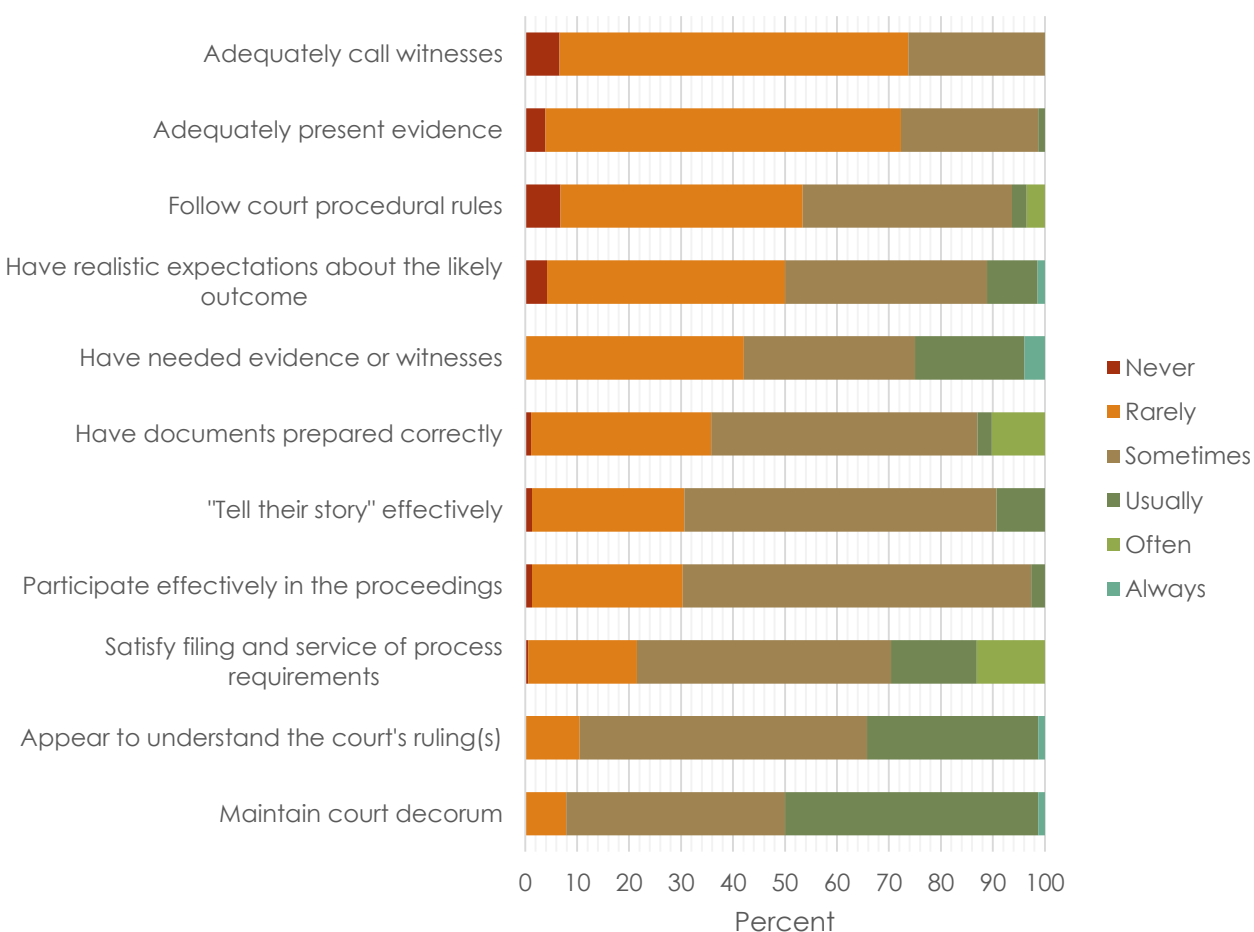


Figure 12. Indicators of how often SRLs are able to do the specified court process activities

<sup>25</sup> JQ10/CQ6: In your experience, how often do self-represented litigants... (Response choices were as they appear in Figure 13. Note that judges were asked about all of the response choices; clerks were only asked if SRLs satisfied filing and service of process requirements, have documents prepared correctly, and follow court procedural rules.

According to the judges and clerks, SRLs need more assistance with cases filed in district courts, and with cases in urban areas. Specifically, in terms of the need for assistance completing the hearing, 23.1% of district court respondents indicated that SRLs *always* need assistance. Meanwhile, in the county courts, none of the respondents indicated that SRLs always need assistance completing the hearing (though 53.8% did say that SRLs *usually* need assistance). In the district courts, 64.8% of respondents indicated that SRLs usually, often, or always look to them for legal advice, compared to 44.8% of the county respondents.

In urban areas, respondents were more likely to indicate that SRLs look to them for legal advice and/or advocacy, with 72.2% indicating this happens usually, often or always, compared to 46.2% of rural respondents. Urban respondents were also more likely to indicate that SRLs never or rarely maintain proper court decorum (14.3% of the urban respondents vs. 2.4% of rural respondents).

### ***C. Consequences of Self Representation***

#### ***1. Consequences for SRLs***

In an effort to determine if there are types of cases for which SRLs need additional attention or support, judges and clerks were asked to indicate the areas of the law in which they believed SRLs were most and least successful.<sup>26</sup> Overall, 67% of the respondents indicated that SRLs were *most* successful in the area of family law, followed by 18% indicating consumer law, and 11.6% indicating housing law. When asked to indicate the areas of the law in which SRLs were *least* successful, curiously, 57% also indicated family law (followed by 17.6% consumer law and 14.4% housing law), suggesting that indicators regarding when SRLs are most and least successful likely require an analysis at a level more specific than area of law.

There were some expected differences by court level, given the types of cases heard by district vs. county courts, with the vast majority of district court respondents (over 90%) indicating that SRLs were both the most successful as well as the least successful within the area of family law (see Fig. 13). Meanwhile, county court respondents provided more variation in their responses, with the most successful areas being consumer law (39.6%), family law (30.2%) and housing (22.6%) and the least successful areas being consumer law (34.5%), housing (29.3%) and family law (17.2%). See the Figure 26 and Figure 27 in the appendix for more detailed information by county.

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<sup>26</sup> JQ7/CQ13: Please provide the following information regarding self-represented litigation and substantive areas of the law. Area of law response options were provided in a drop-down box. Small claims and traffic cases were excluded.

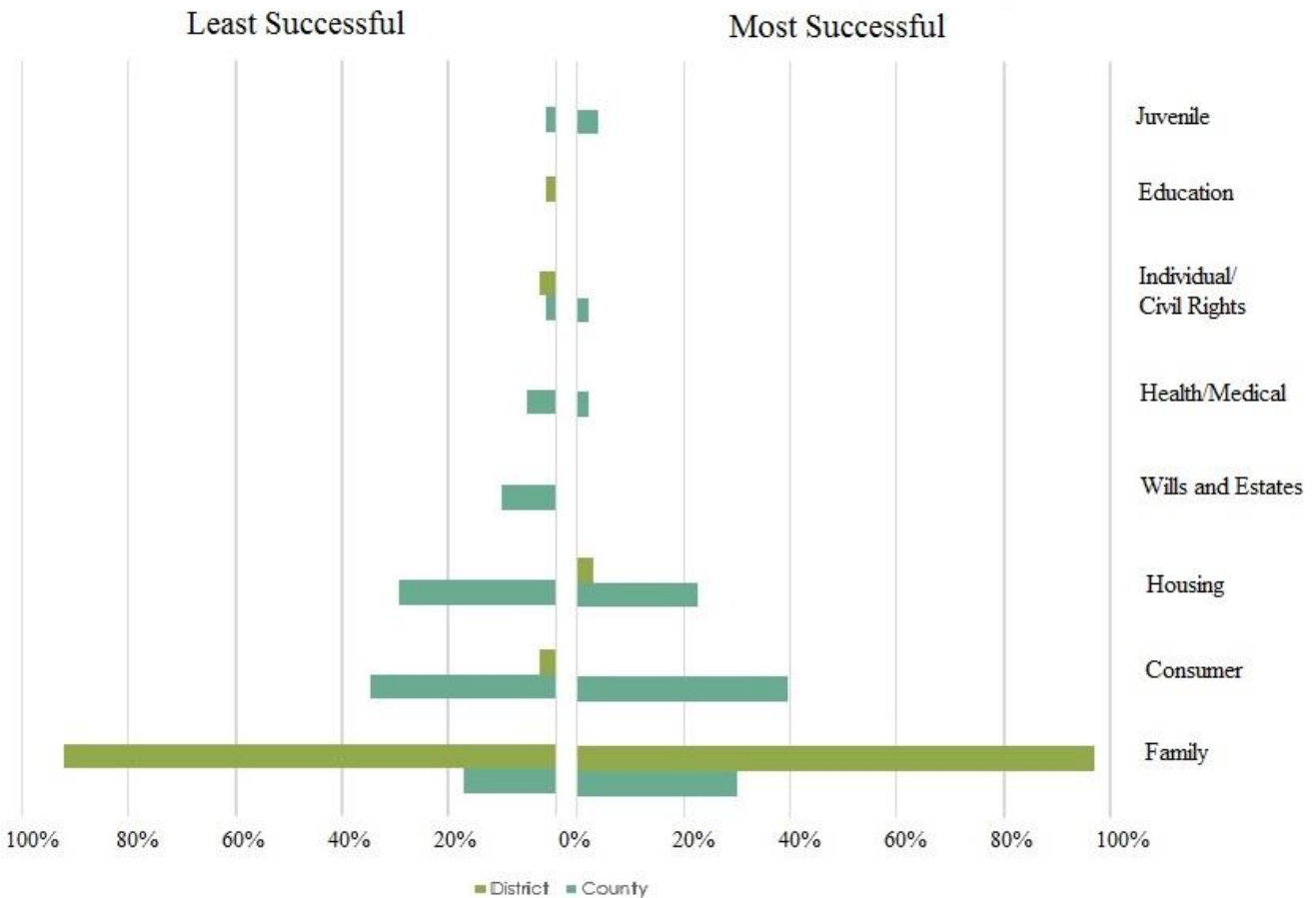


Figure 13. Areas of the law for which SRLs are most and least successful, by district vs county court

Some clarity on how the same area of the law could be determined to have the most and least successful clients comes from the breakdown of legal problems *within* family law. Out of those who indicated that respondents were most successful in the area of family law, 58% cited divorce specifically. Meanwhile, out of those who indicated that respondents were least successful in the area of family law, 45.1% cited custody/visitation cases specifically.

As expected, given the different types of cases heard, there were striking differences by court level in terms of observations regarding when SRLs are most and least successful. District court respondents overwhelmingly indicated that SRLs are most successful in divorce cases and least successful in custody or domestic abuse cases. County court respondents were essentially split between selecting guardianships as the most successful case type and least successful case type. See Fig. 14.

Responses regarding whether SRLs were successful in domestic abuse cases were quite variable. Overall, of the respondents who chose family law as the area for which SRLs were most successful, 12.3% selected domestic abuse. Of the respondents who chose family law as the least

successful area, 18.3% selected cases involving domestic abuse. Differences appeared to be county-specific, however. See Figure 28 in the appendix for more detailed information by county.

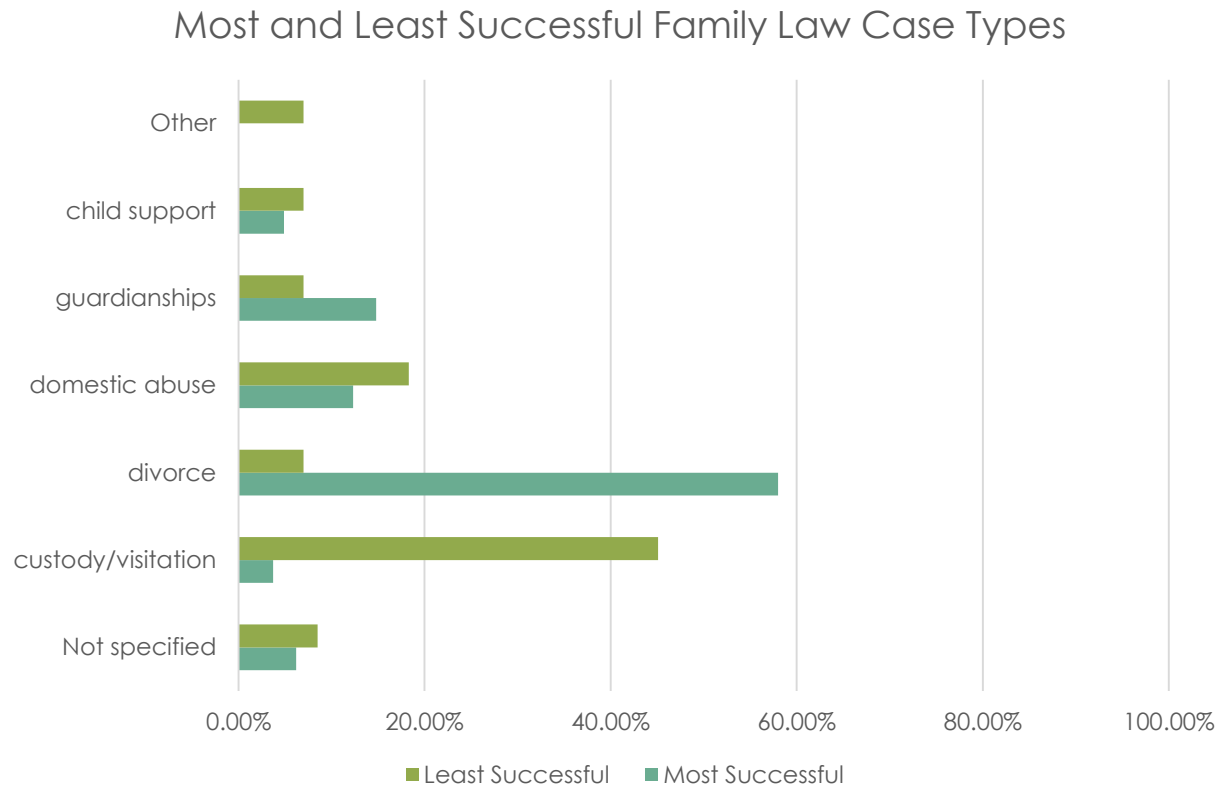


Figure 14. Family law case types for which SRLs are most and least successful

## *2. Consequences for the Court Process*

It was clear from the survey responses that clerks and judges are expending additional time and energy assisting SRLs. Approximately 65% of respondents indicated that SRLs usually, often or always need assistance to complete the hearing. And approximately 55% indicated that SRLs usually often or always look to them for legal advice and/or advocacy. When asked to estimate how the presence of SRLs in the courtroom impacts the length of time spent on the case, 61.9% of respondents indicated that SRLs usually, often or always take more time than represented litigants.<sup>27</sup> See Fig. 15. Urban respondents were 45% more likely to indicate that SRLs usually, often or always take longer than represented litigants.<sup>28</sup>

<sup>27</sup> JQ10/CQ6: In your experience, how often do self-represented litigants... (Response choices were as they appear in Figure 12. Note that judges were asked about all of the response choices; clerks were only asked if SRLs looked to them for legal advice and/or advocacy.

<sup>28</sup> 74.3% of urban county respondents indicated that SRLs usually, often or always take longer than represented litigants compared to 51.2% of rural respondents.

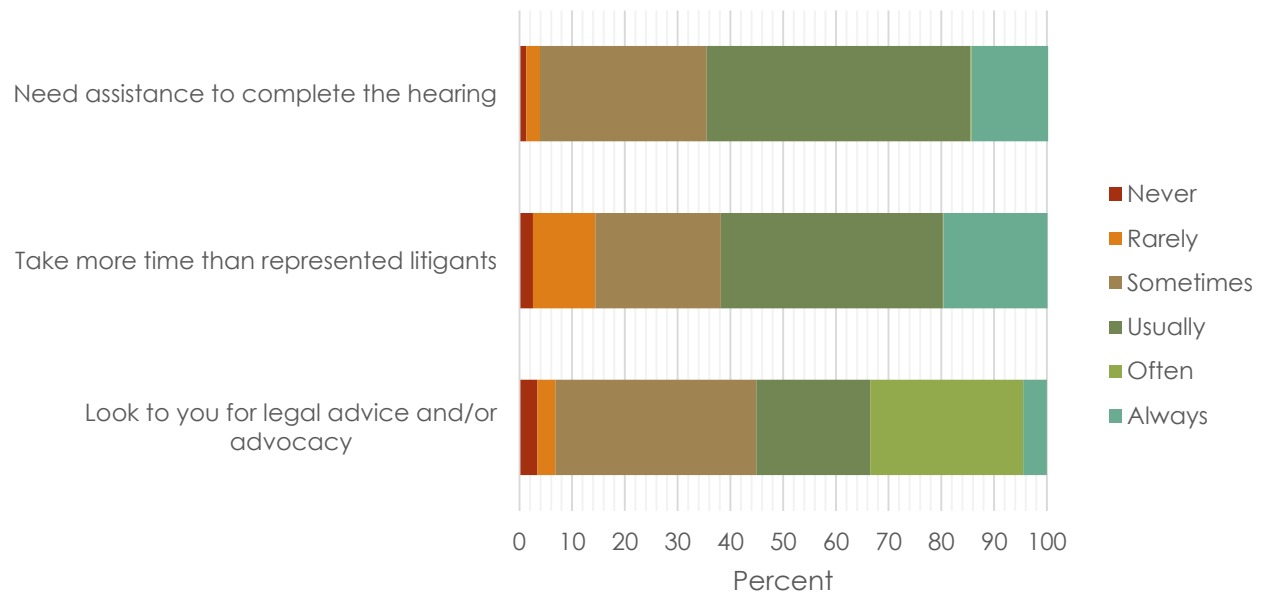


Figure 15. Indicators of specific consequences of the presence of SRLs on the court process

More specifically, judges tended to agree that the presence of SRLs results in more contested hearings because there are fewer settlements (69.7% agreed) and that SRLs cause progression delays (68.9% agreed). Approximately half of the judges agreed that SRLs compromise judicial neutrality due to an increased pressure on the judge to provide assistance (52.6% agreed) and that SRLs lead to more case dismissals (51.3% agreed).<sup>29</sup> See Fig. 16.

When asked if they believed that SRLs improve the process because they reduce the number of lawyers in the courtroom, the overwhelming majority disagreed (97.3%).

<sup>29</sup> JQ9: Rate your agreement with the following statements about pro se litigation. Response choices were as shown in Figure 15.



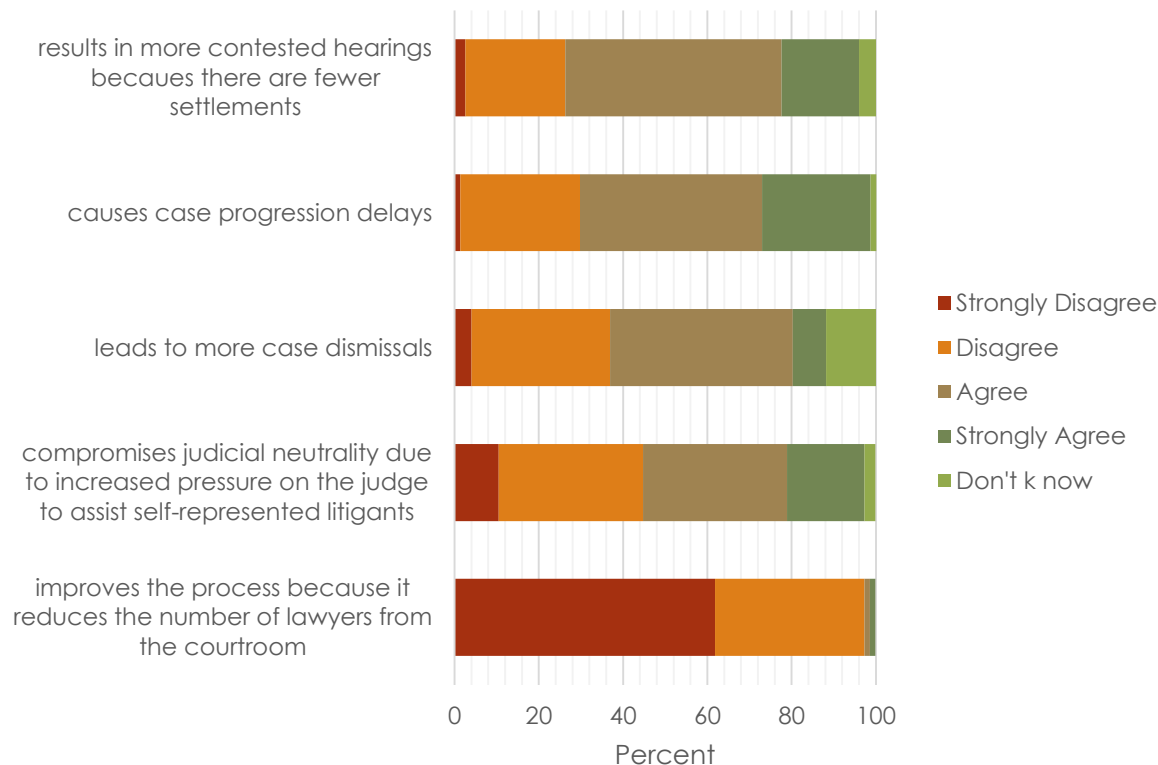


Figure 16. Judges' agreement with statements regarding the impact of SRLs in the courtroom.

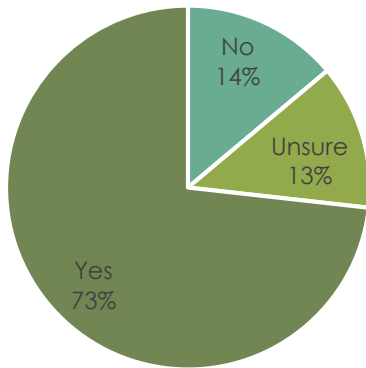
One consequence to clerks specifically comes in the form of being put in the position of having to distinguish between legal information and legal advice. As previously noted in this report, it is common for SRLs to ask for not only information but advice and advocacy as well, and clerks must be careful to not cross the line from information to advice. Most (73%) of the clerks indicated that they have received written guidance and/or training on this topic<sup>30</sup> and 77% indicated that they either always or usually feel confident in their ability to distinguish requests for legal information from requests for legal advice.<sup>31</sup> About a quarter (23%) indicated that they were sometimes confident that they could distinguish between requests for legal information and requests for legal advice. See Fig. 17. County court respondents were 32% more likely than district court respondents to indicate that they had been trained on this distinction.<sup>32</sup>

<sup>30</sup> CQ9: Have you received written guidance and/or training on the difference between legal information and legal advice? Response choices were Yes/No/Unsure.

<sup>31</sup> CQ10: Are you confident that you are able to distinguish requests for legal information from requests for legal advice? Response choices were never, rarely, sometimes, often, and always.

<sup>32</sup> 82.7% of county respondents said they had been trained (9.6% unsure, 7.7% not trained) compared to 62.5% of district court respondents (16.7% unsure, 7.7% not trained).

Trained on Difference  
Between Legal  
Information and Legal  
Advice



Confidence in Ability  
to Distinguish Requests  
for Legal Information  
vs Legal Advice

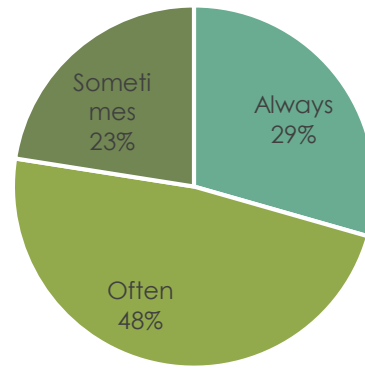


Figure 17. Clerks reported training on and confidence in ability to distinguish between legal information and legal advice.

Judges and clerks were asked to describe what they believed to be the most and least frustrating aspects of working with self-represented litigants.<sup>33</sup> Many respondents described SRLs' lack of knowledge or understanding of court procedures as the most frustrating aspect, with 48% of judges and 26% of clerks providing this type of response. The second most frustrating aspect described was that SRLs tend to have unrealistic expectations (18% of judges and 21% of clerks referred to this). Among the judges only, the third most frustrating aspect indicated was the impact on court time and resources (17% of judges provided this response).

There were some responses that were unique to, yet pervasive among the clerks. Having to explain that the court has to be impartial was referred to by one fifth of the clerks. And, another fifth expressed frustration with the fact that many SRLs would prefer to not put in the effort in figuring out what forms to use and how to complete them. Other themes revealed in the answer to this question included: that SRLs are often frustrated, trying to balance being impartial while being helpful, access to justice concerns, the abuse of self-representation by litigants who could afford to hire an attorney, that self-help resources are insufficiently helpful, and that self-help resources seem to increase the numbers of SRLs.

<sup>33</sup> JQ12/CQ14: What is the most frustrating aspect of working with self-represented litigants? JQ13/CQ15: what is the most frustrating aspect of working with self-represented litigants? Both questions prompted respondents to provide a narrative response. Thematic content analysis was applied to reveal patterns in the qualitative data.

Both judges and clerks agreed that one of the most rewarding aspects of working with SRLs is when the litigants are actually able to successfully navigate the system and achieve the outcome they were looking for. Almost 1/3 of the clerks indicated that being able to help people was very rewarding, followed by receiving expressions of appreciation from the SRLs (19%). Many judges, however, did not provide an answer for this question, or provided an answer that suggested that there were no rewarding aspects of working with SRLs. Other themes revealed in the answer to this question included: access to justice, having direct communication with litigants, seeing the SRLs learn about the process, that SRLs listen, that SRLs are more likely to reach an agreement, and that SRL testimony provides a more complete picture of the issues.

#### ***D. Resources and Support for SRLs***

In the final section of the surveys to both judges and clerks, a series of questions asked about the use and effectiveness of specific support and resources currently provided to SRLs. Judges and clerks responded to questions about resources for helping individuals find a lawyer as well as the prevalence of limited scope representation. Additionally, questions covered support provided by the courthouse itself, by Legal Aid of Nebraska, and by the Nebraska State Bar Association's Volunteer Lawyers Project (VLP).

##### *1. Sources for Finding Legal Advice or Representation*

First, clerks were asked to indicate where they *typically* direct individuals who are seeking legal advice and/or representation.<sup>34</sup> Most commonly, clerks indicated that they typically directed SRLs to the Supreme Court website (32.3%) and to Legal Aid of Nebraska (30.3%). An additional 12% indicated that they typically refer SRLs to local attorneys. There were some notable differences according to whether the clerks were in rural or urban counties: it was more typical for rural clerks to refer SRLs to the Supreme Court Website (35.6%), Legal Aid of Nebraska (31.5%), and local attorneys (15.1%). Urban clerks were more likely than rural clerks to refer SRLs to a Nebraska State Bar Association VLP Self-Help desk. See Fig. 18.

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<sup>34</sup> CQ7: Where do you typically direct self-represented litigants seeking legal advice and/or representation? Response choices were as shown in Figure 17.

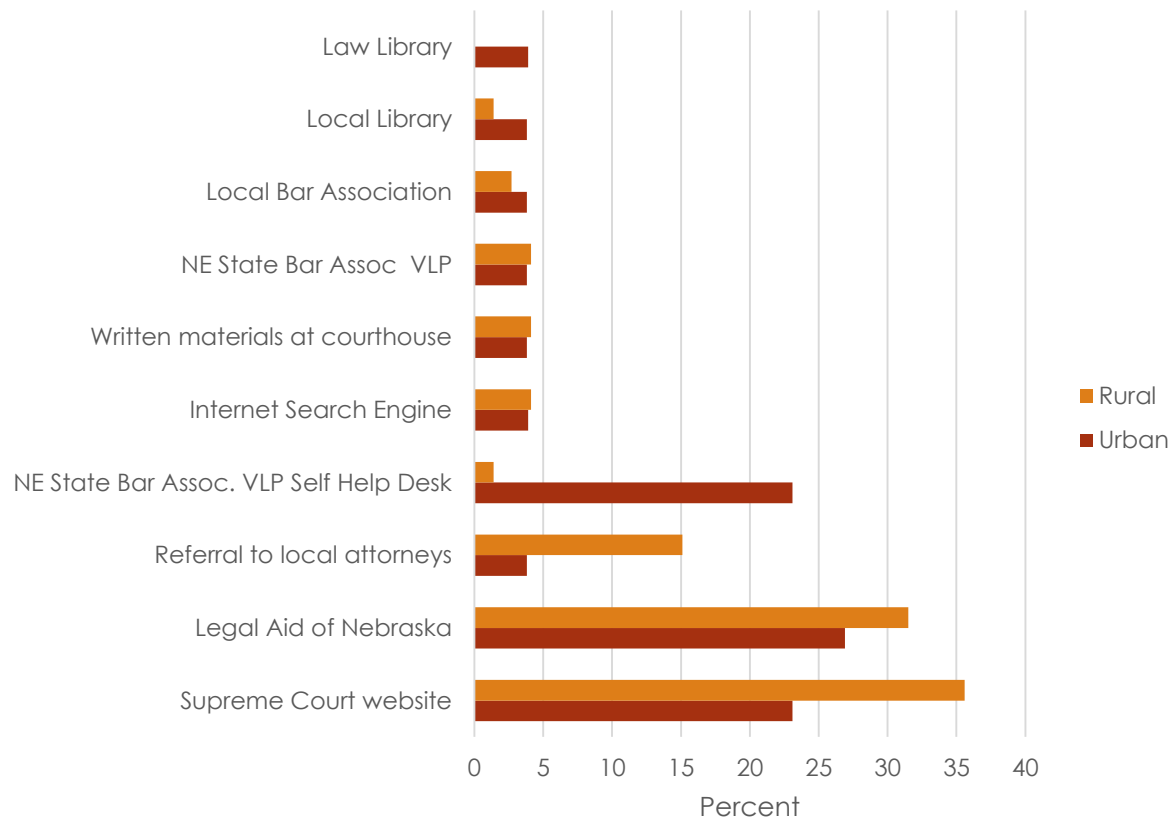


Figure 18. Percent of clerks referring individuals to specific sources for help finding legal representation or advice.

## 2. *Limited Scope Representation*

The use of limited scope representation by SRLs to help with very specific aspects of their cases appears to be occasional, rather than the norm. When SRLs did use limited scope representation services, most commonly they retain a lawyer for preparing documents; 43% of the judges indicated they sometimes see this.<sup>35</sup> The second most common use of limited scope representation was for legal advice during the process (28.9% of judges sometimes see this). See Fig. 19.

<sup>35</sup> JQ11: How often do you deal with self-represented litigants who have retained counsel for limited scope representation for the following.... Response choices were as shown in Figure 18.

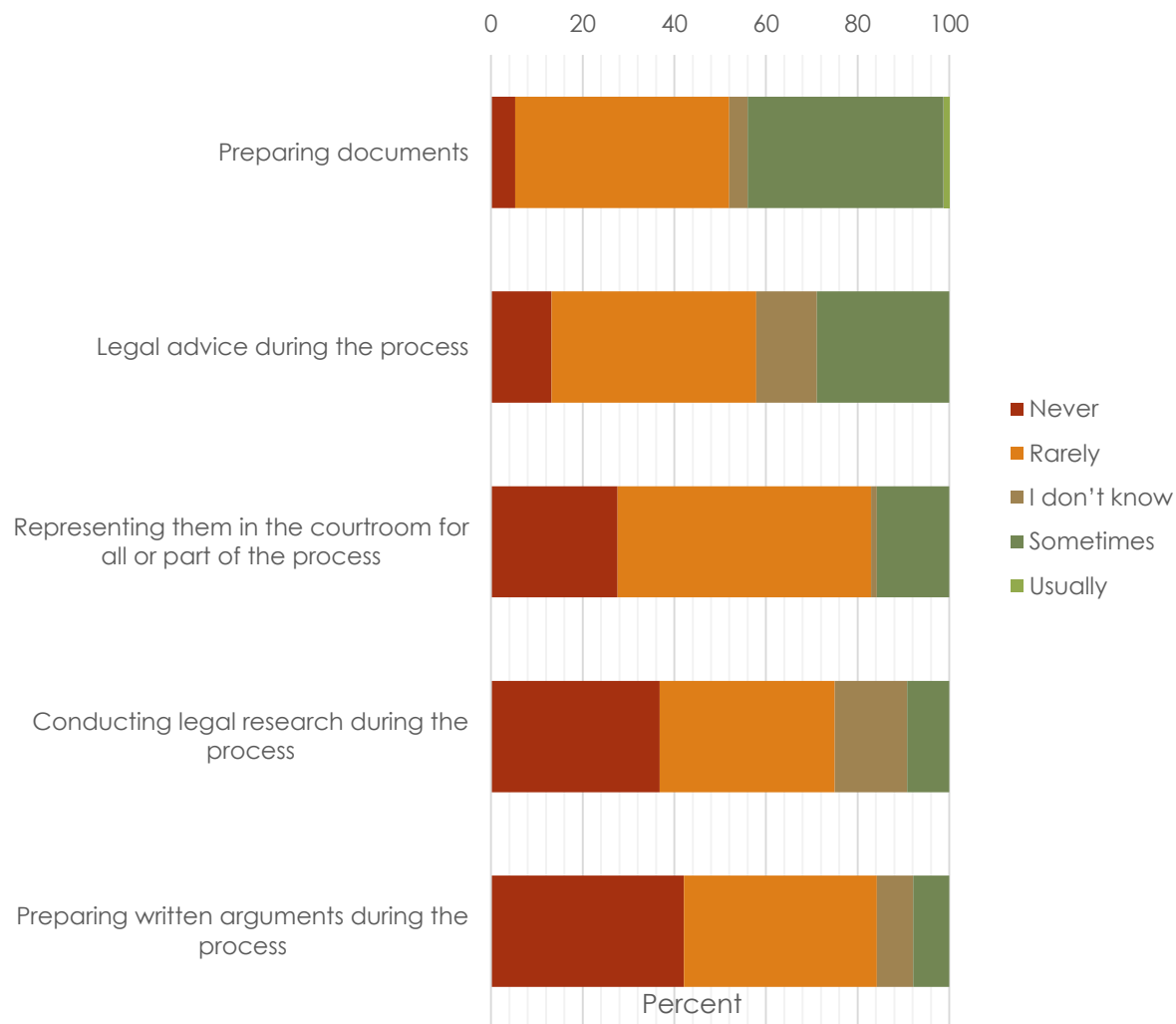


Figure 19. Use of limited scope representation by SRLs

#### 4. Courthouse Resources and Online Interactive Court Forms

When asked about resources developed by the courthouse to help assist SRLs, the most common resource developed and offered was a self-help desk, followed by written materials and online resources.<sup>36</sup> Urban clerks were more likely to indicate having a self-help desk (50%), whereas rural clerks were more likely to indicate having written material (31.8%) and online resources (31.8%).

<sup>36</sup> CQ8: Has your courthouse developed any of the following resources to assist self-represented litigants? Check all that apply. Due to an error, the survey only allowed one answer, rather than multiple answers to this question and therefore percentages are not presented.

Over the past few years, the Supreme Court Pro Se Committee partnered with Legal Aid of Nebraska to develop online interactive court forms. Forty-two percent of the respondents indicated that they had seen an increased use of these forms and 43% indicated they had not.<sup>37</sup> Additionally, 75% reported that they have seen a noticeable difference between SRLs who use forms from the court website and those who use do-it-yourself forms from other sources.<sup>38</sup> See Fig. 20.

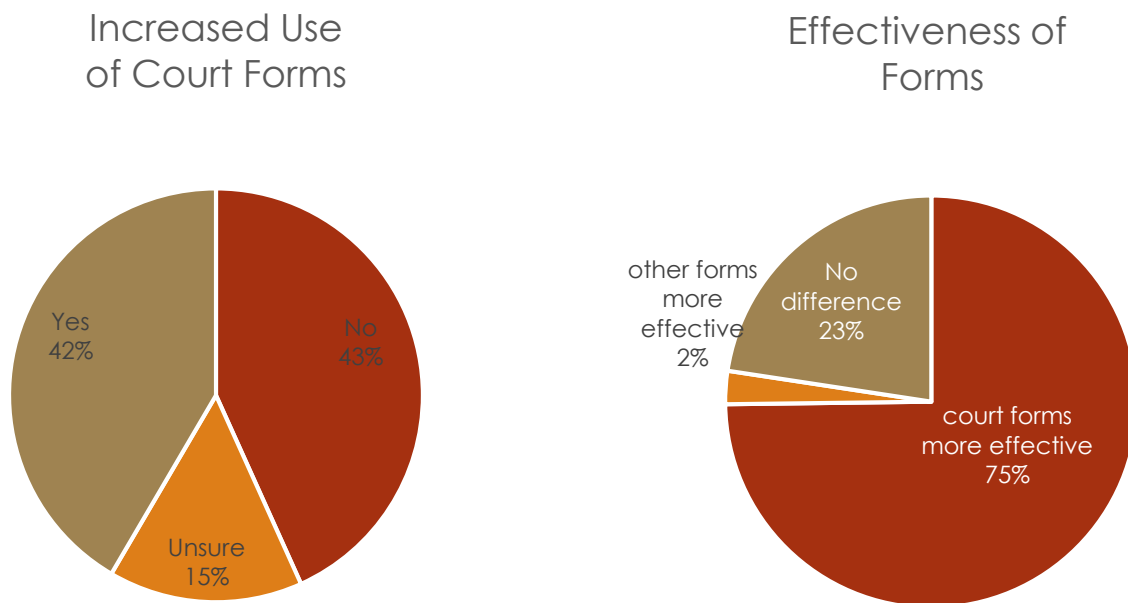


Figure 20. Use and effectiveness of court and other forms

### 5. Nebraska State Bar Association's Volunteer Lawyers Project Self-Help Desks

In addition to the availability of online court forms, SRLs in specific counties<sup>39</sup> have access to courthouse self-help desks, run by the Nebraska State Bar Association's Volunteer Lawyers Project (VLP). Approximately 1/3 of the respondents indicated that they had a VLP desk in their judicial district. Another 1/3 indicated they did not and 1/3 indicated they were unsure.<sup>40</sup> There

<sup>37</sup> JQ14/CQ16: Over the past few years, the Supreme Court Pro Se Committee partnered with Legal Aid of Nebraska to develop online interactive court forms (identified with a logo with "A2J" and scales). Have you seen an increased use of these forms? Response choices included Yes/No/Unsure.

<sup>38</sup> JQ15/CQ17: Is there a noticeable difference in self-represented litigants who use the forms from the Judicial Branch Website and those who use do-it-yourself forms from other sources? Response choices were as shown in Figure 19.

<sup>39</sup> The VLP coordinates self-help desks in Buffalo, Douglas, Hall, Lancaster, Madison, and Scottsbluff Counties.

<sup>40</sup> JQ16/CQ18: Is there a VLP Self-Help Desk in your Judicial District? Response options were Yes/No/Unsure.

were some significant differences by location, with rural respondents being 70% less likely than urban respondents to report having a VLP self-help desk in their judicial district.<sup>41</sup> See Fig. 21.

Of those who reported that they had a VLP desk in their district, the majority (60%) indicated that they believe the desk has improved self-represented litigation, followed by 1/3 reporting being unsure whether or not the desks were resulting in improvements.<sup>42</sup> Almost 67% of the clerks indicated that the VLP desks were specifically easing the burden on them to provide assistance to SRLs.<sup>43</sup> Of those who reported that they did not have or were unsure if they have a VLP self-help desk, 61.2% indicated that they perceived a need for one.<sup>44</sup> See Fig. 21.

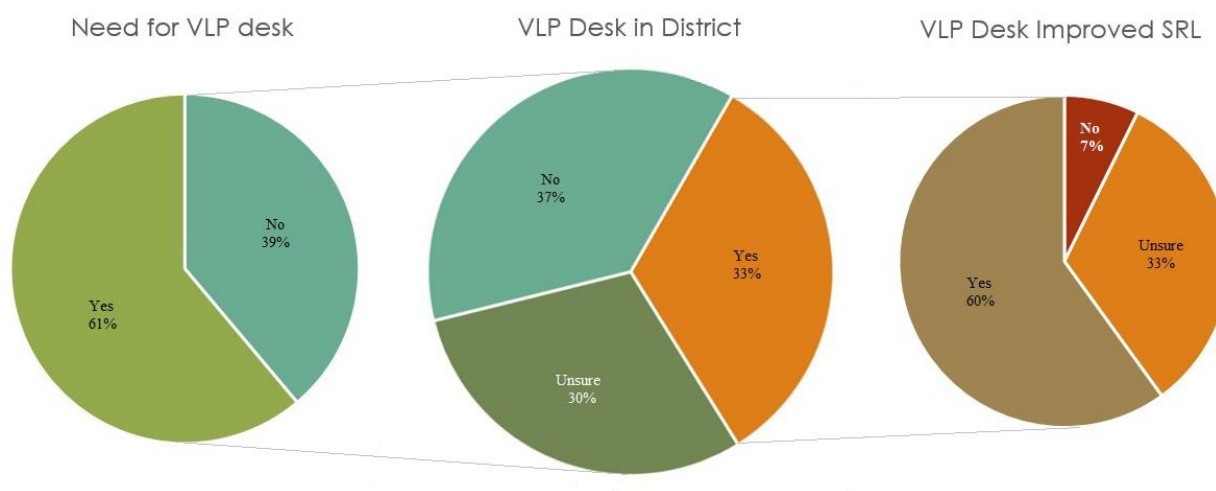


Figure 21. Prevalence, effectiveness and need for VLP desks

Urban respondents were more likely to indicate that the VLP desks were helpful (70.3%), whereas rural respondents were more likely to indicate that they were unsure (55.6%).<sup>45</sup>

In open-ended sections for the questions about the VLP Self-Help desks,<sup>46</sup> respondents expressed a common concern about the limited hours of operation for self-help desks. Overall judges and clerks expressed that the self-help desks were helpful when they were operating, and that expanding the hours would be a great benefit. However, simultaneously there were concerns about there being enough lawyers to staff the self-help desks. Additionally, some comments

<sup>41</sup> 60% of urban county respondents reported having a VLP desk compared to 18% of rural respondents.

<sup>42</sup> JQ17/CQ19: Do you think the VLP Self-Help Desk has improved self-represented litigation in your judicial district (correct use of forms, court preparedness, case success, etc.)? Response choices included Yes/No/Unsure.

<sup>43</sup> CQ20: Has the VLP Self-Help Desk eased the burden on clerks to provide assistance to self-represented litigants? Response choices included Yes/No/Unsure.

<sup>44</sup> JQ19/CQ22: Do you perceive a need for a VLP Self-Help Desk in your judicial district and/or courthouse? Response choices included Yes/No.

<sup>45</sup> Note that because of the distance to the nearest self-help desk, many rural county respondents would not have first-hand knowledge or experience with the self-help desk in their jurisdiction.

<sup>46</sup> JQ18/CQ21: What problems do you perceive with the VLP self-help desks?

expressed concern about the expertise of the lawyers volunteering at the self-help desks, suggesting that specific training might be helpful.

### 6. *Legal Aid of Nebraska*

Given that Legal Aid of Nebraska provides a range of statewide services for SRLs - including advice and counsel over the phone, online resources, informational sessions and in-person assistance at self-help centers in Lincoln and Omaha - judges and clerks were asked to indicate which type of assistance they believed to be the most effective.<sup>47</sup> The majority of respondents felt that Legal Aid could most effectively assist SRLs by providing advice and counsel regarding the court process (66.3%) and court forms, along with assistance in completing them (61%). About 1/3 of the respondents also believed that Legal Aid could most effectively assist SRLs by providing information sessions or guides on the court process and/or online interactive court forms. See Fig. 22.

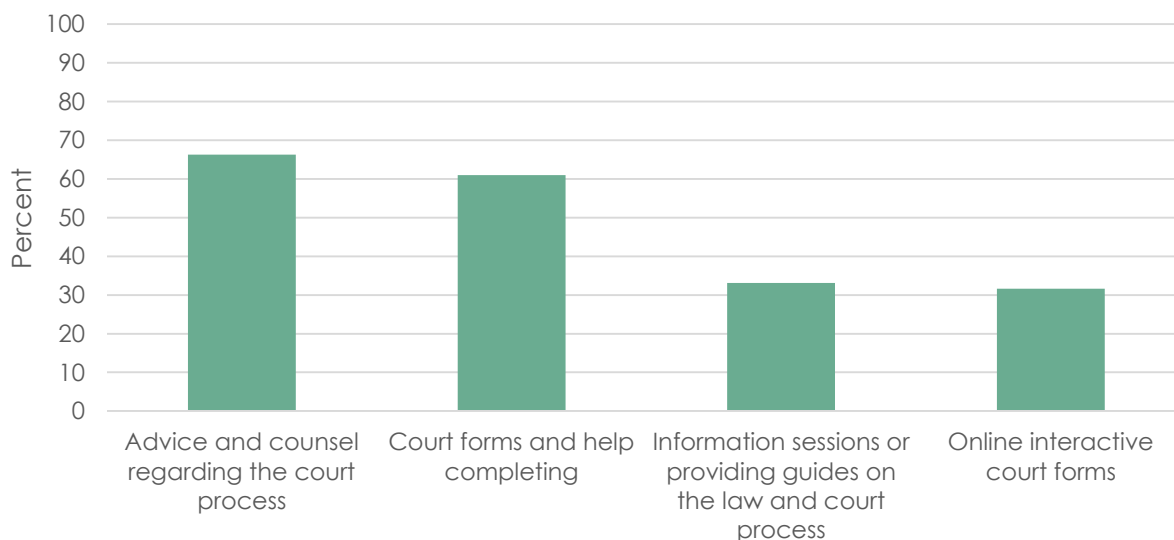


Figure 22. Most effective Legal Aid services to SRLs.

<sup>47</sup> JQ20/CQ23: In your experience, how can Legal Aid most effectively assist self-represented litigants (check all that apply). Response choices were as shown in Fig. 22.



## V. Conclusion and Discussion

Although the results of this survey can neither be a substitute for the collection of actual numbers of SRLs appearing in Nebraska courts nor self-reports of the experiences of SRLs, the impressions of the people who are in the courtrooms with them on a day to day basis are certainly extremely valuable in their own right. The surveyed judges and clerks are in the unique position of being present – interacting and observing – while litigants self-represent as well as being the most knowledgeable about the nuances of the court system. Their descriptive and normative reactions to self-representation are therefore a necessary contribution to any attempt to really meaningfully address access to justice issues for this population.

While some variation in responses was inevitable, there was also significant agreement throughout the survey suggesting that current supports and resources available to SRLs are not meeting the growing demand. Self-representation has become common in approximately 1/5<sup>th</sup> of the cases, and is even more common in the area of family law, in urban areas and most significantly in district courts. This explosion of self-representation in the district courts is one of the more noteworthy findings in this survey, as institutional supports for addressing this problem are less likely to be in place there, as compared to the county courts where self-representation is likely to have been more common in recent history.

Although support in the form of online court forms, assistance over the phone, and self-help desks are available across the state, these resources are subject to a number of limitations, including availability depending on the type of case, client eligibility, location and time of day. Everywhere, resources are stretched thin, but this survey shows that this is even more likely to be the case in the Nebraska district courts. Meanwhile, the clerks in the district courts were less likely to have been trained on the distinction between legal information and legal advice than clerks in the county courts.

The brunt of this mismatch between the needs of SRLs and the availability of resources is inevitably taken on by the court staff. With many clerks and judges painstakingly tip toeing around impartiality issues, doing their best to walk right up to that line between information and advice without crossing it, while SRLs are faced with the daunting task of navigating a system that, without some kind of assistance, is much too complex for even highly educated citizens. One thing is clear: the court system was not designed for this.

In an ideal world, each SRL unable to afford a lawyer would be provided one free of charge, and no litigant would ever again be faced with the loss of a home, a life savings, or custody of a child without access to a fair trial. But the reality of resource availability in an already economically beleaguered system precludes even entertaining the idea of a world like that. Instead, determining the most efficient and effective way to use the limited resources that we do have is the task now before us.

The solution for how to best allocate resources to address the problem of self-representation would be more clear were there more agreement regarding the cause of the problem. The crux of the disagreement involves the answer to the question of what these litigants would do as an alternative to self-representation: somehow find the funds to seek assistance from a lawyer or simply not go to court at all. Or, in other words, is the rise in self-representation a choice, driven by a broadening cultural acceptance of a do-it-yourself attitude towards the court process or is it the result of financial pressures and the lack of alternatives? The answer to this question is believed to be essential in determining where responsibility for this problem lies.

Although a thorough analysis of the causes of the increase in self-representation is beyond the scope of this survey, the opinions here expressed by the judges and clerks suggest that a dichotomous approach to asking and answering this question might be misleading. While many agree that finances are the leading reason for self-representation and that self-help resources need to be expanded and made more available, 1/3 of the respondents indicated that many SRLs actually do not really understand the costs and benefits of having a lawyer and 1/4<sup>th</sup> indicated that the availability of self-help resources deters some litigants from seeking legal assistance.

One might interpret these results to mean that there is a subset of court staff that are simply and categorically hostile towards SLRs. An alternative view, however is that the diversity of responses reflects the fact that the SRL population is complex and dynamic. Some self-represent because they have no choice (and in fact much of the literature suggests this<sup>48</sup>), while others self-represent because it is the *best* choice. Considering the SRL population not as one homogenous group, but as a diverse group with variable motivations, financial resources, and abilities to self-represent suggests that there is not one solution, but many to this problem.

Certainly, for the many who self-represent because they have no choice, expanded self-help resources (not only providing court forms, but assistance filling them out) is absolutely necessary. But, for those who self-represent because it is their *best* choice, making lawyers more accessible by expanding limited scope representation and reduced fee lawyering would go a long way in making sure that the self-help resources are used for those who need it the most. The clerks and judges in this survey agreed that limited scope representation is underutilized and the preliminary results of a statewide survey of Nebraska attorneys shows that only 2% of lawyers have provided limited scope representation in a pro bono case. In that same survey, only 31% indicated that they had provided legal services for a reduced fee. Clearly, the legal profession is still clinging to an antiquated model of lawyering.

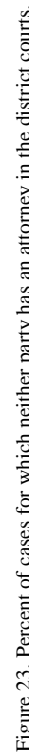
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<sup>48</sup> See, for example John M. Greacen (2014) Self-Represented Litigants, The Courts, and the Legal Profession: Myths and Realities. *Family Court Review* 52(4):662-669.

This is a situation that requires more than band-aid solutions, as the landscape has so significantly changed that now a systemic and holistic response is required if we want to preserve equal access to justice in Nebraska.<sup>49</sup>

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<sup>49</sup> The editorial sections of this report represent the views of Legal Aid of Nebraska and not the views of the Nebraska Supreme Court Committee on Self-Represented Litigation.



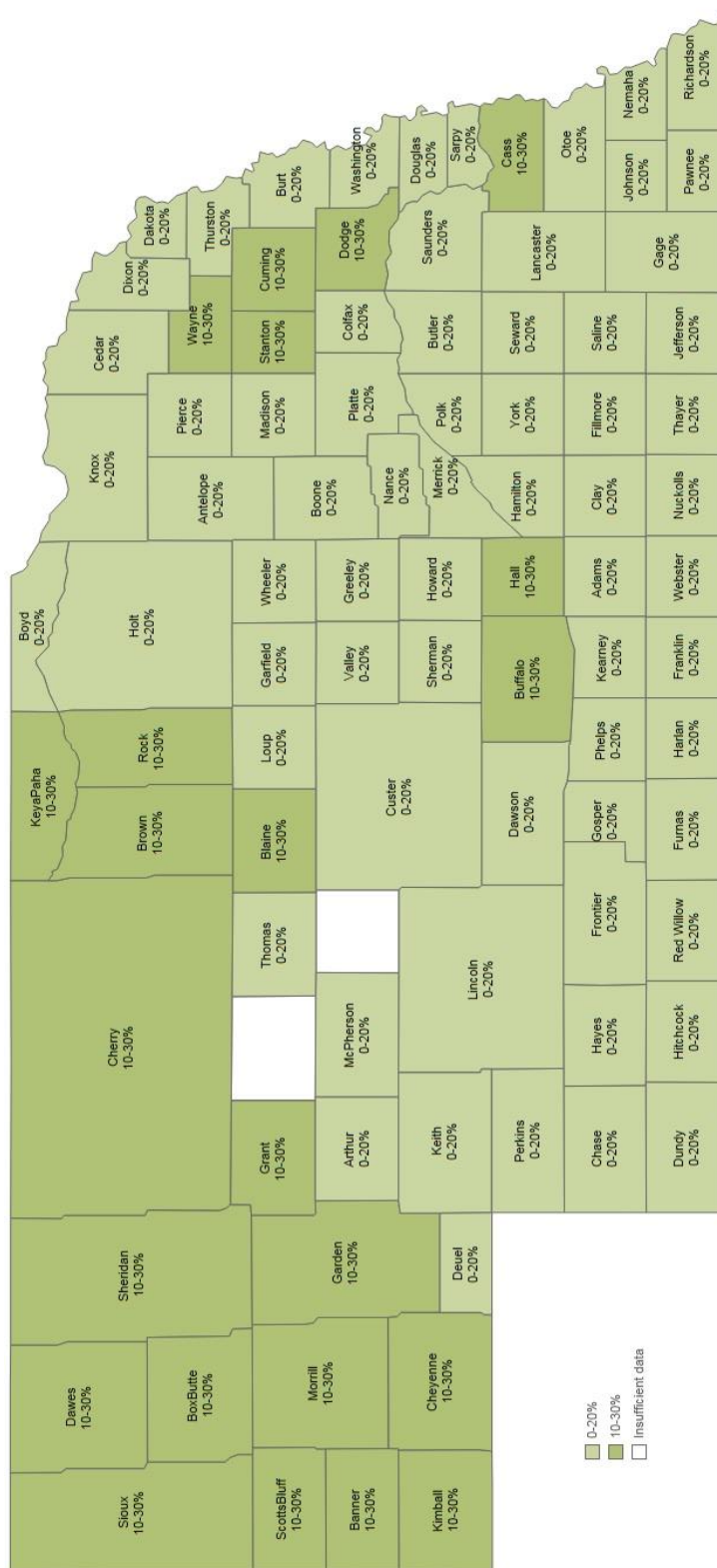


Figure 24. Percent of cases for which neither party has an attorney in the county courts.

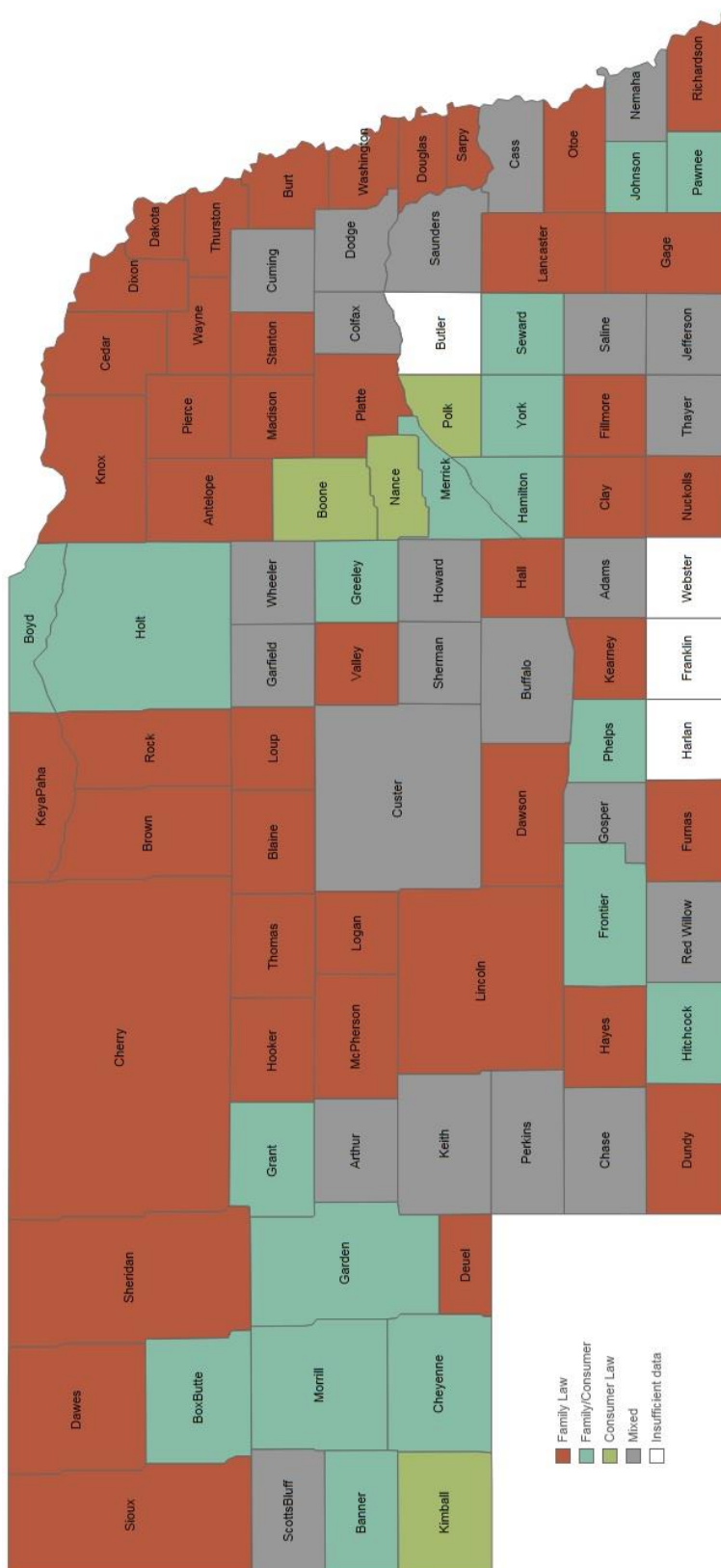


Figure 25. Area of law with most SRI.s

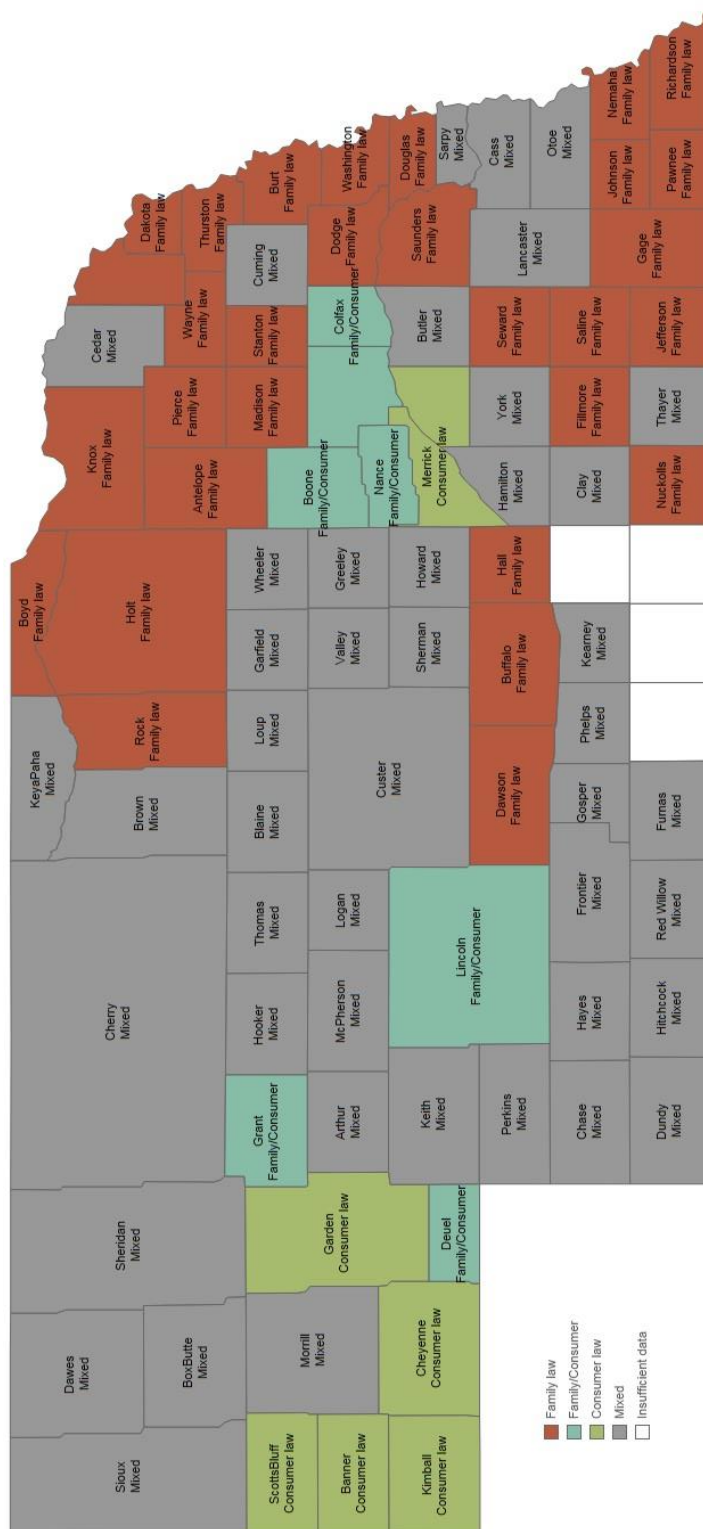
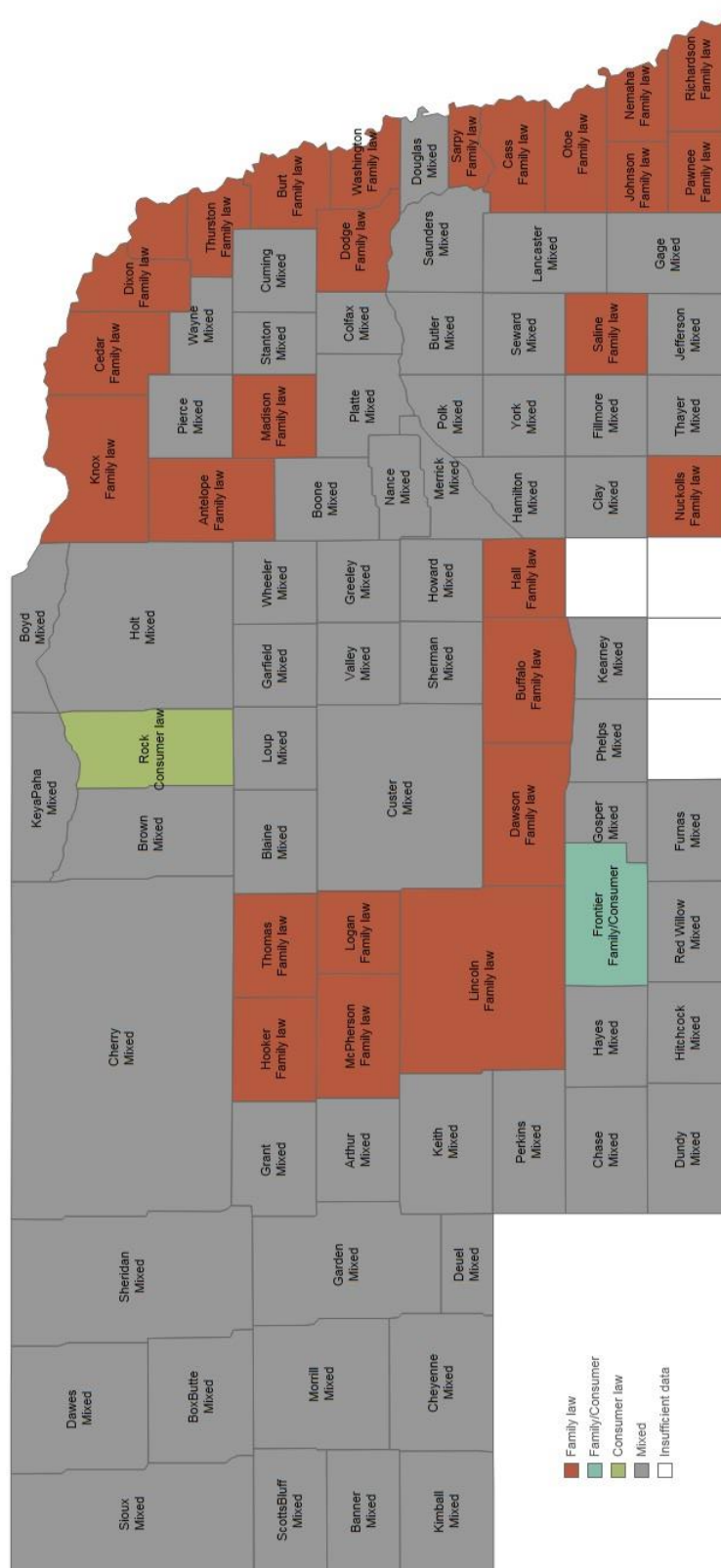


Figure 26. Most successful Area of law





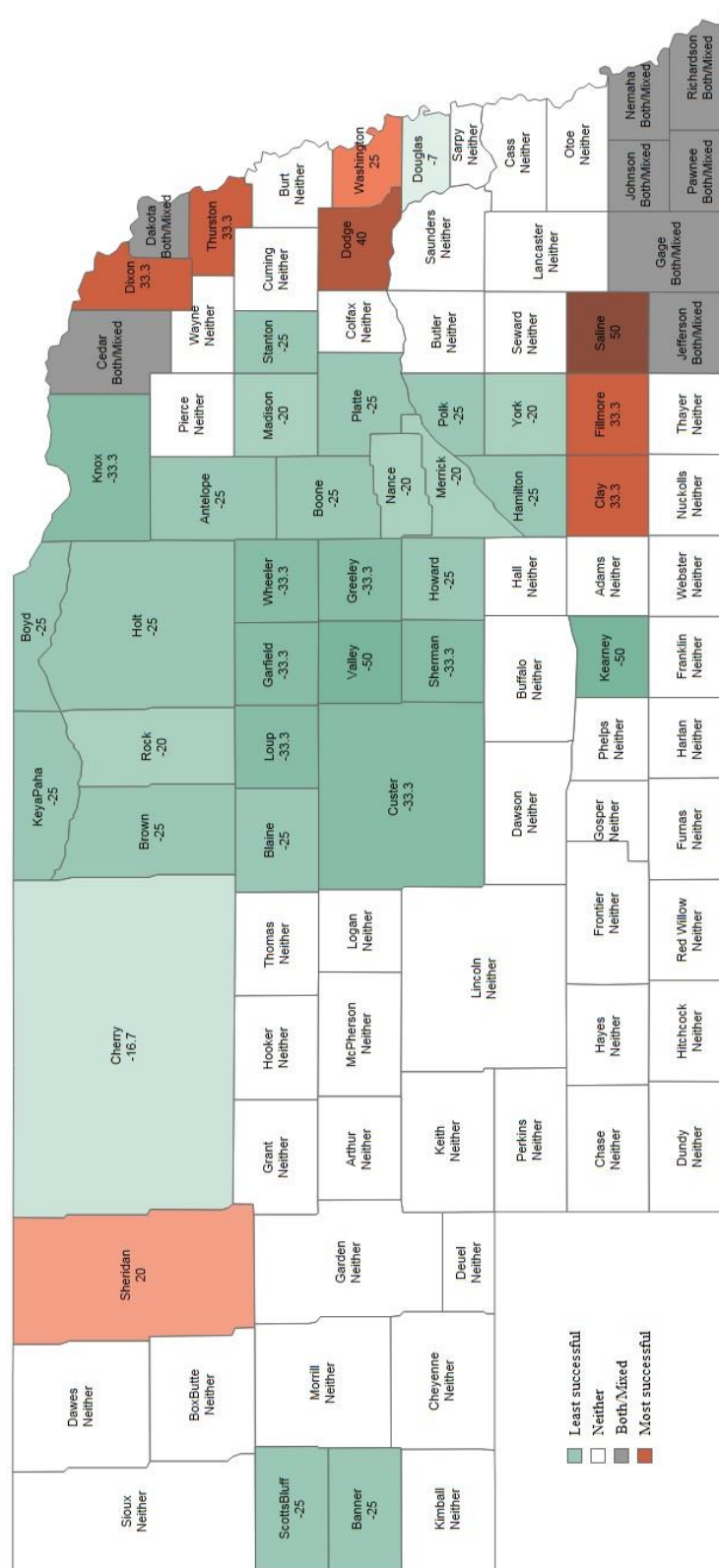


Figure 28. Estimations of success in domestic violence cases, by county. Numbers were calculated according to average responses, where stronger negative numbers indicate a stronger agreement that DV cases were least successful and higher positive numbers indicate a stronger agreement that DV cases were most successful.