

## **Hypothetical case: Foreclosure discrimination**

*The following hypothetical case presents challenges and opportunities to use technology strategies while litigating complex systemic issues.*

*Don't spend time getting bogged down in any legal issues that may apply. Instead, focus on brainstorming the best options, resources and strategies that advocates could pursue to effectively achieve a positive outcome .*

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An increasing number of homes continue to be foreclosed across New Mexico. New Mexico Legal Aid's attorneys have responded to as many individual cases as possible. There have been some successes, but also a growing number of cases where homeowners have been forced to move out after the foreclosure process is completed.

Your case management system produces a monthly report showing all cases closed. The report lists client names, opposing party names and the problem code for each case. In reviewing this list, one of NMLA's attorneys sees that Lobos National Bank has been the most frequent opposing party in foreclosure cases during the past year.

The attorney looks into some of the case files and soon notices an unusual pattern. In cases where LNB has foreclosed on properties owned by white clients, the bank has agreed to time extensions that on average have allowed the homeowners to remain in the home 6 months longer compared to foreclosure cases involving non-white homeowners.

Litigating this case will not be easy. The evidence is still mostly anecdotal at this point. The Albuquerque law firm which represents LNB has a reputation for vigorously defending any claims against the bank. A single case involving these claims could easily take more than 500 hours of staff time.

A conference call is scheduled for NMLA attorneys who have expertise for foreclosure cases. A litigation team is established including attorneys from Santa Fe, Albuquerque and Las Cruces, three communities where LNB has been filing frequent foreclosure actions. The team will be charged with outreach, investigation and litigation regarding the potential claims against the bank. You are appointed to lead the team.

As you discuss how to handle this situation, keep the following questions in mind:

- 1) How will potential clients, social service agencies, private bar partners, and other allies in the community know that NMLA is interested in reviewing cases involving LNB foreclosures?
- 2) How will NMLA's intake system be able to effectively identify cases which fit the suspected pattern?
- 3) How will staff be able to timely share information about new case facts and other significant events in any case being investigated or litigated?

- 4) How will staff be able to effectively collaborate across local office boundaries?
- 5) How will documents and other information compiled through investigation and discovery be effectively analyzed to prove common patterns that may exist across multiple cases?
- 6) How will research and pleadings be effectively shared to minimize duplication of effort?
- 7) For cases which go to trial, how will the program provide appropriate support and resources for advocates to effectively present complex information and legal concepts to a jury?
- 8) How will private bar partners or other advocacy organization allies be integrated into this project?
- 9) How will the program analyze outcomes and define success?
- 10) How will the project effectively be supervised across multiple office lines?
- 11) How would any of your answers changed if you discovered that legal aid programs in three neighboring states also were litigating similar cases against LNB?